DOCKET NUMBER 2011-1565-IWD

APPLICATION BY	§	**BEFORE THE**
DOS REPUBLICAS COAL	§	**TEXAS COMMISSION ON**
PARTNERSHIP FOR TPDES	§	**ENVIRONMENTAL QUALITY**
PERMIT NO. WQ0003511000	§	

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS AND REQUEST FOR RECONSIDERATION

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests and Request for Reconsideration on the application by the Dos Republicas Coal Partnership (Applicant) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) permit number WQ0003511000. Timely contested case hearing requests were filed by the following persons and entities.

Keith Ayers, George Baxter, Jesus Castillion, Aureliano and Terri Conteras, Gabriel and Leticia De La Cerda, Tricia Cortez, Dr. Carlos De La Pena, the City of Eagle Pass, Tina and Albert Ellis, Mr. and Mrs. Raul Espinosa, Mr. and Mrs. Ramon Ferrer, Jesus Fuentes, Humberto and Ana Maria Gamez, Alonzo and Eva Gonzales, Dr. Carlos Hernandez, Gloria Hernandez, Mike P. Hernandez, Walter and Ladye Herring, Mr. and Mrs. Hierro, Anson Howard, Ryland Howard, Ernesto Ibarra, Kickapoo Traditional Tribe of Texas (KTTT), Prosser Martin, Claudio Sandoval Martinez, Maverick County (represented by Lowerre Frederick Perales Allmon & Rockwell), Maverick County Environmental and Public Health Association (represented by Texas Rio Grande Legal Aid, Inc.), Heriberto Morales, Jr., Mr. and Mrs. Jose M. Morales, Jim and Rosa O'Donnell, Dr. Carlos E. de la Pena, Eli and Sharo Perez, Martha M. Ramirez, Martha S. Ramirez, Claudio H. Sandoval, Edward M. Sandoval, Jesus H. Sandoval, Jose Sandoval, Betty and E.K. Taylor, Mr. and Mrs. Satos Torres, Mr. and Mrs. Alfonso A. Trevino, Mr. and Mrs. Enrique G. Trevino, Mr. and Mrs. Guillermo Villarreal, and Kim Wall.
A timely request for reconsideration (RFR) was also filed by KTTT.
Attached for Commission consideration are the following:

Attachment A	Satellite Map of Area
Attachment B	Fact Sheet and ED's Preliminary Decision
Attachment C	Draft Permit
Attachment D	ED's Response to Public Comment (RTC)
Attachment E	Compliance History
Attachment F	November 29, 1994 TNRCC Order Issuing Original Permit with Findings of Fact and Conclusions of Law

Attachment G	Original Landowner List and Map from Initial Wastewater Permitting
Attachment H	EPA Permit TX0109011 issued August, 1995
Attachment I	TNRCC Permit 03511 issued November, 1994

II. Description Of The Facility

The Applicant, which intends to operate the Eagle Pass Mine, a sub-bituminous coal mine, has applied for a renewal of TPDES Permit No. WQ0003511000, which authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013. This permit was first issued in 1995 and subsequently renewed in 2000 and 2005. Though the permit is a renewal, the Applicant has not begun active mining operations at the permitted site.

The site is located on the northeast side of State Highway 1588, three miles northeast of U.S. Highway 277, and approximately five miles northeast of the City of Eagle Pass, in Maverick County. The effluent will be discharged to unnamed ditches; then to Elm Creek; then to the Rio Grande below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin. The unclassified receiving waters have no significant aquatic life use for the unnamed ditches and high aquatic life use for Elm Creek. The designated uses for Segment No. 2304 are high aquatic life use, contact recreation, and public water supply.

III. Procedural Background

The application for renewal was received on February 26, 2010, and declared administratively complete on March 31, 2010. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in *The News Gram* on April 22, 2010. The alternative language (Spanish) NORI was published in *The News Gram* on April 23, 2010. The ED completed the technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published in *The Eagle Pass Business Journal* on October 21, 2010 and in *The News Gram* on October 22, 2010. An alternative language NAPD was also published in *The News Gram* on October 22, 2010.

Public meeting requests were received from Texas State Senator Carlos I. Uresti and Texas State Representative Tracy O. King. The Applicant published notice of the public meeting in *The News Gram* on December 16, 2010. The Applicant also published an alternative language notice of the public meeting in *The News Gram* on December 16, 2010. A public meeting was held in Eagle Pass on January 25, 2011 and the comment period ended at the close of the public meeting. The ED filed his Response to Comment on July 28, 2011 and the deadline to request a CCH or RFR was August 31, 2011. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. The Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. This application is subject to the HB 801 requirements.

A. Responses to Requests

"The executive director, the public interest counsel, and the applicant may submit written responses to [hearing] requests . . . ." 30 TAC § 55.209(d).

According to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

(1) whether the requestor is an affected person;
(2) which issues raised in the hearing request are disputed;
(3) whether the dispute involves questions of fact or of law;
(4) whether the issues were raised during the public comment period;
(5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
(6) whether the issues are relevant and material to the decision on the application; and
(7) a maximum expected duration for the contested case hearing.

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements. As noted in 30 TAC § 55.201(c):

> A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

According to 30 TAC § 55.201(d), a hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and

documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

C. Requirement that Requestor be an "Affected Person"

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person." The factors to consider in making this determination are found in 30 TAC § 55.203 and are as follows:

(a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

(b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

D. Referral to the State Office of Administrative Hearings

30 TAC § 50.115(b) details how the Commission refers a matter to the State Office of Administrative Hearings: "When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(c) further states:

> The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.

E. Permit Applications Where There is No Right to a Contested Case Hearing

30 TAC § 55.201(i)(5) outlines when a renewal or amended permit application proposed to be issued under the Texas Water Code, Chapter 26, is not subject to a contested case hearing. A permit renewal or amendment is not subject to a contested case hearing when:

(A) the applicant is not applying to:
  (i) increase significantly the quantity of waste authorized to be discharged; or
  (ii) change materially the pattern or place of discharge;
(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
(C) any required opportunity for public meeting has been given;
(D) consultation and response to all timely received and significant public comment has been given; and
(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

V. Evaluation of Hearing Requests

A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d).

All hearing requesters submitted timely written contested case hearing (CCH) requests that included contact information and raised disputed issues, with two exceptions. The KTTT request contained individual hearing requests for Anson Howard and Ryland Howard, but no contact information for those two individuals were included. The request stated they had previously submitted contact information, but this information was not located in the file in the Office of the Chief Clerk. Absent additional information, the ED recommends finding Anson Howard and Ryland Howard did not comply with 30 TAC §§ 55.201(c) and (d) for requesting a CCH.

The following persons did not include enough information for the ED to specifically locate them in relation to the proposed mining operation on the attached satellite map. *See* Attachment A:

Kickapoo Traditional Tribe of Texas (KTTT), HCR 1, Box 9700, Eagle Pass, Texas 78852[1]
Terri and Aurelimo Conteras, Rt. 2, Box 211, U.S. Hwy 277, Eagle Pass, Texas 78852
George Baxter, P.O. Box 951, FM 1589, Eagle Pass, Texas 78853
Betty and E.K. Taylor, Rt. 2, Box 186, Eagle Pass, Texas 78852
Jim and Rosa O'Donnell, HC 2, Box 192, Eagle Pass, Texas 78852
Alonzo and Eva Gonzales, Rt. 2, Box 185, Eagle Pass, Texas 78852
Humberto and Ana Maria Gomez, HC 2, Box 190, Eagle Pass, Texas 78852
Mike P. Hernandez, Rt. 2, Box 171B, Eagle Pass, Texas 78852
Tina and Albert Ellis, Rt, 2, Box 172, Eagle Pass, Texas 78852
Keith Ayers, P.O. Box 1290, Eagle Pass, Texas 78853
Eli and Sharo Perez, P.O. Box 4728, Eagle Pass, Texas 78853-4728
Martha M. Rameriz, P.O. Box 2020, Eagle Pass, Texas 78853-2020
Martha S. Rameriz, P.O. Box 2020, Eagle Pass, Texas 78853-2020[2]
Maverick County (their hearing request indicated they owned parkland property on Elm Creek "in close proximity" to the mining site, but did not indicate a precise location, so that it could be included on the agenda map)
Anson Howard (no address submitted with request)
Ryland Howard (no address submitted with request)

The ED recommends finding that all requestors substantially complied with 30 TAC §§ 55.201(c) and (d), with the exception of Anson Howard and Ryland Howard.

B. The Requestors Have no Right to a Contested Case Hearing on this Renewal Application

This is an application for renewal of a wastewater discharge permit and the Commission must determine whether there is a right to a contested case hearing. The CCH requests in this case should be denied under TWC § 26.028(d) and 30 TAC § 55.201(i)(5), because there is no right to a contested case hearing for this permit renewal.

30 TAC § 55.201(i)(5) states that there is no right to a CCH for applications that seek to renew or amend a permit under Texas Water Code, Chapter 26, if: (1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge, (2) The activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged, (3) Any required opportunity for public meeting has been given, (4) Consultation and response to all timely received and significant public comment was done, and (5) The Applicant's compliance history for the previous five years raises no issues regarding the Applicant's ability to comply with a material term of the permit.

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1 According to their letter, the Kickapoo reservation is located "approximately12 miles" from the mining site and would not be shown on the agenda map (Attachment A) in any event.
2 Martha M. and Martha S. Ramirez filled out separate TCEQ Public Meeting Forms at the public meeting held on January 25, 2011.

This application seeks to renew TPDES permit no. WQ0003511000. The permit was originally issued in 1995 and this is the third renewal of the permit. A contested case hearing was held on the original permit application in 1994 prior to issuance of the permit and the Texas Natural Resources Conservation Commission (TNRCC now TCEQ) issued the permit with Findings of Fact and Conclusions of Law. *See* Attachment F. Since that time the mine has not began operating and the ponds shown in the permit application, with one exception, have not been constructed. The permit would authorize intermittent discharges of storm water as did the existing permit, so it does not increase significantly the quantity or quality of waste to be discharged. The mine boundaries remain the same as they were in the 2005 TPDES permit that is being renewed. Some pond locations were changed within the existing mining boundaries, but all discharges from the ponds would ultimately leave the mining facility at the same location on Elm Creek as authorized in the existing permit and draft permit.

Moving the pond locations within the boundaries without a permit amendment is currently a provision in the draft permit and the Applicant is required to notify TCEQ and submit a new map if pond locations change. *See* Attachment C, page 14, provision 4. Pond relocation within the permit boundaries was also in the original EPA and TNRCC permits for this facility. *See* Attachment H, page 3 of Part II, provision 16 and Attachment I, page 8, provision 3 . It was also in the Applicant's renewal permits in 2000 and 2005. Also, during the initial permit application in 1992, mailed notice was sent to property owners more than one mile downstream from where Elm Creek exits the permitted operating boundary. *See* Attachment G. Therefore, the ED recommends finding that the application does not materially change the place or pattern of discharge from the existing permit.

The draft permit will also maintain the quality of waste authorized to be discharged by the current permit. The Applicant requested renewal of the existing permit without changes, but after review of the application the ED added two additional Other Requirements (Nos. 13 and 14). Other Requirement No. 14 arguably makes the draft permit more protective. It was added to give TCEQ the flexibility to consider the permit limitations if additional data is obtained during the permit term.

> 14. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 2304 of the Rio Grande Basin and any subsequent updating of the water quality model for Segment No. 2304 in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC Sections 305.62, as a result of such review.

All required public meetings were held in this case. A public meeting was held for this permit application in Eagle Pass on January 25, 2011. The ED received numerous comments during the public comment period and at the public meeting and responded to all timely received relevant and material, or significant public comments in the RTC filed on July 28, 2011. *See* Attachment D.

The compliance history for the Applicant raises no issues concerning the ability of the Applicant to comply with the terms of the draft permit. The Applicant has a classification of "High" and a numerical rating of 0.00. *See* Attachment E. There is no previous order, judgment, or pending enforcement action against the Applicant and no actual mining operations have been performed at the proposed mining site. Therefore, the compliance history raises no issues regarding the Applicant's ability to comply with a material term of the permit.

The ED recommends finding that the permit renewal application meets all of the conditions in 30 TAC § 55.201(i)(5) and that there is no right to a contested case hearing in this case.

The ED recommends that the Commission find that the Requesters are not entitled to a contested case hearing under TWC § 26.028(d) and 30 TAC § 55.201(i)(5).

VI. Request for Reconsideration (RFR)

The Kickapoo Traditional Tribe of Texas (KTTT) also filed a RFR. The RFR was filed during the comment period, so the issues raised were considered during the comment period and addressed in the RTC. To summarize, the RFR raised the following issues: (1) air or dust abatement issues, (2) transportation of coal in uncovered rail cars or across the border, and (3) premature issuance or termination of TCEQ permit. These issues were thoroughly addressed in the ED's RTC filed with the Commission on July 28, 2011.

The RFR did not raise new issues or provided any additional factual documentation not already considered by the ED or that would change the ED's decision on this permit application.

The ED recommends denying the RFR.

VII. Executive Director's Recommendation

The ED recommends the following actions by the Commission:

1. Find that there is no right to a contested case hearing under TWC § 26.028(d) and 30 TAC § 55.201(i)(5);
2. Deny all contested case hearing requests; and
3. Deny the Request for Reconsideration.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director
Environmental Law Division

By _____
Robert D. Brush, Staff Attorney
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Representing the Executive Director of the
TCEQ

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(512) 239-5600
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2011 the original and seven true and correct copies of the "Executive Director's Response to Hearing Requests" relating to the application of the Dos Republicas Coal Partnership for Permit No. WQ0003500111 were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via email, hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

Robert D. Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772

MAILING LIST
DOS REPUBLICAS COAL PARTNERSHIP
DOCKET NO. 2011-1565-IWD; PERMIT NO. WQ0003511000

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See attached list of Requestors/Interested Persons.

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The Honorable Carlos I. Uresti
The Senate of the State Of Texas
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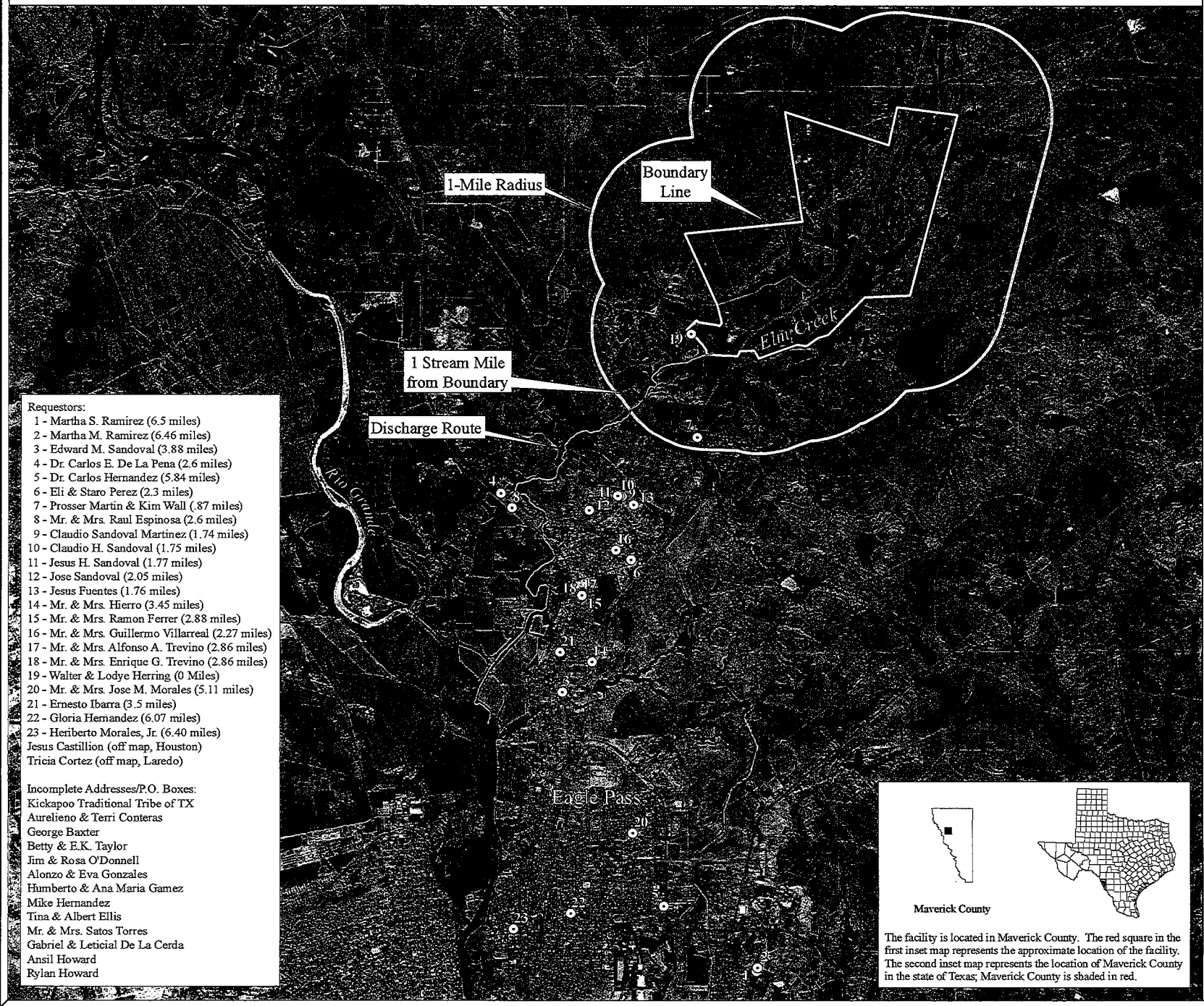
ATTACHMENT A

Dos Republicas Coal Partnership
WQ0003511000
Map Requested by TCEQ Office of Legal Services for Commissioners' Agenda



Protecting Texas by Reducing and Preventing Pollution

TCEQ

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

October 3, 2011

0 0.25 0.5 1 1.5 Miles

Projection: Texas Statewide Mapping System (TSMS)

Scale 1:93,000

Legend

- Facility
- Requestor's Property
- Discharge Route

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The vector data are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a one-half meter photograph from the 2008 Texas Orthoimagery Project.

This map depicts the following:

(1) The approximate location of the facility. This is labeled "Facility".
(2) Circle and arrow depicting 1-mile radius. This is labeled "1-Mile Radius".
(3) Requestors that were located.
(4) The discharge route. This is labeled "Discharge Route".

N

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

M McDonough CRF-355560

ATTACHMENT B

FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

For proposed Texas Pollutant Discharge Elimination System TPDES Permit No. WQ0003511000, EPA ID No. TX0109011 to discharge to water in the state.

Issuing Office: Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

Applicant: Dos Republicas Coal Partnership
5150 North Loop 1604 West
San Antonio, Texas 78249

Prepared By: Melinda Luxemburg, P.E.
Wastewater Permitting Section
Water Quality Division
(512) 239-4541

Date: July 28, 2010

Permit Action: Renewal; TPDES Permit No. WQ0003511000

I. EXECUTIVE DIRECTOR RECOMMENDATION

The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. It is proposed the permit be issued to expire on September 1, 2015 following the requirements of 30 TAC §305.71.

II. APPLICANT ACTIVITY

The applicant will operate the Eagle Pass Mine, a sub-bituminous coal mine, and has applied for a renewal of TPDES Permit No. WQ0003511000, which authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013.

III. DISCHARGE LOCATION

As described in the application, the site is located on the northeast side of State Highway 1588, three miles northeast of U.S. Highway 277, and approximately five miles northeast of the City of Eagle Pass, Maverick County, Texas. The effluent will be discharged to unnamed ditches; thence to Elm Creek; thence to the Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin.

IV. RECEIVING STREAM USES

The unclassified receiving waters have no significant aquatic life use for the unnamed ditches and high aquatic life use for Elm Creek. The designated uses for Segment No. 2304 are high aquatic life use, contact recreation, and public water supply.

V. STREAM STANDARDS

The general criteria and numerical criteria that make up the stream standards are provided in 30 TAC §§307.1 - 307.10, effective April 30, 1997.

FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

VI. DISCHARGE DESCRIPTION

A review of the wastewater discharge authorized under this permit could not be detailed since the facility has yet to discharge.

VII. PROPOSED EFFLUENT LIMITATIONS

The draft permit authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013.

Final effluent limitations are established in the draft permit as follows:

Outfall	Parameter	Daily Average, mg/l	Daily Maximum, mg/l
001 -	Flow (MGD)	(Report MGD)	(Report MGD)
013	Total Suspended Solids (TSS)	35	70
	Iron, Total	3.0	6.0
	Manganese, Total	2.0	4.0
	Selenium, Total	N/A	0.036
	pH (standard units, su)	(6.0 su minimum)	(9.0 su maximum)

VIII. SUMMARY OF CHANGES FROM APPLICATION

The applicant requested a renewal of the existing permit without changes, and after review of the application the Executive Director has added the following more protective requirement.

1. Added the following *Other Requirement No. 14,* per EPA requirement:

   14. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 2304 of the Rio Grande Basin and any subsequent updating of the water quality model for Segment No. 2304 in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC Sections 305.62, as a result of such review.

IX. SUMMARY OF CHANGES FROM EXISTING PERMIT

The following additional changes have been made to the draft permit.

1. The Standard Permit Conditions and Other Requirements sections of the draft permit have been updated.

2. Revised current *Other Requirement No. 1*, which addresses reporting of violations of daily maximum effluent limitations, compliance with the permit limitations, and explains reporting of zero values for these parameters on the minimum analytical level (MAL), by the addition of MALs for total iron and total manganese.

3. Added the following *Other Requirement No. 13*, to help ensure required monitoring is performed:

13. Reporting requirements pursuant to 30 TAC Sections 319.1-319.12 and any additional effluent reporting requirements contained in the permit are suspended from the effective date of the permit until facility start-up or discharge, whichever comes first, from the facility areas and applicable outfalls described by this permit. The permittee shall provide written notice to the TCEQ, Applications Review & Processing Team (MC 148), Wastewater Permitting Section and the Regional Office, forty-five (45) days prior to facility area start-up or applicable outfall anticipated discharges.

X. DRAFT PERMIT RATIONALE

The following section sets forth the statutory and regulatory requirements considered in preparing the draft permit. Also set forth are any calculations or other necessary explanations of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guidelines and water quality standards.

A. REASON FOR PERMIT ISSUANCE

The applicant has applied to the TCEQ for a renewal of TPDES Permit No. WQ0003511000, which authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013.

B. WATER QUALITY SUMMARY

The effluent will be discharged to unnamed ditches; thence to Elm Creek; thence to the Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin. The unclassified receiving waters have no significant aquatic life use for the unnamed ditches and high aquatic life use for Elm Creek. The designated uses for Segment No. 2304 are high aquatic life use, contact recreation, and public water supply. Effluent limitations and/or conditions established in the draft permit are in compliance with state water quality standards and the applicable water quality management plan. The effluent limits in the draft permit will maintain and protect the existing instream uses. Additional discussion of the water quality aspects of the draft permit will be found at Section X.D. of this fact sheet.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threaten species.

A waste Load Evaluation has been prepared for Segment No. 2304. Segment No. 2304 is currently listed on the State's inventory of impaired and threatened waters, (the 2008 Clean Water Act Section 303(d) list).

The 2008 Clean Water Act Section 303(d) listing is specifically for bacteria from the San Felipe Creek confluence to the Las Moras Creek confluence (AU 2304_02), from the Laredo Water Treatment Plant intake to International Bridge #2 (AU 2304_08), from International Bridge #2 to just below Chacon Creek confluence (AU 2304_09) and from Chacon Creek confluence to the Arroyo Salado confluence (AU 2304_10).

This permit does not authorize the discharge of treated domestic wastewater and this is a renewal application without any requested change in the volume or characteristics of the wastestreams. Additionally, the draft permit requires the permittee to complete testing requirements for effluent from each outfall following the initial discharge of the outfall and then submit the effluent analyses for review. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements. Therefore, the discharge authorized under this draft permit is not expected to contribute to elevated bacteria levels in the receiving segment.

C. TECHNOLOGY-BASED EFFLUENT LIMITATIONS/CONDITIONS

1. GENERAL COMMENTS

Regulations promulgated in Title 40 of the Code of Federal Regulations (40 CFR) require technology-based limitations be placed in wastewater discharge permits based on effluent limitations guidelines, where applicable, and/or on best professional judgment (BPJ) in the absence of guidelines.

The draft permit authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013.

The discharge of storm water and mine seepage from active mining areas, haul roads and anciliary disturbed areas via Outfalls 001-013 from the Eagle Pass Mine is subject to federal effluent limitation guidelines at 40 CFR Part 434, Subpart C – Acid or Ferruginous Mine Drainage. A new source determination was performed and the discharge of storm water and mine seepage is a new source as defined at 40 CFR § 122.2. Therefore new source performance standards (NSPS) are required for this discharge.

The wastewater system at the mine will consist of sedimentation ponds draining disturbed areas of the active coal mining areas and reclamation operation. The mine has not yet begun to discharge.

2. CALCULATIONS

Effluent limitations for total suspended solids, total iron, total manganese, and pH are continued from the existing TPDES permit based on 40 CFR § 434.35 (NSPS).

Outfall	Parameter	Daily Average, mg/l	Daily Maximum, mg/l
001 -	Flow (MGD)	(Report MGD)	(Report MGD)
013	Total Suspended Solids (TSS)	35	70
	Iron, Total	3.0	6.0
	Manganese, Total	2.0	4.0
	pH (standard units, su)	(6.0 su minimum)	(9.0 su maximum)

See *Appendix A* of this fact sheet for calculations and further discussion of technology-based effluent limitations proposed in the draft permit.

D. WATER QUALITY-BASED EFFLUENT LIMITATIONS/CONDITIONS

1. GENERAL COMMENTS

The Texas Surface Water Quality Standards found at 30 TAC Chapter 307 state that "surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life." The methodology outlined in the "Procedures to Implement the Texas Surface Water Quality Standards" is designed to insure compliance with 30 TAC Chapter 307. Specifically, the methodology is designed to insure that no source will be allowed to discharge any wastewater that: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation that threatens human health. Calculated water quality-based effluent limits can be found in *Appendix B* of this fact sheet.

TPDES permits contain technology-based effluent limits reflecting the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses, additional water quality-based effluent limitations and/or conditions are included. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity databases to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

2. AQUATIC LIFE CRITERIA

a. SCREENING

Water quality-based effluent limitations are calculated from freshwater aquatic life criteria found in Table 1 of the Texas Surface Water Quality Standards (30 TAC Chapter 307). The discharges via Outfalls 001 – 013 and are to various unnamed ditches (i.e., intermittent streams).

There is no mixing zone or zone of initial dilution (ZID) for these discharges directly to intermittent streams; acute freshwater criteria apply at the point of discharge (i.e., end of pipe). Chronic freshwater criteria do not apply to discharges to intermittent streams where there is no perennial waterbody within three miles downstream from the point of discharge. The following critical effluent percentage is being used:

Acute Effluent % (at edge of ZID)	100%

Wasteload allocations (WLAs) are calculated using the above estimated effluent percentage, criteria outlined in the Texas Surface Water Quality Standards, and partitioning coefficients for metals (when appropriate and designated in the implementation procedures). The WLA is the end-of-pipe effluent concentration that can be discharged when after mixing in the receiving stream, the instream numerical criteria will not be exceeded.

From the WLA, a long term average (LTA) is calculated using a log normal probability distribution, a given coefficient of variation (0.6), and a 90th percentile confidence level. The LTA is the long-term average effluent concentration for which the WLA will never be exceeded using a selected percentile confidence level. The LTA (acute) is used to calculate a daily average and daily maximum effluent limitation for the protection of aquatic life using the same statistical considerations with the 99th percentile confidence level and a standard number of monthly effluent samples collected (12).

Assumptions used in deriving the effluent limitations include segment values for hardness, chlorides, pH and total suspended solids (TSS) according to the segment-specific values contained in the TCEQ guidance document, *Procedures to Implement the Texas Surface Water Quality Standards (IPs).* The Segment No. 2304 values are 250 mg/l $CaCO_3$ for hardness, 119 mg/l Chlorides, 7.8 standard units for pH, and 5 mg/l for TSS. For additional details on the calculation of water quality-based effluent limitations, refer to the TCEQ guidance document.

TCEQ practice for determining significant potential is to compare the reported analytical data against percentages of the calculated daily average water quality-based effluent limitation. Permit limitations are required when analytical data reported in the application exceeds 85 percent of the calculated daily average water quality-based effluent limitation. Monitoring and reporting is required when analytical data reported in the application exceeds 70 percent of the calculated daily average water quality-based effluent limitation.

b. PERMIT ACTION

No analytical data is available for screening against calculated water quality - based effluent limitations since no discharge from Outfalls 001 – 013 have yet to occur.

Current *Other Requirement No. 12,* which requires effluent sampling and submittal of the analytical data for review, once discharge begins at any Outfall 001 through Outfall 013, has been continued in the draft permit. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements for aquatic life protection.

The current water quality-based daily maximum total selenium effluent of 0.036 mg/l is continued in the draft permit as follows:

Outfall	Parameter	Daily Average, mg/l	Daily Maximum, mg/l
001 – 013	Selenium, Total	N/A	0.036

See *Appendix B* of this fact sheet for the calculated water quality-based effluent limits.

3. LIMITATIONS FOR PROTECTION OF DISSOLVED OXYGEN STANDARDS

a. DISCUSSION

In accordance with the Interoffice Memorandum dated April 8, 2010, from the Water Quality Assessment Team of the Water Quality Assessment Section (Modeling Memo), the proposed discharge via Outfalls 001 - 013 were evaluated.

Based on the description of the wastestreams and the low concentration of oxygen demanding constituents in the wastewater, no significant dissolved oxygen depletion is anticipated in the receiving waters as a result of these discharges.

b. PERMIT ACTION

None.

4. AQUATIC ORGANISM TOXICITY CRITERIA (7-DAY CHRONIC/48 - HOUR ACUTE)

a. SCREENING

The current TPDES permit does not include 7-day chronic or 48-hour acute biomonitoring requirements at any Outfall 001 - 013. The draft permit does not require 7-day chronic or 48-hour acute biomonitoring at any Outfall 001 – 013.

b. PERMIT ACTION

None.

5. AQUATIC ORGANISM TOXICITY CRITERIA (24-HOUR ACUTE)

a. SCREENING

The current TPDES permit does not require 24-hour acute biomonitoring at any Outfall 001 - 013. The draft permit does not require 24-hour acute biomonitoring at any Outfall 001 – 013.

b. PERMIT ACTION

None.

6. AQUATIC ORGANISM BIOACCUMULATION CRITERIA

a. SCREENING

The discharge point is located at a distance greater than three miles upstream of perennial waters. Human health screening is not applicable because of the distance between the discharge point and perennial waters that support fisheries.

b. PERMIT ACTION

None.

7. DRINKING WATER SUPPLY PROTECTION

a. SCREENING

Although water quality Segment No. 2304 is designated as a public water supply, the discharge point is located at a distance greater than three miles upstream of perennial waters.

Since the discharge point is located at a distance greater than three miles upstream of any perennial waters, human health screening is not applicable.

b. PERMIT ACTION

None.

XI. PRETREATMENT REQUIREMENTS

This facility is not defined as a publicly owned treatment works (POTW). Pretreatment requirements are not proposed in the draft permit.

XII. VARIANCE REQUESTS

No variance requests have been received.

XIII. PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application, and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the technical summary or fact sheet, to the Chief Clerk. At that time, Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application. This notice sets a deadline for public comment.

Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's Response to Comments and Final Decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's Response to Comments and Final Decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application contact Melinda Luxemburg, P.E. at (512) 239-4541.

XIV. ADMINISTRATIVE RECORD

The following section is a list of the fact sheet citations to applicable statutory or regulatory provisions and appropriate supporting references.

A. PERMIT(S)

TPDES Permit No. WQ0003511000 issued November 16, 2006.

B. APPLICATION

TPDES wastewater permit application received on February 26, 2010, and additional information received March 4, 2010 and April 5, 2010.

C. 40 CFR CITATION(S)

40 CFR Part 434 Subpart C

D. LETTERS/MEMORANDA/RECORDS OF COMMUNICATION

TCEQ Interoffice Memorandum dated April 8, 2010, from Tom Y. Harrington, P.E. of the Water Quality Assessment Team, Water Quality Assessment Section to the Industrial Permits Team, Wastewater Permitting Section (Modeling Memo).

TCEQ Interoffice Memorandum dated April 2, 2010, from Brittany Lee of the Standards Implementation Team, Water Quality Assessment Section to the Industrial Permits Team, Wastewater Permitting Section (Standards Memo).

TCEQ Interoffice Memorandum dated April 6, 2010, from Nancy Vignali, of the Water Quality Assessment Team, Water Quality Assessment Section to the Industrial Permits Team, Wastewater Permits Section (TEXTOX Memo).

E. MISCELLANEOUS

Quality Criteria for Water (1986), EPA 440/5-86-001, 5/1/86.

The State of Texas Water Quality Inventory, 13th Edition, Publication No. SFR-50, Texas Commission on Environmental Quality, December 1996.

Texas Surface Water Quality Standards, 30 TAC §§307.1 - 307.10 (21 TexReg 9765, 4/40/97), and Appendix E, effective February 27, 2002.

Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fourth Edition, EPA/600/4-90/027F.

Procedures to Implement the Texas Surface Water Quality Standards, Texas Commission on Environmental Quality, January 2003.

Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits," TCEQ Document No. 98-001.000-OWR-WQ, May 1998.

APPENDIX A

CALCULATED TECHNOLOGY BASED EFFLUENT LIMITATIONS

The following technology-based effluent limitations are proposed in the draft permit in accordance with 40 Code of Federal Regulations (CFR) Part 434 - Federal Effluent Guidelines for the Coal Mining Point Source Category, each point source discharge from the facility will be monitored and reported as a separate outfall for compliance with the effluent limitations. The current TPDES permit and this renewal draft permit do not authorize the discharge of wastewater from post-mining areas (applicability under 40 CFR §434 Subpart E).

40 CFR §434, Subpart C, Acid or Ferruginous Mine Drainage Subcategory

40 CFR §434.35 New Source Performance Standards (NSPS):

The following technology-based effluent limitations are applicable:

Outfall	Parameter	Daily Average, mg/l	Daily Maximum, mg/l
001 -	Flow (MGD)	(Report MGD)	(Report MGD)
013	Total Suspended Solids (TSS)	35	70
	Iron, Total	3.0	6.0
	Manganese, Total	2.0	4.0
	pH (standard units, su)	(6.0 su minimum)	(9.0 su maximum)

Technology-based effluent limitations for total suspended solids, total iron, total magnesium and pH at Outfalls 001-013 are continued from the existing permit based upon 40 CFR 434.35 (NSPS).

APPENDIX B
CALCULATED WATER QUALITY-BASED EFFLUENT LIMITS
TEXTOX MENU #1 - BAY OR WIDE TIDAL RIVER

The water quality-based effluent limitations demonstrated below are calculated using:

- Table 1, 2000 Texas Surface Water Quality Standards (30 TAC 307) for Freshwater Aquatic Life
- "Procedures to Implement the TSWQS," Texas Commission on Environmental Quality, January 2003.

PERMITTEE INFORMATION:

Permittee Name:	Dos Republicas Coal Partnership
TPDES Permit No.	WQ0003511000
Outfall No:	001
Prepared By:	Melinda Luxemburg, P.E.
Date:	August 4, 2010

DISCHARGE INFORMATION:

Immediate Receiving Waterbody:	Unnamed ditches in Texas
Segment No:	2304
TSS:	5
pH:	7.8
Hardness:	250
Chloride:	119
Effluent Flow for Aquatic Life (MGD)	< 10 MGD
Critical Low Flow [7Q2]:	0.0
Acute Effluent % for Aquatic Life (% eff. for ZID):	100

CALCULATE TOTAL/DISSOLVED RATIO:

Stream/River Metal	Intercept (b)	Slope (m)	Partition Coefficient (Kpo)	Dissolved Fraction (Cd/Ct)		Water Effects Ratio (WER)	
Aluminum	N/A	N/A	N/A	1.00	Assumed	1	Assumed
Arsenic	5.68	-0.73	147826.365	0.58		1	Assumed
Cadmium	6.60	-1.13	645897.934	0.24		1	Assumed
Chromium (Total)	6.52	-0.93	741238.376	0.21		1	Assumed
Chromium (+3)	6.52	-0.93	741238.376	0.21		1	Assumed
Chromium (+6)	N/A	N/A	N/A	1.00	Assumed	1	Assumed
Copper	6.02	-0.74	318245.445	0.39		1	Assumed
Lead	6.45	-0.80	777721.306	0.20		1	Assumed
Mercury	N/A	N/A	N/A	1.00	Assumed	1	Assumed
Nickel	5.69	-0.57	195698.320	0.51		1	Assumed
Selenium	N/A	N/A	N/A	1.00	Assumed	1	Assumed
Silver	6.38	-1.03	457152.286	0.30		1	Assumed
Zinc	6.10	-0.70	408057.155	0.33		1	Assumed

AQUATIC LIFE-CALCULATE DAILY AVERAGE AND DAILY MAXIMUM EFFLUENT LIMITS

Parameter	Acute Standard (ug/l)	WLAa	LTAa	Daily Avg. (ug/l)	Daily Max. (ug/l)
Aldrin	3.0	3.000	1.719	2.527	5.346
Aluminum[d]	991	991.000	567.843	834.729	1765.992
Arsenic[d]	360	626.087	358.748	527.360	1115.707
Cadmium[d]	92.152	389.755	223.330	328.294	694.555
Carbaryl	2.0	2.000	1.146	1.685	3.564
Chlordane	2.4	2.400	1.375	2.022	4.277
Chlorpyrifos	0.083	0.083	0.048	0.070	0.148
Chromium (+3)[d]	1162.19	5469.50	3134.02	4607.01	9746.81
Chromium (+6)[d]	15.7	15.700	8.996	13.224	27.978
Copper[d]	43.689	113.208	64.868	95.357	201.741
Cyanide (free)	45.78	45.7800	26.23	38.56	81.58
4,4'-DDT	1.1	1.100	0.630	0.927	1.960
Dementon	N/A	0.000	N/A	N/A	N/A
Dicofol	59.3	59.300	33.979	49.949	105.674
Dieldrin	2.5	2.500	1.433	2.106	4.455
Diuron	210	210.000	120.330	176.885	374.226
Endosulfan I (alpha)	0.22	0.220	0.126	0.185	0.392
Endosulfan II (beta)	0.22	0.220	0.126	0.185	0.392
Endosulfan sulfate	0.22	0.220	0.126	0.185	0.392
Endrin	0.18	0.180	0.103	0.152	0.321
Guthion	N/A	0.000	N/A	N/A	N/A
Heptachlor	0.52	0.520	0.298	0.438	0.927
Hexachlorocyclohexane (Lindane)	2.0	2.000	1.146	1.685	3.564
Lead[d]	233.029	1139.186	652.753	959.548	2030.063
Malathion	N/A	0.000	N/A	N/A	N/A
Mercury	2.4	2.400	1.375	2.022	4.277
Methoxychlor	N/A	N/A	N/A	N/A	N/A
Mirex	N/A	N/A	N/A	N/A	N/A
Nickel[d]	3072.829	6079.57	3483.59	5120.88	10833.97
Parathion (ethyl)	0.065	0.065	0.037	0.055	0.116
Pentachlorophenol	20.267	20.267	11.613	17.071	36.117
Phenanthrene	30	30.000	17.190	25.269	53.461
Polychlorinated Biphenyls (PCBs)	2.0	2.000	1.146	1.685	3.564
Selenium	20	20.000	11.460	16.846	35.641
Silver, (free ion)	0.8	25.459	14.588	21.445	45.369
Toxaphene	0.78	0.780	0.447	0.657	1.390
Tributlytin (TBT)	0.13	0.130	0.074	0.110	0.232
2,4,5 Trichlorophenol	136	136.000	77.928	114.554	242.356
Zinc[d]	248.760	756.301	433.361	637.040	1347.751

CALCULATE 70% AND 85% OF DAILY AVERAGE EFFLUENT LIMITATIONS

Parameter	70%	85%
Aquatic Life		
Aldrin	1.769	2.148
Aluminum	584.310	709.520
Arsenic	369.152	448.256
Cadmium	229.806	279.050
Carbaryl	1.179	1.432
Chlordane	1.415	1.718
Chlorpyrifos	0.049	0.059
Chromium (+3)	3224.91	3915.96
Chromium (+6)	9.257	11.241
Copper	66.750	81.053
Cyanide (free)	26.993	32.777
4,4'-DDT	0.649	0.788
Dementon	N/A	N/A
Dicofol	34.964	42.457
Dieldrin	1.474	1.790
Diuron	123.820	150.352
Endosulfan I (alpha)	0.130	0.158
Endosulfan II (beta)	0.130	0.158
Endosulfan sulfate	0.130	0.158
Endrin	0.106	0.129
Guthion	N/A	N/A
Heptachlor	0.307	0.372
Hexachlorocyclohexane (Lindane)	1.179	1.432
Lead	671.683	815.615
Malathion	N/A	N/A
Mercury	1.415	1.718
Methoxychlor	N/A	N/A
Mirex	N/A	N/A
Nickel	3584.62	4352.75
Parathion (ethyl)	0.038	0.047
Pentachlrophenol	11.950	14.511
Phenanthrene	17.689	21.479
Polychlorinated Biphenyls (PCBs)	1.179	1.432
Selenium	11.792	14.319
Silver, (free ion)	15.011	18.228
Toxaphene	0.460	0.558
Tributlytin (TBT)	0.077	0.093
2,4,5 Trichlorophenol	80.188	97.371
Zinc	445.928	541.484

ATTACHMENT C

TPDES PERMIT NO. WQ0003511000
[For TCEQ office use only -
EPA I.D. No. TX0109011]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P. O. Box 13087
Austin, Texas 78711-3087

This is a renewal of TPDES Permit No. WQ0003511000, issued on November 16, 2006.

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Dos Republicas Coal Partnership

whose mailing address is

5150 North Loop 1604 West
San Antonio, Texas 78249

is authorized to treat and discharge wastes from the Eagle Pass Mine, a sub-bituminous coal mine (SIC 1221)

located on the northeast side of State Highway 1588, three miles northeast of U.S. Highway 277, and approximately five miles northeast of the City of Eagle Pass, Maverick County, Texas

to unnamed ditches; thence to Elm Creek; thence to the Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin

only according to effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight on September 1, 2015.

ISSUED DATE:

For the Commission

1. During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge storm water and mine seepage from the active mining area (*1) subject to the following effluent limitations:

   Volume: Intermittent and flow variable

Effluent Characteristics	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Average	Daily Maximum	Single Grab	Report Daily Average and Daily Maximum	
	mg/l	mg/l	mg/l	Measurement Frequency	Sample Type
Flow (MGD)	(Report MGD)	(Report MGD)	N/A	1/week (*2)	Estimate
Total Suspended Solids (TSS)	35	70	70	1/week (*2)	Grab
Total Iron	3.0	6.0	6.0	1/week (*2)	Grab
Total Manganese	2.0	4.0	4.0	1/week (*2)	Grab
Total Selenium	N/A	0.036	0.036	1/month (*2)	Grab

(*1) See Other Requirement No. 2.
(*2) When discharge occurs.

2. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week (*2) by grab sample.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

4. Effluent monitoring samples shall be taken at the following locations: At Outfalls 001 through 013, at the spillway retention pond associated with each outfall (see Other Requirement No. 3), and prior to mixing with any other waters.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC §§305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in Texas Water Code §26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

   a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder, and limited to major domestic wastewater discharge facilities with a one million gallons per day or greater permitted flow.

   b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

   c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.

   d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.

   e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.

   f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

   a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

      i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

      ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

   b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.

   c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.

   d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day.

      The "daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

   e. Bacteria concentration (Fecal coliform, E. coli, or Enterococci) – the number of colonies of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month.

The geometric mean shall be determined by calculating the nth root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements of made in a calendar month. For any measurement of bacteria equaling zero, a substitute value of one shall made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.

f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).

g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.

3. Sample Type

a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (b).

b. Grab sample - an individual sample collected in less than 15 minutes.

4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.

5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes .

6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge that is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act; TCW Chapters 26, 27, and 28; and THSC Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.

b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

3. Records of Results

a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.

c. Records of monitoring activities shall include the following:

i. date, time, and place of sample or measurement;
ii. identity of individual who collected the sample or made the measurement.
iii. date and time of analysis;
iv. identity of the individual and laboratory who performed the analysis;
v. the technique or method of analysis; and
vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

7. Noncompliance Notification

a. In accordance with 30 TAC §305.125(9) any noncompliance that may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:

i. Unauthorized discharges as defined in Permit Condition 2(g).
ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.

c. In addition to the above, any effluent violation that deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.

d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.

8. In accordance with the procedures described in 30 TAC §§35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.

9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

i. One hundred micrograms per liter (100 µg/L);
ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
iv. The level established by the TCEQ.

b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

i. Five hundred micrograms per liter (500 µg/L);
ii. One milligram per liter (1 mg/L) for antimony;
iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC §305.128 (relating to Signatories to Reports).

11. All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Executive Director of the following:

a. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to CWA §301 or §306 if it were directly discharging those pollutants;

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and

c. For the purpose of this paragraph, adequate notice shall include information on:

i. The quality and quantity of effluent introduced into the POTW; and
ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

1. General

a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.

b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:

i. Violation of any terms or conditions of this permit;
ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.

b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.

e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.

f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§305.62 and 305.66 and TWC §7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.

h. In accordance with 30 TAC §305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility that does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.

i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code §§7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA § 402, or any requirement imposed in a pretreatment program approved under the CWA §§402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC Chapter 361.

b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC §7.002.

The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

   a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:

      i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC §305.534 (relating to New Sources and New Dischargers); or

      ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;

      iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

   b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.

   c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.

   d. Prior to accepting or generating wastes that are not described in the permit application or that would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.

   e. In accordance with the TWC §26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.

   f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA §307(a) for a toxic pollutant that is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under CWA §307(a)for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

   a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.

   b. A permit may be transferred only according to the provisions of 30 TAC §305.64 (relating to Transfer of Permits) and 30 TAC §50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

   This permit does not authorize any activity of hazardous waste storage, processing, or disposal that requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

   Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to Texas Water Code Chapter 11.

8. Property Rights

   A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

   The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

    The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

    a. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

       i. the permittee;
       ii. an entity (as that term is defined in 11 USC, §101(15)) controlling the permittee or listing the permit or permittee as property of the estate; or
       iii. an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.

    b. This notification must indicate:
       i. the name of the permittee;
       ii. the permit number(s);
       iii. the bankruptcy court in which the petition for bankruptcy was filed; and
       iv. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.

2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§319.21 - 319.29 concerning the discharge of certain hazardous metals.

3. Domestic wastewater treatment facilities shall comply with the following provisions:

   a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.

   b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.

4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.

6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC §7.302(b)(6).

7. Documentation

   For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.

   a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility that reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

      If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

   b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission, and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

   c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.

9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.

10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.

11. Facilities that generate industrial solid waste as defined in 30 TAC §335.1 shall comply with these provisions:

    a. Any solid waste, as defined in 30 TAC §335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.

    b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.

    c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC §335.8(b)(1), to the Corrective Action Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.

    d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC §335.5.

    e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.

    f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:

        i. Volume of waste and date(s) generated from treatment process;
        ii. Volume of waste disposed of on-site or shipped off-site;
        iii. Date(s) of disposal;
        iv. Identity of hauler or transporter;
        v. Location of disposal site; and
        vi. Method of final disposal.

    The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC Code Chapter 361.

TCEQ Revision 08/2008

OTHER REQUIREMENTS

1. Violations of daily maximum limitations for the following pollutants shall be reported orally or by facsimile to TCEQ Region 16, within 24 hours from the time the permittee becomes aware of the violation followed by a written report within five working days to Texas Commission on Environmental Quality (TCEQ) Region 16 and the Enforcement Division (MC 224).

POLLUTANT	MAL (mg/l)
Iron, total	1.0
Manganese, total	1.0
Selenium, total	0.010

Test methods utilized shall be sensitive enough to demonstrate compliance with the permit effluent limitations. Permit compliance/noncompliance determinations will be based on the effluent limitations contained in this permit with consideration given to the minimum analytical level (MAL) for the parameters specified above.

When an analysis of an effluent sample for any of the parameters listed above indicates no detectable levels above the MAL and the test method detection level is as sensitive as the specified MAL, a value of zero (0) shall be used for that measurement when determining calculations and reporting requirements for the self-reporting form. This applies to determinations of daily maximum concentration, calculations of loading and daily averages, and other reportable results.

When a reported value is zero (0) based on this MAL provision, the permittee shall submit the following statement with the self-reporting form either as a separate attachment to the form or as a statement in the comments section of the form.

> "The reported value(s) of zero (0) for _____[list parameter(s)]_____ on the self-reporting form for [monitoring period date range]____ is based on the following conditions: 1) the analytical method used had a method detection level as sensitive as the MAL specified in the permit, and 2) the analytical results contained no detectable levels above the specified MAL."

When an analysis of an effluent sample for a parameter indicates no detectable levels and the test method detection level is not as sensitive as the MAL specified in the permit, or an MAL is not specified in the permit for that parameter, the level of detection achieved shall be used for that measurement when determining calculations and reporting requirements for the self-reporting form. A zero (0) may not be used.

2. Active Mining Area:

   A. The term "active mining area" is defined as the areas, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.

   B. All discharges from all retention ponds shall comply with the limitations for hazardous metals as regulated under the TCEQ, Permanent Rule, Title 30 Texas Administrative Code (TAC) Chapter 319, Subchapter B, 319.21 - 319.29, "Hazardous Metals".

   C. All retention ponds shall be constructed prior to disturbing the natural soils in preparation of any mining activity. Upon initiation of any mining related activity in the watershed of any particular pond, the permittee shall notify the TCEQ, Industrial Permits Team, Wastewater Permitting Section (MC-148) and the Regional Office. A record of the design dimensions, construction information, the pond drainage area and a map, sketch or drawing showing the location of each pond shall be maintained at the site and shall be readily available for inspection by authorized representatives of the permitting authority.

D. Discharges from the retention ponds shall be monitored in accordance with this permit from the time the natural soils are disturbed until reclamation of the disturbed soils is complete and until the performance bond (Phase Two) issued by the appropriate authority has been released. At least 10 days prior to any such action, the TCEQ, Industrial Permits Team, Wastewater Permitting Section (MC-148) and the Regional Office shall be notified in writing of the permittee's intent to close any retention pond or to discontinue monitoring.

E. For discharges from "active mining area" ponds that do not contain mine pit water (or water that has contacted acid forming or toxic forming spoil) the following effluent limitations shall apply, and shall replace the effluent limitations listed on page 2 of this permit.

Any discharge caused by a precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event, or snowmelt of equivalent volume shall comply with the following limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATIONS:

Pollutant or Pollutant Property	Maximum for any 1 Day
Settleable Solids*	0.5 ml/l
pH - within the range of 6.0 to 9.0 at all times.	

* These limits do not apply when the discharge is caused by a precipitation event greater than the 10-year/24-hour precipitation event.

F. The term "10-year, 24-hour rainfall event" shall mean a rainfall event with the probable recurrence interval of once in ten years as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

3. Samples shall be collected at each outfall, when discharge occurs. The sampling location for each outfall is at the spillway of the retention pond associated with that outfall, and prior to mixing with any other waters. The outfalls, associated pond numbers, and discharge routes are as follows:

Permitted Outfall & Pond ID	Facility Pond ID	Discharge Route
001	SP-6	From the spillway on the south side of the pond to Elm Creek;
002	TBD*	From the spillway on the southwest side of the pond to a ditch, thence to Elm Creek;
003	Int Pond 003; SP-2	From the spillway on the southwest corner of the pond into a ditch, thence to Elm Creek;
004	SP-1	From the spillway on the southwest corner of the pond to a ditch, thence to Elm Creek;
005	TBD*	From the spillway on the east side of the pond to a ditch, thence to a culvert, thence to Elm Creek;
006	SP-7	From the spillway on the southwest corner of the pond to a tributary, thence to Elm Creek;
007	SP-5	From the spillway on the southeast corner of the pond to Elm Creek;
008	SP-3	From the spillway on the southeast corner of the pond to Elm Creek;
009	TBD*	From the spillway on the west side of the pond to a ditch, thence to Elm Creek;
010	TBD*	From the spillway on the west side of the pond to a ditch, thence to Elm Creek;

Permitted Outfall & Pond ID	Facility Pond ID	Discharge Route
011	TBD*	From the spillway on the north side of the pond to a series of ditches, thence to Elm Creek;
012	TBD*	From the spillway on the south side of the pond to a ditch, thence to Elm Creek;
013	TBD*	From the spillway on the south side of the pond to a ditch, thence to Elm Creek.

TBD* means "to be determined." The Pond ID will be determined upon final design; revisions will be made pursuant Other Requirement No. 4 of this permit.

4. The permittee shall maintain a map at the mine site which shows the location of all ponds and discharge routes. The map and pond list shall be available to authorized TCEQ personnel. The permittee may revise the pond location map. Upon revision, the permittee shall submit revised maps to the TCEQ Wastewater Permitting Section (MC-148), and to the Region 16 Office.

5. Post Mining Areas:

   A. The term "Post mining area" is defined as a reclamation area; or the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

   B. The term "Reclamation area" is defined as the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

   C. The term "Bond release" is defined as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed. Phase Two completion is that point in the reclamation process where the property has been recontoured and replanted but prior to final bond release.

   D. Discharges from post mining areas are not authorized under this permit. The permittee shall obtain a permit amendment prior to initiation of any discharge from post mining areas.

6. This permit does not authorize the discharge of storm water from construction activities. The permittee shall obtain all necessary permits, including coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit No. TXR150000, or most recent construction storm water general permit as applicable, prior to initiating any storm water discharge from construction at the site.

7. The permittee shall provide to the TCEQ Wastewater Permitting Section (MC-148) copies of all surface and groundwater quality monitoring results that it is required to send to the Railroad Commission of Texas (RCT) pursuant to its RCT mining and reclamation permit.

8. This permit does not authorize the disposal of domestic sewage. Domestic sewage shall be routed to a septic tank/drainfield system.

9. The permittee shall notify the TCEQ Region 16 office as each discharge point is developed.

10. The permittee shall notify the Executive Director of the TCEQ at least 90 days prior to conducting any activity of closure of any pit, pond, lagoon, or surface impoundment regulated by this permit.

11. Discharges from the retention ponds shall be monitored in accordance with the requirements of this permit from the time the overburden removal begins until reclamation of the disturbed soils is complete and the performance bond issued by the appropriate authority has been released. At least 10 days prior to such action, the permittee shall notify TCEQ Region 16 office and the TCEQ Wastewater Permitting Section (MC-148) in writing of it's intent to close any retention pond or discontinue monitoring.

12. The Attached Effluent Data Table 1 shall be completed with the analytical results for each Outfall 001 through 013, when discharge occurs, and sent to the TCEQ, Wastewater Permitting Section (MC-148), within 90 days following the completion of the fourth discharge sampling event for any of the applicable outfalls. Sample collection and test methods shall be in accordance with the instructions for *Completing the Industrial Wastewater Permit Application Worksheet 2.0 - Pollutant Analyses Requirements.* Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.

13. Reporting requirements pursuant to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in the permit are suspended from the effective date of the permit until facility start-up or discharge, whichever comes first, from the facility areas and applicable outfalls described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC R 16) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to facility area start-up or applicable outfall anticipated discharges, whichever occurs first and prior to completion of each additional phase on Notification of Completion Form 20007.

14. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 2304 of the Rio Grande Basin and any subsequent updating of the water quality model for Segment No. 2304 in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC Sections 305.62, as a result of such review.

ATTACHMENT
TABLE 1

Outfall No. □C □G	Effluent Concentration (mg/l)					
Pollutants	Samp. 1	Samp. 2	Samp. 3	Samp. 4	Average	
BOD (5-day)						
CBOD (5-day)						
Chemical Oxygen Demand						
Total Organic Carbon						
Ammonia Nitrogen						
Total Suspended Solids						
Nitrate Nitrogen						
Total Organic Nitrogen						
Total Phosphorus						
Oil and Grease						
Total Residual Chlorine						
Total Dissolved Solids						
Sulfate						
Chloride						
Fluoride						
Fecal Coliform						
Temperature (°F)						
pH (Standard Units; min/max)						
	Effluent Concentration (µg/l)					MAL (µg/l)
Total Aluminum						30
Total Antimony						30
Total Arsenic						10
Total Barium						10
Total Beryllium						5
Total Cadmium						1
Total Chromium						10
Trivalent Chromium						N/A
Hexavalent Chromium						10
Total Copper						10
Cyanide						20
Total Lead						5
Total Mercury						0.2
Total Nickel						10
Total Selenium						10
Total Silver						2.0
Total Thallium						10
Total Zinc						5

ATTACHMENT D

TCEQ INTERAGENCY TRANSMITTAL MEMO

DATE: July 28, 2011

TO: LaDonna Castañuela
CHIEF CLERK
BUILDING F, MC - 105

FROM: Robert Brush
ENVIRONMENTAL LAW DIVISION
BUILDING A, MC-173

Attached: Executive Director's Response to Public Comment

Application Information:

√ **Water** Permit No.: WQ0003511000 Name: **Dos Republicas Coal Partnership**

If known, Docket or CCO Tracking #: _____

Action Required:

Date stamp and return copy to above-referenced ELD staff attorney and do the following:

FOR WASTE & WATER:

√ Send Response to Public Comment Letter which solicits hearing requests and requests for reconsideration to those on the mailing list in your files.

For Waste and Water this would occur in all circumstances when comments have been received.

√ Other Instructions: Please include Melinda Luxemburg., MC-148 on the mailing list for this Response to Public Comment.

CHIEF CLERKS OFFICE
2011 JUL 28 PM 1:44
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TPDES PERMIT NO. WQ0003511000

APPLICATION BY	§	**BEFORE THE**
DOS REPUBLICAS COAL	§	**TEXAS COMMISSION**
PARTNERSHIP FOR TPDES	§	**ON**
PERMIT NO. WQ0003511000	§	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment on Dos Republicas Coal Partnership (Applicant or DRCP) application and the ED's preliminary decision. As required by Title 30 Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received electronic comments from the City of Eagle Pass, Maverick County, the Eagle Pass Independent School District (Eagle Pass ISD), Eagle Pass Water Works System (Eagle Pass WWS), Kickapoo Traditional Tribe of Texas (KTTT), Maverick County Water Control and Improvement District #1 (MCWCID #1), the Rio Grande International Study Center, Keith Ayers, George Baxter, Jeannie Benavides, Jesus Castillion, Carolvea Cerda, Gabriel and Leticia De la Cerda, Gabriela Cisneros, Aureliano and Terri Contreras, Enriqueta Diaz, Dr. Carlos De la Pena, Tina and Albert Ellis, Mr. and Mrs. Raul Espinoza, Santiago Espinoza, Mr. and Mrs. Ramon Ferrer, Jose Flores, Victor M. Flores, Jesus Fuentes, Humberto and Ana Maria Gomez, Alonzo and Ema Gonzales, Carlos Hernandez, M.D., Gloria Hernandez, Mike Hernandez, Walter and Ladye Herring, Mr. and Mrs. Hierro, Randy Laurence, Brouning Lentz, Roberto Lopez, Prosser Martin and Kim Wall, Claudio S. Martinez, Juanita Martinez, Luis F. Martinez, Mr. and Mrs. Jose Morales, Jim and Rosa O'Donnell, Jorge Eduardo Perales, Eli and Sharo Perez, Martha M. Ramirez, Martha S. Ramirez, Ricardo Ramos, Rebecca Robinson, Gloria Rodriquez, Jose Luis Rosales, Claudio Sandoval, Edward M. Sandoval, Jesus H. Sandoval, Jose Sandoval, Betty and E.K. Taylor, Mr. and Mrs. Santos Torres, Mr. and Mrs. Alfonso A. Trevino, Mr. and Mrs. Enrique G. Trevino, Hector R. Trevino, M.D., Yadira Torres, Alma R. Vallejo, Sandra Vela, and Mr. and Mrs. Guillermo Villarreal. This response addresses all such timely public comments received, whether or not withdrawn.

A petition was also received from Eagle Pass Junior High School signed by Jose Luis Carraso, Lynn B. Balderas, Jessica V., Yezenia M., Darian V., Colin Byrne, Analilia G., J.S., Daniel Cassiates Jr., Liliana Cantu, Vito Lozano, Amanda Almaguer, Kyle Vidal, Jose Royer, Jesus Garcia, ESW, Juan Carlos Reyes, Guillermo Gonzales, David Raz Xavier Jr., Jose Cari, Carlo Gonzales A., Olga Saltras, Dana Montejano, Lindsey Carrillo, Manela Garcia, Marlowe Zamora, Jae Bak, Ann Hdz, Baillie Hdz, Shawn Galet, Diana Roig, Marco Antonio Solis, Audrey Trevino, Nicholas Flores, Pablo Sanchez, Chris Cody, Chuck Norris, Graciela G. Valdez, Enriquev, Carlos Valdez, Gabriel Villasenor, Kassandra Avila, Maria Ramos, Luis, Ramses X., Odalis Sotelo, Will Miller, Diego

Iregas, Sophia Martinez, Stephen Rosamond, Kevin Pua, Steven Smith, Alberto Castaneda, Adonis Soteu, Ms. Hernandez, Naila Telles, Kiara Balboa, Katlyn, Vivian, Crystal, Ulyses Garcia, Robert Gomez, Stephen Sanchez, Daniel Galan, Francisco Valdes, Kendra Baumer, Eric Herrera, Victor Olivio, Victor Mendez, Kayla Dehoyos, Maria Diaz, Yanneka Barrientos, Rachel Escamilla, Mariah Rodriquez, Diva Jordan and two illegible signatures (Eagle Pass Junior High).

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant, which intends to operate the Eagle Pass Mine, a sub-bituminous coal mine, has applied for a renewal of TPDES Permit No. WQ0003511000, which authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013. This permit was first issued in 1995 and subsequently renewed in 2000 and 2005. Though the permit is a renewal, the Applicant has not begun active mining operations at the permitted site. The mining operation at this facility is permitted by the Texas Railroad Commission.

The site is located on the northeast side of State Highway 1588, three miles northeast of U.S. Highway 277, and approximately five miles northeast of the City of Eagle Pass, in Maverick County. The effluent will be discharged to unnamed ditches; thence to Elm Creek; thencd to the Rio Grande below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin. The unclassified receiving waters have no significant aquatic life use for the unnamed ditches and high aquatic life use for Elm Creek. The designated uses for Segment No. 2304 are high aquatic life use, contact recreation, and public water supply.

Procedural Background

The application for renewal was received on February 26, 2010, and declared administratively complete on March 31, 2010. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in *The News Gram* on April 22, 2010. The alternative language (Spanish) NORI was published in *The News Gram* on April 23, 2010. The ED completed the technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published in *The Eagle Pass Business Journal* on October 21, 2010 and in *The News Gram* on October 22, 2010. An alternative language NAPD was also published in *The News Gram* on October 22, 2010.

Public meeting requests were received from Texas State Senator Carlos I. Uresti and Texas State Representative Tracy O. King. The Applicant published notice of the public meeting in *The News Gram* on December 16, 2010. The Applicant also published an

alternative language notice of the public meeting in *The News Gram* on December 16, 2010. The public meeting was held in Eagle Pass on January 25, 2011 and the comment period ended at the close of the public meeting. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State website: www.sos.state.tx.us;
- for TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select "TAC Viewer" on the right, then "Title 30 Environmental Quality");
- for Texas statutes: www.capitol.state.tx.us/statutes/statutes.html;
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Rules and Rulemaking," then "Download TCEQ Rules");
- for Federal rules in Title 40 of the Code of Federal Regulations: www.epa.gov/epahome/ cfr40.htm; and
- for Federal environmental laws: www.epa.gov/epahome/laws.htm.

Commission records for this facility are available for viewing and copying. Those records are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). The permit application, ED's preliminary decision, and draft permit are available for viewing and copying at the Maverick County Courthouse, 500 Quarry Street, Suite 2, Eagle Pass, Texas.

COMMENTS AND RESPONSES

COMMENT 1:

Representative Tracy King requested that the TCEQ take a close look at the Dos Republicas renewal application. Ramsey English Cantu, Mayor of Eagle Pass, commented that TCEQ should not issue the draft TPDES permit until all relevant and material issues raised during the public meeting have been fully and satisfactorily answered and that any permit issued be completely consistent with current regulatory requirements.

The City of Eagle Pass, Maverick County, the Eagle Pass ISD, Eagle Pass WWS, KTTT, MCWCID #1, the Rio Grande International Study Center, Keith Ayers, George Baxter, Jeannie Benavides, Jesus Castillion, Carolvea Cerda, Gabriel and Leticia De la Cerda, Gabriela Cisneros, Aureliano and Terri Contreras, Enriqueta Diaz, Dr. Carlos De la Pena, Tina and Albert Ellis, Mr. and Mrs. Raul Espinoza, Santiago Espinoza, Mr. and Mrs. Ramon Ferrer, Jose Flores, Victor M. Flores, Jesus Fuentes, Humberto and Ana Maria Gomez, Alonzo and Ema Gonzales, Carlos Hernandez,MD, Gloria Hernandez,

Mike Hernandez, Walter and Ladye Herring, Mr. and Mrs. Hierro, Randy Laurence, Brouning Lentz, Roberto Lopez, Prosser Martin and Kim Wall, Claudio S. Martinez, Juanita Martinez, Luis F. Martinez, Mr. and Mrs. Jose Morales, Jim and Rosa O'Donnell, Jorge Eduardo Perales, Eli and Sharo Perez, Martha M. Ramirez, Martha S. Ramirez, Ricardo Ramos, Rebecca Robinson, Gloria Rodriquez, Jose Luis Rosales, Claudio Sandoval, Edward M. Sandoval, Jesus H. Sandoval, Jose Sandoval, Betty and E.K Taylor, Mr. and Mrs. Satos Torres, Mr. and Mrs. Alfonso A. Trevino, Mr. and Mrs. Enrique G. Trevino, Hector R. Trevino, M.D., Yadira Torres, Alma R. Vallejo, Sandra Vela, Mr. and Mrs. Guillermo Villarreal, and Eagle Pass Junior High expressed general opposition to the Dos Republicas mine.

RESPONSE 1:

The ED preliminarily determined that the draft permit renewal met all statutory and regulatory requirements for re-issuance of the wastewater discharge permit. Please note, the Texas Railroad Commission has to re-authorize the actual mining activities at this site before the Applicant can begin any coal mining activities.

30 TAC § 55.156 requires the ED to issue a response to all timely, relevant and material, or significant comments received during the comment period, including those oral and written comments received at the public meeting. This Response addresses those comments. The ED has not received any information that would cause him to change the preliminary recommendation with regards to the proposed wastewater discharge permit sought by the Applicant.

COMMENT 2:

Ramsey English Cantu, Luis Martinez, and Heriberto Morales, Jr., City Attorney for Eagle Pass comments that the address of the Applicant is a vacant lot without any actual structures and this should be investigated.

RESPONSE 2:

The Applicant lists their address as 5150 North Loop 1604 West, San Antonio, Texas 78249. A valid mailing address must be provided by an applicant. A Google map search indicates an empty spot beside North Loop 1604 for the noted address. However, a Mapquest search indicates that this address is a large building at the intersection of North Loop 1604 West and Tradesman Drive. Also, TCEQ has not received any returned mail sent to the Applicant at this address due to an inability for the U.S. Postal Service to deliver mail to the Applicant's mailing address.

COMMENT 3:

Hector R. Trevino, M.D. comments that he is concerned whether the water quality will be protected for swimming. Rio Grande International Study Center expressed general concerns over the impact of the discharge on the water quality of the Rio Grande. Keith Ayers expressed concern over the impact of the Dos Republicas mine on the groundwater. Martha M. Ramirez is concerned with the potential impact to underground water resources. Enriqueta Diaz comments that the facility will destroy the recreational value of Elm Creek. Aureliano and Terri Contreras expressed general

water quality concerns. Randy Laurence, Martha M. Ramirez, Edward M. Sandoval, Sandra Vela, and Keith Ayers are concerned about problems with water quality as a result of this operation.

RESPONSE 3:

The Applicant's renewal permit application was evaluated for the purpose of protecting aquatic life, human health, and the environment. At a minimum, the review includes an analysis of the existing uses of the receiving waters under 30 TAC § 307.5(c), which aids in establishing the appropriate discharge limitations, and a waste load analysis for Segment No. 2304, which determines the quality of the water discharged by the Applicant into the receiving stream . The water quality standards established under the permit are determined by the water quality, the individual characteristics of the receiving stream, and the impacts that the effluent may have on the receiving stream based on its volume, the flow rate and the type of waste being discharged by the facility. This information is used to develop discharge limitations protective of the quality of the water so that the use of the water will not be impaired and the health and safety of individuals and wildlife that may come into contact with the water is protected.

The ED's technical review of the permit application begins with a review by the Water Quality Assessment (WQA) Section. The WQA Section determines the designated uses of the segment water body that would receive the proposed discharge, the critical conditions for the water body (i.e., low flow) when the water body is most susceptible to adverse effects, and the limitations to ensure the dissolved oxygen criteria are met. Upon completion of the review the WQA Section provides recommendations used in developing the draft permit.

The draft permit is also developed using information about the facility provided in the permit application and in the current permit. The effluent limitations are set by comparing technology-based effluent limitations with the water quality-based effluent limitations. To determine what effluent limits are appropriate, the permit writer first reviews the information about the facility and the proposed discharge, and develops technology-based effluent limitations based on federal effluent guidelines. Then, using the application and recommendations from the WQA Section, the permit writer develops water quality-based effluent limitations using specific numeric aquatic life criteria established in Table 1 the Texas Surface Water Quality Standards (TSWQS) for those specific toxic substances where adequate toxicity information is available and that have the potential for exerting adverse impacts on water in the state.

Finally, the permit writer compares the technology-based limitations with the water quality-based effluent limitations and applies the more stringent effluent limit to the draft permit. The wastewater from the mining operation will be screened for compliance with TSWQS once the facility is in operation to ensure protection of aquatic life in the receiving stream and to protect the designated uses of the intermittent streams.

The permit application proposes that the discharges from the retention ponds will be intermittent in nature and storm water driven. Historically, for mining permits with this type of discharge and without any available discharge flow data, since the Applicant has

not started mining operations or discharges, the most conservative discharge scenario is used to calculate water quality-based effluent limitations. No dilution is assumed at the point of discharge to the receiving stream and water quality-based effluent limitations are calculated based on discharges comprised of 100% wastewater, such as discharges to intermittent streams.

Because the facility had not begun discharging when the application was submitted and reviewed, effluent analysis was not available for screening for compliance with TSWQS (30 TAC Chapter 307). When discharge commences, sample data per Other Requirement No. 12 in the draft permit will be compared against the calculated water quality-based effluent limitations found in Appendix B of the Fact Sheet and Executive Director's Preliminary Decision, and any additional aquatic life and human health water quality-based effluent limitations that can be calculated based on effluent flow data that is not normally available when Applicants have yet to discharge.

Based on a technical review of the submitted analytical results after discharge begins, an amendment may be initiated by TCEQ staff to include additional effluent limitations and monitoring requirements. The current water quality-based daily maximum total selenium effluent of 0.036 mg/l, originally added to the current permit based on best professional judgment (BPJ) and not from actual sample data, is continued from the current permit in the draft permit renewal.

The draft permit contains effluent limitations and provisions designed to protect the designated uses of the receiving stream and ultimately the Rio Grande. The designated uses and dissolved oxygen criterion as stated in Appendix A of the Texas Surface Water Quality Standards (30 TAC § 307.10) for the Rio Grande below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin, are contact recreation, public water supply, high aquatic life use, and 5.0 mg/L dissolved oxygen; and the draft permit is designed to be protective of these applicable water quality uses and criteria.

Compliance with the TSWQS provides for surface water protection. The Water Quality Division determined that if the surface water is protected, then the groundwater quality in the vicinity will not be impacted by the discharge. The draft permit also includes requirements for retention ponds to be constructed prior to disturbing the natural soils in preparation of any mining activity, found at Other Requirements No. 2. This permit provision also requires a record of the design dimensions, construction information, pond drainage area, and a map sketch or drawing showing the location of each pond to be maintained at the site; and readily available for inspection by authorized representatives of TCEQ.

COMMENT 4:

Hector R. Trevino, M.D. and Rosa O'Donnell comment that they are concerned that water quality will be protected for drinking. KTTT and Luis F. Martinez expressed concern over their drinking water for Eagle Pass. According to KTTT, Eagle Pass takes its drinking water from the Rio Grande, one mile downstream of the point Elm Creek enters the Rio Grande. Rio Grande International Study Center expressed concern over the impact of the Applicant's proposed discharge on Laredo's public water supply.

Martha M. Ramirez comments that the proposed discharge would negatively impact communities' drinking water supplies downstream of the discharge. Heriberto Morales, Jr. asks whether the Applicant can guarantee that our water source will never be contaminated by their operations and asks if there is potential for contamination what alternatives, both operationally and fiscally, that can be offered to the city and the citizens.

RESPONSE 4:

The Texas Surface Water Quality Standards (TSWQS) in 30 TAC Chapter 307 are intended to protect surface waters so that they will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life. The methodology outlined in the *Procedures to Implement the Texas Surface Water Quality Standards,* Texas Commission on Environmental Quality, January 2003 (IPs) is designed to ensure compliance with TSWQS. Specifically, the methodology is designed to insure that no source will be allowed to discharge any wastewater that: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation that threatens human health.

The draft permit was developed in accordance with the Texas Surface Water Quality Standards, which ensure that the effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water reviewers and modelers.

Water quality-based effluent limitations are calculated from freshwater aquatic life criteria found in Table 1 of the TSWQS (30 TAC Chapter 307). There is no mixing zone or zone of initial dilution for discharges directly to an intermittent stream; acute freshwater criteria apply at the point of discharge. The acute effluent percent, which is the amount of effluent used to calculate the water-quality based effluent limit, is 100%.

For discharges to an intermittent stream within three miles of a perennial freshwater stream, such as Elm Creek, there is still no mixing zone or zone of initial dilution for this discharge directly to an intermittent stream and acute freshwater criteria apply at the point of discharge. Chronic freshwater criteria are normally applied in the perennial freshwater stream. Subsequently, TCEQ uses the mass balance equation to estimate dilution in the perennial stream during critical conditions. The estimated dilution for chronic protection of aquatic life is calculated using the daily average flow via the outfall and the 7-day, 2-year low flow (7Q2) for the perennial stream, which is not indicative of storm water events. In this case, the intermittent nature of storm water driven flows does not provide an expected daily average flow volume. Without a reasonable assumption for a daily average flow volume, in the place of actual data, this calculation procedure cannot be applied.

When a daily average effluent flow is available, freshwater fish tissue bioaccumulation criteria are applied for human health protection in the perennial stream. TCEQ uses the

mass balance equation to estimate dilution in the perennial stream during average flow conditions. Again, the estimated dilution for human health protection is calculated using the daily average flow via the outfall and the harmonic mean flow of the perennial stream. Again, without a reasonable assumption for a daily average flow volume, in the place of actual data, this calculation procedure cannot be applied.

The storm water driven discharges in the proposed permit are intermittently produced and variable in nature; and are better characterized as discharging on an intermittent and flow variable basis via Outfalls 001 - 013. When discharge occurs at these types of outfalls, the receiving water flow volumes are expected to be greater than the 7Q2 and harmonic mean flow volume conditions. Although the permitted discharge volumes are expected to be intermittent and flow variable, the proposed permit requires reporting of the daily average and daily maximum flows via Outfall 001 – 013, in million gallons per day (MGD). Therefore, flow volumes and discharge events will be recorded and the discharge conditions will be more accurately characterized. Once the flow data is collected, the results of this evaluation can be re-examined and the appropriate effluent dilutions determined, so that additional aquatic life and human health water quality-based effluent limitations can be calculated.

In determining the appropriate water quality-based effluent, wasteload allocations (WLAs) are calculated. WLAs are calculated using the estimated effluent percentages, criteria outlined in the TSWQS, and partitioning coefficients for metals, when appropriate.

From the WLA, a long term average is calculated using a log normal probability distribution, a given coefficient of variation (0.6), and a 90th percentile confidence level. The long term average (LTA) is the LTA effluent concentration that will not allow the WLA to be exceeded using a selected percentile confidence level. For discharge to perennial streams or within 3 miles of perennial streams, the lower of the two LTAs (acute and chronic) is used to calculate a daily average and daily maximum effluent limitation for the protection of aquatic life. This calculation uses the same statistical considerations with the 99th percentile confidence level and a standard number of monthly effluent samples collected (12). For discharges to intermittent stream not within 3 miles of perennial stream, the LTA is used to calculate a daily average and daily maximum effluent limitation for the protection of aquatic life using the same statistical considerations with the 99th percentile confidence level and a standard number of monthly effluent samples collected (12).

Assumptions used in deriving the effluent limitations include segment values for hardness, chlorides, pH, and total suspended solids (TSS) according to the segment-specific values contained in the TCEQ guidance document, *Procedures to Implement the Texas Surface Water Quality Standards (IPs)*. The Segment No. 2304 values are 250 mg/l $CaCO_3$ for hardness, 119 mg/l chlorides, 7.8 standard units for pH, and 5 mg/l for

TSS. For additional details on the calculation of water quality-based effluent limitations, refer to the TCEQ guidance document.[1]

When discharge commences at this mining operation, flow data can then be collected so that additional aquatic life and human health water quality-based effluent limitations can be calculated and compared to the sampling data required per the draft permit in Other Requirement *No. 12*. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and monitoring requirements in the permit if it is determined they are necessary for the protection of aquatic life, human health, and the public water supply. The draft permit contains effluent limitations and provisions designed to protect the designated uses of the Rio Grande. The designated uses and dissolved oxygen criterion as stated in Appendix A of the Texas Surface Water Quality Standards (30 TAC § 307.10) for Segment 2304 are contact recreation, public water supply, high aquatic life use, and 5.0 mg/L dissolved oxygen. As discussed in the previous response, the draft permit is designed to be protective of the applicable water quality uses and criteria.

COMMENT 5:

Dr. Carlos de la Pena, Jeannie Benavides, Jose Flores, Martha M. Ramirez, Enriqueta Diaz, Ladye Herring, Luis F. Martinez, Jeannie Benavides, Gloria Rodriquez, Sandra Vela, and KTTT are concerned about the potential health effects of the operation on local residents. Eagle Pass ISD is concerned about the health and the safety of the children who attend district schools due to the operation of the mine. Martha M. Ramirez comments that there are schools within one mile of the proposed coal mine.

RESPONSE 5:

Regulations promulgated in the TSWQS and the Implementation Procedures are designed for the protection of human health in water in the state. No significant aquatic life use is designated for the unnamed ditches and high aquatic life use is designated for Elm Creek. The permit renewal is drafted in accordance with TSWQS and the Implementation Procedures and should be protective of human health and preclude nuisances or other adverse effects in the receiving stream when the Applicant operates and maintains the site according to the requirements of the draft permit.

Although TCEQ regulates the discharges of wastewater from the Applicant's facility, it does not regulate all other operational activities at the mine. The Railroad Commission of Texas (RRC) is charged with the responsibility to permit and regulate the activities and operations at the facility. The RRC rules can be found at 16 TAC Part 1. The TCEQ water quality permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes, and coastal waters. Human health and the environment are protected by protecting the quality of "water in the state." TCEQ does not have jurisdiction to address the operational concerns such as those expressed by the commenters and the potential impacts such

[1] That document can be found online on TCEQ's website at: http://www.tceq.texas.gov/permitting/water_quality/wq_assessment/standards/WQ_standards_implementing.html

operational concerns might have on the health and safety of the commenters. Concerns regarding mining activities and operations at the facility may be referred to the RRC. General information about the RRC of Texas can be obtained at www.rrc.state.tx.us.

The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route. Should nuisance conditions, or other potential violations of the TPDES permit be observed at the site, observers are encouraged to report an environmental complaint by calling toll-free, 1-888-777-3186 or calling the TCEQ, Region 16 - Laredo Office, at 956-791-6611. On a complaint basis, the regional investigators will investigate the conditions at the facility. If the regional investigator documents a violation of TCEQ regulations or conditions included in the TPDES permit, then appropriate enforcement action will be taken.

COMMENT 6:

Rio Grande International Study Center is concerned with naturally occurring chemicals that will be brought to the surface during the mining process and the impact of potential contamination that would result from a flood exceeding a 10-year, 24-hour storm event. George Baxter comments that the 10-year, 24-hour rainfall event that the retention ponds will be designed to hold are insufficient. Mr. Baxter also notes just last year there was a flooding event that probably exceeded the design rainfall event. Mr. Baxter states that, at minimum, the Applicant should be required to re-engineer the entire sediment pond concept and design it so that it can handle not only a 10-year, 24-hour storm event, but a worst case scenario as well. KTTT expressed concern that during a regular flood event the mined portion of the site will fill with water and overflow into Elm Creekand asks how water in the storage ponds will be treated and disposed of. Mr. Laurence comments that a independent hydrology study should be performed for the area surrounding the proposed mining operation to determine not only water quality impacts, but whether the retention ponds are undersized and subject to overflow at times other than the 10-year, 24-hour design rainfall event. Charles Roberts asks whether the retention ponds are constructed to withhold a flood and to accommodate excess storm water. Eagle Pass WWS comments that the sedimentation ponds are designed to hold a storm event only up to the 10-year storm event, but they need to know the potential volume of discharge and concentrations of potential contaminants that could reach the treatment plant in a worst case scenario storm event.

RESPONSE 6:

The wastewater system at the mine will consist of sedimentation/retention ponds. The ponds receive drainage from disturbed areas of the active coal mining areas and reclamation operation. The retention ponds allow settling of particles and can be treated with flocculants to aid in sedimentation.

The draft permit includes Other Requirement No. 12, which requires the discharge of storm water and mine seepage from these active mining areas to be screened against the calculated water quality-based effluent limitations developed using the TSWQS criteria for various pollutants and many of these pollutants do occur naturally in the environment. If significant potential exists to exceed the calculated water quality-based effluent limitations, then an amendment may be initiated by TCEQ staff to include additional effluent limitations or monitoring requirements.

The federal effluent limitation guidelines at Title 40 Code of Federal Regulations (40 CFR), Part 434 – Coal Mining Point Source Category limitations, address specific design storm discharges and the associated effluent limitations based on the frequency of the storm (the greater the frequency, or the recurrence interval, the smaller the volume of storm water runoff). The volume of storm water runoff dictates the size of the retention ponds. Therefore, the pond sizing is related to specific design storms and applicable discharge limits (i.e., 1-year, 2-year, and 10-year, 24-hour precipitation events means the maximum 24-hour precipitation event with a probable recurrence interval of once in one, two, and ten years respectively, as defined by the National Weather Service).

The discharge of storm water and mine seepage from active mining areas, haul roads, and ancillary disturbed areas via Outfalls 001-013 is also subject to federal effluent limitation guidelines at 40 CFR Part 434, Subpart A – General Provisions, Subpart C – Acid or Ferruginous Mine Drainage, and Subpart F – Miscellaneous Provisions. Other Requirement No. 2A, E, and F in the draft permit contain provisions based on these guidelines. Other Requirement No. 2A defines the "active mining area," 2E applies an additional effluent limit for discharges from a storm event with a frequency less than a 10-year, 24- precipitation event, and 2F defines the term a "10-year, 24-hour rainfall event." Specifically, those provisions read as follows:

2. Active Mining Area:

   A. The term "active mining area" is defined as the areas, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.

   E. For discharges from "active mining area" ponds that do not contain mine pit water (or water that has contacted acid forming or toxic forming spoil) the following effluent limitations shall apply, and shall replace the effluent limitations listed on page 2 of this permit.

      Any discharge caused by a precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event, or snowmelt of equivalent volume shall comply with the following limitations:

      EFFLUENT LIMITATIONS DURING PRECIPITATIONS:

Pollutant or Pollutant Property	Maximum for any 1 Day
Settleable Solids*	0.5 ml/l

pH - within the range of 6.0 to 9.0 at all times.

* These limits do not apply when the discharge is caused by a precipitation event greater than the 10-year/24-hour precipitation event.

F. The term "10-year, 24-hour rainfall event" shall mean a rainfall event with the probable recurrence interval of once in ten years as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

COMMENT 7:

Charles Roberts provided statements from the Applicant in response to questions from Mr. Roberts regarding information about the proposed operations.

RESPONSE 7:

The ED acknowledges receipt of this information.

COMMENT 8:

Herberto Morales, Jr. and Edward M. Sandoval ask whether the Applicant will be required to re-vegetate the topsoil to the Sabine Mine standards. Gabriela Cisneros asked if Dos Republicas or TCEQ would be responsible to return the site to its existing condition.

RESPONSE 8:

TCEQ does not have the statutory authority under the Texas Water Code to regulate coal mine reclamation. Currently, the federal government through the Surface Mining Control and Reclamation Act mandates uniform standards for mine reclamation activities. Specific reclamation requirements are addressed under the Dos Republicas surface coal mining operations permitted under RRC Permit No. 42A. The Surface Mining and Reclamation Division of the Railroad Commission is currently processing this mining application.

Finally, discharges from post mining areas are not authorized under this draft permit. The permittee is required to obtain a permit amendment prior to initiation of any discharge from post mining operations. Other Requirement No. 5 in the draft permit contains the following provisions pertinent to post mining discharges of wastewater:

5. Post Mining Areas:

A. The term "Post mining area" is defined as a reclamation area; or the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

B. The term "Reclamation area" is defined as the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

C. The term "Bond Release" is defined as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed. Phase Two completion is that point in the reclamation process where the property has been recontoured and replanted but prior to final bond release.

D. Discharges from post mining areas are not authorized under this permit. The permittee shall obtain a permit amendment prior to initiation of any discharge from post mining operations.

COMMENT 9:

Heriberto Morales, Jr. comments that the Applicant stated that they performed testing on the proposed detention ponds, but asks how they can be sure the correct chemical tests are performed.

RESPONSE 9:

This sort of testing is under the regulation of the RRC mining permit. However, TCEQ does recognize that a RRC mining permit is required for operation of the coal mine and that the application requires soil and groundwater testing. Therefore, the draft permit includes Other Requirement No. 7 as follows:

7. The permittee shall provide to the TCEQ Wastewater Permitting Section (MC-148) copies of all surface and groundwater quality monitoring results that it is required to send to the Railroad Commission of Texas (RCT) pursuant to its RCT mining and reclamation permit.

The specific testing requirements and results are related to the surface coal mining operations permitted under RRC Permit No. 42A. As noted in the previous response, the RRC is currently processing this mining application.

COMMENT 10:

Heriberto Morales, Jr. and Edward M. Sandoval ask what the compliance history is for other mines operated by the Applicant.

RESPONSE 10:

This site (i.e., DRCP - Eagle Pass Mine, regulated entity number RN101529493) has a classification of High and a rating of 0.00. The Applicant (i.e., DRCP, customer number CN600787782) has a classification and rating, which is the average of the ratings for all sites the Applicant owns. The Applicant has a classification of High and a rating of 0.00. This is the only Applicant's application for a wastewater discharge permit from TCEQ in the state. Based on this classification and rating, the ED determined that the Applicant

is operating in compliance with rules and regulations. Please note the compliance history is available to the public and may be viewed on the TCEQ website at:

http://www.tceq.state.tx.us/compliance/enforcement/history.

COMMENT 11:

Eagle Pass WWS comments that their evaluation indicates that discharges from the mine could impact treatment operations of the city. In particular, iron and manganese are two specific parameters of concern. Edward M. Sandoval comments that the Eagle Pass water treatment plant possesses only two days of reserves and asks whether TCEQ will consider that when evaluating the permit application.

RESPONSE 11:

The surface water quality standards specify narrative provisions, designated uses, and numerical criteria for the protection of aquatic life and human health in water in the state. Compliance with the TSWQS provides for surface water protection. If the surface water is protected, then the discharges of storm water and mine seepage from the active mining areas should not impact the water treatment operations or reserves.

This application was evaluated and water quality-based effluent limitations were calculated and compared to the required technology-based effluent limitations under 40 CFR Part 434 – Coal Mining Point Source, Subpart C – Acid or Ferruginous Mine Drainage, and the most protective effluent limitation is contained in the permit as discussed in previous responses.

The draft permit authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013 with the following effluent limitations in the draft permit as follows:

Outfall	Parameter	Daily Average, mg/l	Daily Maximum, mg/l
001 -	Flow (MGD)	(Report MGD)	(Report MGD)
013	Total Suspended Solids (TSS)	35	70
	Iron, Total	3.0	6.0
	Manganese, Total	2.0	4.0
	Selenium, Total	N/A	0.036
	pH (standard units, su)	(6.0 su minimum)	(9.0 su maximum)

COMMENT 12:

Edward M. Sandoval comments that how can the Applicant assure that chemical tests on the ponds will be correctly performed. Gabriela Cisneros asked when the Applicant's effluent will be tested and if the draft permit requires random testing. KTTT expressed concern that the water sampling will not be timely.

RESPONSE 12:

The Applicant is required to collect and analyze samples of wastewater and to provide monthly Discharge Monitoring Reports (DMRs) to TCEQ that include the results of the analyses. A permittee may collect and analyze the effluent samples itself or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A, Monitoring and Reporting System. A permittee is also required to notify TCEQ in the event that the effluent sampled fails to meet the permitted effluent limitations. As provided by state law, a permittee is subject to administrative, civil, and criminal penalties, for knowingly making any false statement, representation, or certification on any report, record, or document submitted or required to be maintained by the permit.

Finally, TCEQ regional offices conduct periodic inspections of facilities based on complaints received from the public. To report complaints about the facility please contact the TCEQ at 1-888-777-3186 to reach the appropriate TCEQ regional office (i.e., TCEQ Region 16 – Laredo Office at 956-791-6611 or by e-mail at cmplaint@TCEQ.state.tx.us. Noncompliance with TCEQ rules or the permit may result in enforcement action.

COMMENT 13:

Eagle Pass WWS comment that the draft permit should include a requirement that they be immediately notified if discharges exceed the effluent limitations to allow the system to take appropriate measures.

RESPONSE 13:

TCEQ rules do not require permittees to report effluent limitations violations to other non-agency entities. However, the permit does not limit the ability of the Eagle Pass WWS from seeking civil court remedies in response to activities that interfere with a system's operation and production of potable water.

COMMENT 14:

Eagle Pass WWS comments that the FEMA floodplain map shows that approximately 50% of the mine area is located within the 100-year floodplain area.

RESPONSE 14:

The location of coal mines in Texas is regulated by the RRC. Those rules can be found in 16 TAC Chapter 12, Subchapter F. The rules include regulations relating to suitability of land for mining and have a process for determining whether a particular site is suitable for coal mining. That process is found in 16 TAC § 12.75 and involves petitioning the RRC for a determination of unsuitability. 16 TAC § 12.75 reads as follows:

a) Upon petition, an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the Commission determines that reclamation is not technologically and economically feasible under the Act, this chapter (relating to Coal Mining Regulations), or the approved state program.

b) Upon petition, an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will:

(1) be incompatible with existing state or local land-use plans or programs;
(2) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;
(3) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or
(4) affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

16 TAC § 12.71 contains a list of areas where surface coal mining operations are prohibited or limited.

COMMENT 15:

Hector R. Trevino, M.D. asks whether an environmental impact study (EIS) has been done for the proposed mine. Randy Lawrence requested that TCEQ require an independent hydrology study before considering whether to issue this permit. Jesus Castillon stated that there have not been any environmental studies done to evaluate the long term effects of the Dos Republicas mine. KTTT stated that the TCEQ should conduct a full investigation. Luis F. Martinez comments that a good feasibility study should be conducted. KTTT asks what methodology did TCEQ use to determine the potential for environmental contamination at the proposed site and if there is a report available for review by KTTT's experts.

RESPONSE 15:

Neither the Texas Water Code nor TCEQ rules require the applicant for a wastewater discharge permit to prepare an Environmental Impact Statement (EIS). However, as required by the National Environmental Policy Act (NEPA), EPA conducted and issued an EIS in January, 1995 for the proposed facility when the mine was originally being permitted. NEPA requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. NEPA imposes a procedural requirement on all federal agencies to prepare an environmental impact statement or:

> include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on-- (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and

irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

See 42 U.S.C. § 4332(C). This permit action is not subject to NEPA's EIS requirements and Texas laws do not require the preparation of an EIS for an industrial wastewater discharge permit.

COMMENT 16:

Keith Ayers stated that when coal surfaces are exposed, iron sulfide comes in contact with water and forms sulfuric acid, which then drains into the waterways regardless of whether the mine is operating. KTTT expressed concern over acid water discharges and the ponding of sulfuric acid and metals. Keith Ayers and KTTT comment that strip mining leaves the infertile subsurface soil on the surface which then acidifies streams and kills fish, plants, and aquatic animals.

RESPONSE 16:

The draft permit only authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013. These outfalls have technology-based effluent limitations, except for total selenium, that were developed using 40 CFR Part 434, Subpart C (relating to Acid or Ferruginous Mine Drainage Subcategory).

The limitations and monitoring requirements established in the draft permit at Outfalls 001 through 013 are listed below.

Parameter	Daily Avg	Daily Max	Monitoring Frequency
Flow (MGD)	(Report)	(Report)	1/week (*)
Total Suspended Solids	35 mg/l	70 mg/l	1/week (*)
Iron, Total	3.0 mg/l	6.0 mg/l	1/week (*)
Manganese, Total	2.0 mg/l	4.0 mg/l	1/week (*)
Selenium, Total	N/A	0.036 mg/l	1/month (*)
pH (standard units)	(6.0 min)	(9.0 max)	1/week (*)

(*) When /discharge occurs.

The sedimentation/retention ponds receive drainage from disturbed areas of the active coal mining areas. These retention ponds allow settling of particles and can be treated prior to discharge.

The permit was also drafted in accordance with all appropriate state and federal law requirements. This includes, but is not limited to 33 U.S.C. § 1342 (CWA § 402); 40 CFR Parts 122 and 434 ; Texas Water Code § 26.027; and 30 TAC Chapters 305, 307, and 319.

Additionally, EPA approved the draft permit by letter dated January 19, 2011. Therefore, the TCEQ believes the draft permit contains the appropriate effluent limits for the proposed discharges from the Eagle Pass Mine.

COMMENT 17:

Keith Ayers, Aureliano and Terri Contreras comment that most of the chemicals that will be discharged are highly carcinogenic and are lethal to humans, agricultural animals, wildlife, aquatic species, plants, and natural fauna.

RESPONSE 17:

Regulations require technology-based limitations in wastewater discharge permits based on effluent limitations guidelines, which reflects the best controls available. Where these technology-based permit limits do not protect water quality or the designated uses, additional water quality-based effluent limitations and conditions are included. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity databases to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

The current permit includes effluent limitations and monitoring requirements, which are continued in the draft permit, for Total Suspended Solids (TSS), total iron, total manganese, total selenium, and pH to ensure that the proposed discharge meets water quality standards for the protection of surface water quality, groundwater, and human health according to TCEQ rules and policies. The draft permit includes additional requirements addressing discharges from active mining areas and additional sampling requirements to ensure the protection of water quality, human health and the environment.

While 30 TAC Chapter 307, and the Implementation Procedures do not specifically designate criteria for the protection of animals, wildlife, plants, and natural fauna, they do designate criteria for the protection of aquatic life and human health that should preclude impacts to the health and performance of animals, wildlife, plants, and natural fauna.

A guidance document provided by the Texas Agricultural Extension Service entitled "Water Quality: Its Relationship to Livestock" (Doc. No. L2374) states that the most common water quality problems affecting livestock production are high mineral concentrations (excess salinity), high nitrogen, bacterial contamination, heavy growth of blue-green algae, petroleum, pesticide, and fertilizer spills. The constituents of concern mentioned in the document are generally not associated with the waste streams proposed to be generated from this facility and should not affect animals and wildlife either.

COMMENT 18:

KTTT asks whether TCEQ has considered studies, whose results were recently published by Dr. Michael Hendryx, Ph.D., which point to increased illnesses and premature deaths among Appalachian residents living near coal mining operations and that questions

whether the cost of the health impacts are greater than the industry's economic benefit to the region. KTTT also asks whether TCEQ considered the recommendations of the Obama Administration that "the PEL for coal dust be decreased from 2 mg/cubic meter to 1 mg/cubic." Finally, KTTT asks if TCEQ is aware that NIOSH stated in 2010 that even at 1 mg/cubic meter coal dust exposure limit could cause some occupational effect on ventilator function is expected. Aureliano and Terri Contreras expressed concern over air and soil pollution.

RESPONSE 18:

The RRC is charged with the responsibility to permit and regulate the mining activities and operations at this facility. TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out in Chapter 26 of the Texas Water Code. The TPDES permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. Air quality and solid waste issues are outside of the scope of normal evaluations for a wastewater discharge permit application. The scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to use common law remedies for trespass, nuisance, or other causes of action in response to activities that result in damage to private property or that interfere with the private use and enjoyment of property.

COMMENT 19:

MCWCID No. 1 stated that it owns Laterals 20, 21, and 26, and notes that these laterals are tributaries of Elm Creek. MCWCID No. 1 also notes that any water used from the laterals must be in accordance with state law and the district's operating rules.

RESPONSE 19:

The draft permit, if issued, does not give the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights and comply with any other applicable rules and regulations to use the site of the planned facility and the discharge route, including any permits required by other state or federal agencies with applicable authority.

COMMENT 20:

KTTT asked why TCEQ has not complied with the mandatory rules in the Texas Natural Resources Code (Tex. Nat. Res. Code § 134.072(a)) that prohibit extensions for facilities that have not begun to operate within three years. KTTT acknowledges that the Tex. Nat. Res. Code § 134.072(a) governs permits issued by the Railroad Commission (RRC), but asserts that the TCEQ is bound by the same requirements.

RESPONSE 20:

The ED disagrees that Nat. Res. Code § 134.072(a) applies to TCEQ issued wastewater discharge permits authorized by TWC Chapter 26. As noted by KTTT, § 134.072(a) states that a permit terminates if the permit holder has not began the surface coal mining operation covered by the permit on or before the third anniversary of the date of permit issuance.

However, § 134.004(12) defines "permit" as used in Chapter 134 as "a permit to conduct surface coal mining and reclamation operations or underground mining operations issued by the commission." The TCEQ permit does not authorize an applicant to conduct surface coal mining, but to discharge wastewater and therefore, is not under the definition of "permit" as used in this chapter of the Natural Resources Code.

COMMENT 21:

Rosa O'Donnell notes that the permit application includes the sentence: "Since the discharge point is located at a distance of greater than three miles downstream of any perennial waters, human screening is not applicable." She asks why this is so. Maverick County comments that Elm Creek is a perennial stream within three miles of a proposed discharge point and the attendant analysis of water quality based effluent limitations and compliance of the would-be discharge with the State's water quality standards.

RESPONSE 21:

The ED agrees that the Applicant proposes to discharge within three miles of a perennial stream. As explained in more detail in Response 4, because the discharges from the retention ponds are intermittent and storm water driven, the most conservative discharge scenario is used to calculate water quality based effluent limitations. Therefore, whether the discharge of storm water is within three miles of a perennial stream the effluent limitations in the draft permit are the same.

Additionally, when the discharge is to an intermittent stream within three miles of a perennial freshwater stream, water quality-based effluent limitations for the protection of human health are normally calculated using criteria for the consumption of freshwater fish tissue found in Table 3 of the TSWQS (30 TAC Chapter 307). The estimated dilution for human health protection is calculated using the daily average flow via the outfall and the harmonic mean flow of the perennial stream. Also, as noted and explained in more detail in Response 4, without a reasonable assumption for a daily average flow volume, in the place of actual data, this calculation procedure cannot be applied.

Water quality-based effluent limitations for intermittent and flow variable discharges from mining areas are normally only evaluated using TEXTOX Menu 1 – Discharges to an Intermittent Stream and only Aquatic Life Criteria are included in TEXTOX Menu 1. To evaluate using a TEXTOX Menu 2 or 3, which include perennial waters and subsequently, human health criteria, then you need to input either the permitted daily average flow or the "highest monthly average discharge of the preceding two-year period" for aquatic life calculations or the "average of monthly average flow values over the preceding two-year period" for the human health calculations. This permit does not

have a permitted daily average flow or any self-reported discharge flow values. Therefore, at this time any assigned flow values would be completely arbitrary and without those values only TEXTOX Menu 1 can be used to calculate effluent limits.

COMMENT 22:

Rosa O'Donnell comments that the permit application includes the statement: "Wastewater discharges authorized under the permit could not be detailed since the facility is yet to discharge." She asks whether this means that how toxic the discharge will be will not be known until the coal mine is operating.

RESPONSE 22:

Industrial wastewater permits are developed using national effluent limitation guidelines based on specific industrial processes and site-specific calculated water quality-based effluent limitations. Therefore, regulations require technology-based limitations be placed in wastewater discharge permits based on effluent limitations guidelines, where applicable, and on best professional judgment (BPJ) in the absence of guidelines. The discharges via Outfalls 001-013 from the mine are subject to federal effluent limitation guidelines at 40 CFR Part 434 – Coal Mining Point Source, Subpart A – General Provisions, Subpart C – Acid or Ferruginous Mine Drainage, and Subpart F – Miscellaneous Provisions.

Effluent limitations for total suspended solids, total iron, total manganese, and pH are continued from the existing TPDES permit based on 40 CFR Part 434.

Outfall	Parameter	Daily Average, mg/l	Daily Maximum, mg/l
001 -	Flow (MGD)	(Report MGD)	(Report MGD)
013	Total Suspended Solids (TSS)	35	70
	Iron, Total	3.0	6.0
	Manganese, Total	2.0	4.0
	pH (standard units, su)	(6.0 su minimum)	(9.0 su maximum)

When discharge commences, flow data can then be collected so that additional aquatic life and human health water quality-based effluent limitations can be calculated and compared to the sampling data required per the draft and existing permit's Other Requirement No. 12. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and monitoring requirements in the permit.

COMMENT 23:

KTTT asks whether the Applicant submitted a detailed "Water Balance" to TCEQ to aid in determining the impact of the facility on the surrounding environment.

RESPONSE 23:

The Industrial Wastewater Technical Report Item 2 b. requests a flow schematic with a water balance showing each treatment unit and all sources of wastewater flow and outfalls. The draft permit authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001-013. The schematic shows variable flows of storm water runoff to sedimentations ponds to either discharge from Outfalls 001-013 at a variable flow or reuse for dust suppression on haul roads at variable flows. The impact of these flows to the surrounding environment is addressed in the previous responses detailing water quality and technology-based effluent limitations. The impact of the facility on the surrounding environment may best be addressed through the Railroad Commission Mining Permit No. 42A.

COMMENT 24:

MCWCID #1 comments that all the water in Elm Creek belongs to the Maverick Water District. MCWCID #1 notes that the mining company has 411 acres of irrigated land in the district for irrigation, but he was unaware of any other water right they hold. MCWCID #1 comments that the State of Texas, TCEQ, and the watermaster are very strict about cross using water from one permit for another use. KTTT comments that surface coal miners use water in the process and want to know if they have contracted for that water or are planning to drill for water or create reservoirs. And, if reservoirs, what will be the capacity of the reservoirs.

RESPONSE 24:

TCEQ acknowledges the importance of water supply to the commenter; however, the Applicant is not required to obtain a water rights or water well permit from the TCEQ or construct a reservoir in order to obtain a wastewater discharge permit. However, the Applicant is required to obtain any required permits and authorizations, including for its water supply, if necessary, before it can start mining operations.

COMMENT 25:

Gabriela Cisneros asked if the Dos Republicas permit could be revoked and if it were revoked could the Applicant apply for a new permit. Gabriela Cisneros asked about the disciplinary process for violating TCEQ permits. She also asks what kind of violations will cause a permit to be revoked. Gabriela Cisneros asks what the time period is before the Applicant would have to re-apply for the permit.

RESPONSE 25:

The permit as currently drafted would expire on September 1, 2015. TCEQ rules include a provision in 30 TAC § 305.66 that provides for permit denial, suspension, or revocation and the causes that could trigger denial, suspension, or revocation. Sections 305.66(a), (d), (e),(f), and (g) read as follows:

a) A permit or other order of the commission does not become a vested right and may be suspended or revoked for good cause at any time by order of the commission after

opportunity for a public hearing is given. Good cause includes, but is not limited to, the following:

(1) the permittee has failed or is failing to comply with the conditions of the permit or a commission order, including failure to construct, during the life of the permit, facilities necessary to conform with the terms and conditions of the permit;
(2) the permit or the operations thereunder have been abandoned;
(3) the permit or other order is no longer needed by the permittee;
(4) the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time;
(5) a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm;...or
(6) (10) such other cause sufficient to warrant termination or suspension of the authorization.

d) When the executive director determines revocation or suspension proceedings are warranted, a petition requesting appropriate action may be filed by the executive director with the commission. A person affected by the issuance of a permit or other order of the commission may initiate proceedings for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.

e) If the executive director or an affected person intends to file a petition to revoke or suspend a permit, notice of the intention and a copy of the petition to be filed shall be personally served on or sent by registered or certified mail to the permittee at the last address of record with the commission. This notice shall be given at least 15 days before a petition for revocation or suspension is submitted to the executive director or filed with the commission for further proceedings. Failure to provide such notice shall not be jurisdictional....

f) The commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if the commission finds after notice and hearing, that:

(1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;
(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;
(3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;
(4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by a rule of the commission;

g) Before denying, suspending, or revoking a permit under this section, the commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or
(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by rule of the commission.

The ED has not received a petition to revoke the Applicant's permit and currently has no factual or legal reasons to initiate a petition to revoke the permit. An applicant whose permit is revoked is generally not precluded from reapplying as long the reasons for the revocation are resolved.

TCEQ investigators from the Laredo Region Office will conduct site inspections on either a periodic basis or in response to complaints from the general public. If permit violations are found, the facility is potentially subject to administrative penalties and fines depending on the severity of the violations in question.

COMMENT 26:

Gabriela Cisneros and Martha M. Ramirez comment that earthquakes have occurred in the last ten years in the area and comments that these could be a factor. Gabriela Cisneros asked who will be responsible if there is a catastrophe.

RESPONSE 26:

The ED acknowledges this comment, but is limited in authority as it relates to water quality issues as granted in TWC, Chapter 26. In general, the TCEQ does not address earthquakes and other catastrophes in the wastewater permitting process. The wastewater permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. However, the draft permit includes effluent limits and other requirements that the Applicant must meet, regardless of the occurrence of earthquakes or other such natural phenomena.

COMMENT 27:

KTTT asks if TCEQ has determined the anticipated clean-up costs when the mine is remediated and reclaimed. If so, KTTT wants to know how those cost numbers were developed. KTTT also asks how the clean-up bond dollar amount was established. Further, KTTT asks whether TCEQ considered that the Dos Republicas is owned by Mexicans, who have no real presence in the U.S. with the exception of the proposed mine, when setting the dollar amount of the bond. Gloria Hernandez and Elizabeth Burkhardt comment that the shareholders of the mining facility are Mexican nationals with minimal assets in the United States and lack any track record of running a facility of this type in the United States in an environmentally and financially responsible manner. Ms. Hernandez also comments that the Maverick County public records show the Applicant is a subsidiary of Grupo Acerero and that TCEQ should make sure they are

granting the permit to the entity they say they are. Ms. Burkhardt urges the TCEQ not to grant the permit unless the Applicant is required to supply an additional kind of bond that would cover some of these environmental problems that could be caused by the mining operation. Gloria Rodriquez comments that the bond required by the State of Texas only covers the permitted area and does not include damage that may be caused to the surrounding area by operation of the facility. KTTT asks what steps TCEQ has taken to make sure that the Applicant does not just walk away from the mine after mining most of the coal rather than restoring the area.

RESPONSE 27:

The ED can only evaluate the application requests and is limited in authority as it relates to water quality issues as granted in Chapter 26 of the Texas Water Code. In general, the wastewater permitting process is limited to protecting the water quality of the state's rivers, lakes and coastal waters for the protection of aquatic life and human health. Specifically, the discharge of storm water and mine seepage from active mining areas, haul roads and ancillary disturbed areas via Outfalls 001-013 from the Eagle Pass Mine is subject to federal effluent limitation guidelines at 40 CFR Part 434 – Coal Mining Point Source, when reviewing an application and developing a TPDES wastewater permit. The proposed permit Other Requirement No. 5. B contains provisions based on these guidelines and defines the term "Reclamation area" as the surface area of a coal mine which has been returned to required contour and on which re-vegetation (specifically, seeding or planting) work has commenced. Also, Other Requirement No. 5. C defines the term "Bond Release" as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed. Phase Two completion is that point in the reclamation process where the property has been recontoured and replanted but prior to final bond release.

The specific reclamation and bond release requirements are addressed through the Applicant's surface coal mining operations permitted by the Texas Railroad Commission (Permit No. 42A). The Surface Mining and Reclamation Division of the Railroad Commission is currently processing the mining application. As noted in Response #8, TCEQ has no authority to regulate the actual reclamation activities at mining sites.

COMMENT 28:

Maverick County believes there is an issue with the adequacy of the Fact Sheet for this permitting action. Maverick County also comments that the Fact Sheet does not meet the standards of 40 CFR § 124.8, particularly regarding the quantities of wastes to be discharged.

RESPONSE 28:

The ED disagrees that the Fact Sheet does not meet the standards of 40 CFR § 124.8. Maverick County is correct that 40 CFR § 124.8(b)(2) requires including "the type and quantity" of wastes proposed to be discharged in the Fact Sheet. However, § 124.8(b)

also qualifies that requirement by stating that the Fact Sheet should include this information "when applicable."

The draft permit authorizes the discharge of storm water and mine seepage from active mining areas on an intermittent and flow variable basis via Outfalls 001 through 013. Since the amount of storm water is not known at this time, the draft permit does not specify a discharge quantity, but effluent limitations designed to be protective of water quality, regardless of the quantity of discharge are included in the draft permit and fact sheet. Therefore, failure to include the quantity of waste in the Fact Sheet, when there is no quantity provided in the permit itself, is in compliance with 40 CFR § 124.8.

COMMENT 29:

Maverick County challenges the ED's conclusion that this facility is not a "new source" under the federal rules.

RESPONSE 29:

The ED disagrees that the renewal of this permit constitutes a "new source" as defined in 40 CFR § 122.2. 40 CFR § 122.4(a) and (d) prohibit issuing a permit if the conditions of the permit do not provide for compliance with the Clean Water Act and when the imposition of conditions cannot insure compliance with the applicable water quality requirements.

In fact, this issue was raised at the contested case hearing held prior to TCEQ (then TNRCC) issuing the initial wastewater discharge permit, which was considered by the Commission on November 16, 1994. The Commission adopted the Hearing Examiner's proposal for decision including a Finding of Fact that covered this issue as follows:

> 22. The Commission's permit requirements in Section 321, referenced in Findings of Fact No.21, are generally consistent with the EPA's Coal Mining Point Source Category Effluent Limitations Guidelines and New Source Performance Standards; Final Rule found at Volume 50, Federal Register No. 196, October 9, 1985 and are identical to the EPA's effluent limitations set out in 40 CFR §434.63. [2]

COMMENT 30:

Heriberto Morales, Jr., City Attorney for Eagle Pass, and Rio Grande International Study Center verbally requested a contested case hearing during the formal comment period at the public meeting on January 25, 2011.

RESPONSE 30:

In accordance with 30 TAC § 55.201(c), a request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within 30 days after the chief clerk mails the ED's decision and response to comments and provides instructions

[2] Texas Natural Resource Conservation Commission, Docket No. 94-0446-IWD, Order Issuing Permit No. 03511 to Dos Republicas Resource Company, Inc., November 16, 1994.

for requesting that the commission reconsider the ED's decision on the draft permit or requesting that a contested case hearing be held on the permit application, and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment. See also, 30 TAC § 55.201(a).

Therefore, an oral request at a public meeting is not sufficient to request a contested case hearing under the Texas Water Code and TCEQ rules. However, any interested persons or entities may file a request for a contested case hearing by complying with 30 TAC, Chapter 55, Supchapter F and following the instructions mailed with the Executive Director's Final Decision Letter and this response to public comments. All requests for hearings, if timely filed and authorized by statute or rule, will be considered by the Commissioners.

The Commissioners will consider the requests during a regularly scheduled Commission meeting that is open to the public, and a determination will be made as to whether or not the request will be granted. The requesters will be notified in writing when their requests are scheduled for consideration. If a request is granted, the matter will be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

COMMENT 31:

Keith Ayers stated that the public notice published on October 21, 2010 stated that the discharge from Dos Republicas could affect the public water supply of Eagle Pass.

RESPONSE 31:

The NAPD published on October 21, 2010 in the Eagle Pass Business Journal does not state that the discharge could affect the public water supply of Eagle Pass. It does indicate that the discharge route will ultimately reach the Rio Grande River Basin (See page 2 of this RTC for full description). It also indicates that the ED has completed a technical review of the application and prepared the draft permit. Based on that review the ED preliminarily determined that the permit, if issued, meets all statutory and regulatory requirements.

COMMENT 32:

Commenters asked what amount of money could promise preventative measures and their security to the residents of Eagle Pass. Commenters also ask whether TCEQ is aware that the owners of Dos Republicas are not financially stable and whether TCEQ has investigated their financial condition. Commenters expressed that the Applicant cannot explain its assets or the assets of the owners of the mine.

RESPONSE 32:

RRC rules require that after an application for a RRC permit to conduct surface coal mining and reclamation operations has been approved, but before such permit is issued, an applicant must file with the RRC a performance bond or bonds payable to the RRC.

The performance bond will be conditioned upon the faithful performance of all the requirements of its duties and responsibilities under the RRC permit and applicable law. The amount, duration, form, conditions and terms of the performance bond shall conform to 16 TAC §§12.304-12.307 (relating to Amount and Duration of Performance Bond) and 16 TAC §§12.308-12.311 (relating to Form, Conditions, and Terms of Performance Bond and Liability Insurance). *See* 16 TAC § 12.301.

TCEQ rules do require any financial assurance or perform bond for the issuance of a TPDES wastewater discharge permit. It is the responsibility of the Applicant to obtain the resources necessary to conduct its operation and comply with the TPDES permit terms.. However, regardless of the financial condition of the Applicant, the TPDES permit conditions and TCEQ rules must be followed or the Applicant is subject to TCEQ enforcement action, which may include administrative actions and financial penalties.

COMMENT 33:

The following comments were received from various commenters:

1. How much does the Applicant stand to benefit from mining the coal?
2. What profit can be expected by the Applicant in the next five years?
3. How many tons of coal has the Applicant represented will be produced over what period of time.
4. Does the Applicant have any U.S. customers under contract for coal produced from the proposed mining operation?
5. Where will the coal be sent for processing prior to delivery to customers?
6. Where are the Applicant's coal customers burning facilities located and how close are they to the U.S.?
7. Were any of the shareholders of the Applicant involved with a similar unsuccessful attempt to open a similar coal mining facility in Piedras Negras area during the mid-1980's under the name Tajo Norte?
8. What is the justification for the extension of the Texas Railroad Commission permit?
9. TCEQ should consider an alternative form of energy rather than coal.
10. Whether the Applicant will be using explosives in its operations.
11. Whether blasting at the site will affect area homes.
12. Has the Applicant filed a fire plan with the Fire Marshall?

RESPONSE 33:

TCEQ does not address these types of issues when considering whether to issue a wastewater discharge permit. The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water

quality of the state's rivers, lakes, and coastal waters. The ED cannot consider the types of issues listed above when reviewing wastewater applications and preparing draft wastewater discharge permits. However, to the extent these issues are addressed by state regulations, they are within the jurisdiction of the RRC, who is permitting the mining operation itself.

COMMENT 34:

Commenters asked what environmental response company the Applicant has hired to do the required sampling and where are they located. Commenters also asked what would be the anticipated response time by this company and would it be within 30 minutes.

RESPONSE 34:

The Applicant is required by the draft permit to follow the specific requirements for sampling that are found in 30 TAC Chapter 319, Subchapter A. Neither the draft permit nor TCEQ rules require the information requested in the comment to be available prior to the issuance of the draft permit. However, the chosen company will have to follow the sampling rules and permit requirements, as well as, conducting the appropriate tests under generally accepted practices e.g. labeling, chain of custody, etc.

COMMENT 35:

The following comments were also received from various commenters:

1. Whether Mexican power plants are required to have pollution control equipment.
2. Whether TCEQ will consider the use of coal from the mine in Mexico right across from Eagle Pass.
3. Whether the facility will cause dust and noise pollution.
4. Whether the Applicant has any noise or dust abatement plans.
5. Whether noise from the machinery at the operation be an issue for nearby residents and schools.
6. What emissions controls do the Applicant's coal burning facilities have and are they consistent with best achievable technology standards used in the U.S.?
7. What emission limitations exist in Mexico for coal dust and products of coal combustion and what is Mexico's record of enforcement of such standards?
8. Will the additional coal consumption by PN Electric Plant cause environmental air quality violations?

RESPONSE 35:

Although the legislature has given the TCEQ the responsibility to protect water quality, TCEQ does not address these types of issues when considering whether to issue a wastewater discharge permit. The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water

quality of the state's rivers, lakes, and coastal waters. The ED cannot consider the types of issues listed above when reviewing wastewater applications and preparing draft wastewater discharge permits.

However, the issuance of a permit does not grant to the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights to use the site of the planned facility and the discharge route, including any permits required by other state or federal agencies with applicable authority.

Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 36:

What assurances do the people of Eagle Pass have that the pollution generated by the Applicant's customers will not wind up in Eagle Pass given its proximity to Piedras Negras?

RESPONSE 36:

If the Applicant's customers are engaged in activities within the State of Texas that would require air, waste, or water quality permits or authorizations, they are required to obtain the necessary permits and authorizations prior to conducting those regulated activities.

COMMENT 37:

Has the Applicant applied for a permit from the U.S. Army Corp of Engineers?

RESPONSE 37:

The ED is unaware of whether the Applicant has applied for a Section 404 permit from the U.S. Army Corp of Engineers. Such an authorization is required if the Applicant intends to perform any dredging activities within the banks of Elm Creek.

No changes to the draft permit have been made in response to public comment.

However, the ED made two corrections to the draft permit relating to the facility map and description of the discharge routes in the draft permit. It was noted that the facility map submitted with the renewal application had different mining boundaries than the previous permit renewal in 2005. Therefore, on May 18, 2011, the Applicant submitted a new facility map that returned the mining boundaries to their currently permitted boundaries for purposes of the Applicant's wastewater discharge permit.

Secondly, when the Applicant submitted their renewal application in February, 2010, they requested that the discharge descriptions of a number of the ponds be updated in Other Requirements No. 3 to reflect their new location on the facility map. The ED failed to make the requested change. Therefore, the discharge route descriptions in Other Requirements No. 3 were updated to reflect the actual locations of the ponds.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By _____
Robert Brush, Staff Attorney
Environmental Law Division
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REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on July 28, 2011 the "Executive Director's Response to Public Comment" for Permit No.WQ0003511000 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.

Robert Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772

ATTACHMENT E

Compliance History

Customer/Respondent/Owner-Operator:	CN600787782	Dos Republicas Coal Partnership	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101529493	DOS REPUBLICAS COAL PARTNERSHIP	Classification: HIGH	Site Rating: 0.00
ID Number(s):	WASTEWATER		PERMIT	WQ0003511000
	WASTEWATER		EPA ID	TX0109011

Location:

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: October 04, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 26, 2005 to August 20, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Staff Name Phone: 239 - 1000

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	03/22/2005	(426598)
2	04/19/2005	(426599)
3	06/17/2005	(426600)
4	05/18/2005	(426601)
5	07/22/2005	(446843)
6	08/18/2005	(446844)
7	09/19/2005	(446845)
8	02/21/2006	(490661)
9	03/24/2006	(490662)
10	04/17/2006	(490663)
11	10/24/2005	(490664)
12	11/17/2005	(490665)
13	12/21/2005	(490666)
14	01/24/2006	(490667)
15	05/15/2006	(505428)
16	06/21/2006	(505429)

17	07/27/2006	(527713)
18	08/31/2006	(527714)
19	09/29/2006	(527715)
20	02/23/2007	(551367)
21	10/13/2006	(551368)
22	11/20/2006	(551369)
23	12/27/2006	(551370)
24	01/18/2007	(551371)
25	03/08/2007	(588172)
26	04/27/2007	(588173)
27	05/11/2007	(588174)
28	06/22/2007	(588175)
29	07/19/2007	(588176)
30	08/27/2007	(605360)
31	09/21/2007	(605361)
32	10/23/2007	(605362)
33	11/20/2007	(629281)
34	01/02/2008	(629282)
35	01/02/2008	(629283)
36	03/05/2008	(676674)
37	03/05/2008	(676675)
38	04/25/2008	(676676)
39	05/22/2008	(695222)
40	06/09/2008	(695223)
41	08/11/2008	(716741)
42	08/11/2008	(716742)
43	09/02/2008	(716743)
44	10/03/2008	(716744)
45	11/11/2008	(732176)
46	12/02/2008	(732177)
47	01/08/2009	(732178)
48	02/09/2009	(755511)
49	03/17/2009	(755512)
50	04/15/2009	(755513)
51	05/07/2009	(772569)
52	06/02/2009	(772570)
53	02/12/2010	(817792)
54	08/05/2009	(817793)
55	08/19/2009	(817794)
56	09/18/2009	(817795)
57	10/13/2009	(817796)
58	11/04/2009	(817797)
59	12/07/2009	(817798)
60	01/18/2010	(817799)
61	03/10/2010	(835473)
62	04/19/2010	(835474)
63	05/14/2010	(835475)
64	06/16/2010	(847678)

65 07/19/2010 (862079)
66 08/03/2010 (868667)
67 09/08/2010 (875557)
68 10/18/2010 (883098)
69 11/18/2010 (889513)
70 12/17/2010 (897876)
71 01/18/2011 (903781)
72 02/19/2011 (910669)
73 03/15/2011 (917923)
74 04/18/2011 (929763)
75 05/09/2011 (939625)
76 06/01/2011 (947039)
77 07/05/2011 (954300)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

ATTACHMENT F

DOCKET 94-0446-[illegible] THE STATE OF TEXAS
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Natural Resource Conservation Commission document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on

DEC 02 [illegible]

Gloria A. Vasquez, Chief Clerk
Texas Natural Resource
Conservation Commission

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

AN ORDER issuing Permit No. 03511 to Dos Republicas Resour[illegible] Company, Inc.

On November 16, 1994, the Texas Natural Resource Conservation Commission (Commission) considered the application of Dos Republicas Resources Company, Inc. (DRRC) for authority to discharge effluent from mining operations at an intermittent and variable rate, depending upon precipitation, pursuant to Chapter 26 of the Texas Water Code.

The application was presented to the Commission with a Proposal for Decision written by Leslie Craven, Attorney, a Commission Hearings Examiner, who conducted preliminary hearings on January 12, March 21, April 25, and June 15, 1994 and an adjudicative public hearing concerning the application on June 20, 21, and 22, 1994 in the cities of Austin and Eagle Pass, Texas.

The Hearings Examiner designated the following as parties to the proceeding: the applicant, DRRC; the Executive Director and the Public Interest Counsel of the Commission; the City of Eagle Pass; the Sierra Club; Theodosia Coppock; Ladye, Walter, and Virginia Herring; Dan Riskind; Jesus Rubio; Raymundo Moncada; and Humberto Gamez.

After considering the Hearings Examiner's Proposal for Decision and the evidence and arguments presented, the Texas Natural Resource Conservation Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On May 14, 1992, DRRC applied to the Texas Water Commission, predecessor agency to the Commission, for Permit No. 03511 to authorize the discharge of effluent from a coal mining operation in Maverick County, Texas at an intermittent and variable rate, depending upon precipitation.

2. The application was declared to be administratively complete on August 3, 1992 and technically complete on October 19, 1992.

3. Proper notice of the public hearings held on this application was given pursuant to Section 26.022 of the Texas Water Code.

   a. Notice of the initial public hearing was published on December 2, 1993 in the Eagle Pass News Guide, a newspaper regularly published and generally circulated in Maverick County, Texas, which is the location of the proposed facility.

   b. Notice of the public hearing was mailed on November 23, 1993, by the Chief Clerk of the Commission to all persons who may be affected by any action taken by the Commission and to each person as required by law.

4. DRRC's proposed mine area is located generally northwest of Eagle Pass, Texas on 2700 acres, approximately 1000 to 1250 acres of which will be mined.

5. Three of four possible mining areas (Areas A, B, and C) have been considered in this application and will be permitted by the Order in this case. Mining Area D, under consideration as

part of the full mining plan before the Railroad Commission of Texas (RCT) is not part of the application in this case.

6. The proposed coal mining operation is expected to generate between 700 and 800 jobs in the Eagle Pass area and to produce an annual mine employment payroll between $10 to $12 million with accompanying tax revenues to local, state, and federal taxing entities.

7. DRRC's drainage control system at this facility will contain, direct, and discharge waters associated with its proposed mining operations through the construction and utilization of thirteen sediment control ponds, four diversion and two interceptor ditches. Commission regulations do not specify design criteria for surface mining drainage control facilities.

8. The RCT has jurisdiction under the Texas Surface Mining and Reclamation Act to regulate mining activities and regulates the design of facilities related to surface mining drainage control and stream channel diversions.

9. DRRC has designed its treatment system to meet RCT requirements that the pond facilities provide a minimum ten-hour detention time for the 10-year/24-hour storm event rainfall. The ten-hour detention time is enhanced by the design, which factors in the effect of accumulated sediment in the ponds.

10. Diversion ditches are designed to contain and route the water flow generated during the 10-year/24-hour storm event from Elm Creek and the Elm Creek watershed around the mine site.

11. The sediment pond design further provides that the principal and emergency spillways together can safely pass flows associated with the less frequent, although more extensive, 25-year/24-hour storm event.

12. The sediment control pond design incorporates the RCT requirement that there be three years storage availability for sediment in each pond and are designed so that cleaning activities will not interfere with the ability of ponds to retain water runoff.

13. The sediment ponds do not provide either aerobic or anaerobic effluent treatment but do provide treatment by means of the detention time which allows the settling of sediments.

14. The two primary geologic formations in the mine area are the Olmos formation and the Elm Creek alluvium.

15. The Olmos formation, which underlies the entire project site, outcrops on the surface generally in the south and southeast areas of the site and subcrops under the Elm Creek alluvium farther north on the site. It is composed of a consolidated formation of clays and coals with some sandstone and has a very low permeability of approximately 0.13 to 0.55 millidarcies, essentially that of cured cement or an impervious landfill liner.

16. The Elm Creek alluvium is composed of unconsolidated sands, clays, and gravels deposited by the creek in the floodplain and is more permeable than the Olmos formation.

17. The two primary bodies of water which flow through and around the permit site are Elm Creek and Lateral 21.

18. Elm Creek flows into the permit area from the north, where it has ephemeral flow, and exits the permit area along a south/southwest route. About halfway through the site and roughly in a location south of Lateral 21, Elm Creek flow becomes intermittent-perennial through the remainder of the site and downstream from the project boundary. The alluvium north of Lateral 21 remains unsaturated or dry while the alluvium south of Lateral 21 is saturated, containing and transmitting groundwater.

19. Lateral 21, a portion of the Maverick County Irrigation District canal system, is pumped upvalley from the west/southwest and ends roughly in the middle of the site. Lateral 21 provides the primary infusion of water to the portion of Elm Creek that flows south/southeast of the lateral through groundwater seepage and direct return surface flow from the end of the lateral. Seepage occurs because the lateral is excavated into the permeable Elm Creek alluvium.

20. Besides general monitoring and reporting requirements, the permit contains the following effluent discharge limitations: daily average of 35 milligrams per liter (mg/l) and daily maximum of 70 mg/l for total suspended solids (TSS), daily

average of 3.0 mg/l and daily maximum of 6.0 mg/l for total iron, a daily maximum of 1.0 mg/l total selenium and a Ph requirement of not less than 6.0 and not more than 9.0 standard units.

21. Pursuant to 30 Tex. Admin. Code §321.78, an additional permit limitation to those set out in Finding of Fact No. 20, requires that any discharge caused by a precipitation event within any 24-hour period less than or equal to the 10-year/24-hour precipitation event shall comply with the limitation of daily maximum 0.5 milliliter per liter (ml/l) settleable solids. This latter limitation does not apply when the discharge is caused by a precipitation event greater than the 10-hour/24-hour precipitation event. If the precipitation event is greater than the 10-year/24-hour precipitation event, the discharge shall maintain a Ph range of 6.0 to 9.0 standard units instead of otherwise applicable limitations.

22. The Commission's permit requirements in Section 321, referenced in Finding of Fact No. 21, are generally consistent with the EPA's Coal Mining Point Source Category Effluent Limitations Guidelines and New Source Performance Standards; Final Rule found at Volume 50, Federal Register No. 196, October 9, 1985 and are identical to the EPA's effluent limitations set out in 40 CFR §434.63.

23. The proposed method for treatment of discharges from the mine site through use of sediment ponds complies with the Best Available Technology Economically Achievable (BAT) required by

the EPA and EPA's applicable New Source Performance Standards (NSPS).

24. Selenium testing is consistently imposed in all Commission mining discharge permits as a mechanism to facilitate the general gathering of data on selenium associated with coal mining operations. It is for this reason that the selenium requirement is made a requirement of this permit.

25. The proposed discharge would be to a series of unnamed ditches, thence to Elm Creek, thence to the Rio Grande River in Segment No. 2304 of the Rio Grande River Basin.

26. A discharge in compliance with the final terms and conditions of Permit No. 03511 will be protective of the quality and existing uses of the receiving waters and will comply with all applicable statutory and regulatory criteria.

    a. The proposed discharge under permit requirements will not cause violations of the general criteria, including aesthetic parameters, that govern stream quality as set out in 30 Tex. Admin. Code §307.4.

    b. The numerical criteria applicable to Segment No. 2304 of the Rio Grande River Basin, as set out in 30 Tex. Admin. Code §307.10, are 5.0 mg/l dissolved oxygen, Ph between 6.5 and 9.0 standard units, maximum fecal coliform of 200 col/100 ml, and maximum temperature of 95 degrees Fahrenheit. The proposed discharge under permit requirements will not cause violations of these criteria.

c. The proposed discharge under permit requirements will not cause violations of the specific numerical criteria for aquatic life and human health found in 30 Tex. Admin. Code §307.6 or of the allowable concentrations of hazardous metals found in 30 Tex. Admin. Code §319.22.

(1) A water quality study was run taking samples from surface water in Lateral 21 and Elm Creek and groundwater from the alluvium south of Lateral 21. Samples were taken from September 1992 through June 1994.

(2) The minimum analytical level or "MAL" is the lowest level at which concentrations of constituents may be measured with detection equipment by the discharger.

(3) The study results establish that constituents pertaining to water quality standards in 30 Tex. Admin. Code §§307.6 and 319.22 exist at levels either below the MAL or, if they were of amounts capable of measurement, they were within the acceptable range for that constituent as determined by the Commission and set forth in §307.6 and §319.22.

d. Findings in the above subsections (a), (b), and (c) do not take into account further dilution of the effluent that will occur from storm water runoff entering the

ponds or from the discharges commingling with receiving stream waters.

e. The designated uses for Segment No. 2304 of the Rio Grande River Basin, as set out in 30 Tex. Admin. Code §307.10, are contact recreation, high aquatic life, and public water supply. Discharge is made directly to an unclassified water body and, pursuant to 30 Tex. Admin. Code §307.4 (h) and (k), Elm Creek and various ditches in the vicinity of this discharge are determined to have no significant aquatic life use. No impoundments or hydrologic conditions exist to change this determination and seepage from Lateral 21 is not sufficient to change the intermittent nature of the creek.

f. The proposed discharge under permit requirements will not cause impairment of existing uses nor otherwise cause degradation of the quality of the receiving waters in violation of 30 Tex. Admin. Code §307.5.

(1) Downstream flooding will not be increased and will likely be lessened due to the temporary storage and retention time provided by the sediment control ponds, which act as a buffer to allow the release of the water at slightly lower rate.

(2) Anticipated slight stream flow gains and losses will come from increased pit pumpage and losses of some irrigation return runoff and area runoff. The cumulative approximate acreage lost from project

activities is only 1 to 4 percent of the total watershed acreage above the site, causing only a negligible impact on stream flow which is difficult to measure with any precision.

(3) Current Elm Creek water quality meets stock water standards but does not meet drinking water standards and is of poor quality for irrigation.

27. The applicant has appropriately characterized the quality of water inflow to the mining pits which will ultimately flow into and be discharged from the sediment control ponds.

a. Surface water samples from Lateral 21 and Elm Creek and groundwater collected from Mining Area C located in the alluvium south of Lateral 21, used for analysis, are the best representations of expected mine pit pumpage to the sediment ponds, as is further noted in the Findings of Fact Nos. 17, 18, and 19 regarding the relationships of the water at this site.

b. Groundwater samples from the Olmos formation and the alluvium north of Lateral 21 (Mining Areas A and B) were not used because, as noted in Findings of Fact Nos. 16 and 18, these formations contain little or no groundwater for later contribution to the mine pits.

c. The 129 priority pollutant constituents are not found in effluent discharges from coal mine sediment control ponds in significant concentrations to warrant technology-based

effluent limitations as established by extensive sampling and analysis by the EPA.

d. It is not standard Commission practice to require separate testing of coal leachate and this application presents no special circumstances which might otherwise warrant or necessitate a change in this practice.

e. In determining the quality of expected pit inflows, the applicant's study tested for inorganics in the groundwater and organics in the surface waters. Radionuclides and various miscellaneous parameters were tested for in both surface water and groundwater samples.

f. Data on organics collected from the surface waters is comparable to organic data from the alluvium and a direct test for organics in the alluvium is not likely to yield any better information than that found from the surface waters of Lateral 21 and Elm Creek, as these waters are the primary contributors to the alluvium groundwater supply.

28. The applicant has appropriately characterized the quantity of the expected water inflow to the mining pits and sediment ponds.

a. DRRC's facility design assumes pit inflows will primarily flow from the Mining Area C groundwater.

b. Contribution to the mining pits inflows from surface rainfall runoff and rainfall directly into the open pits

is too small to be factored into anticipated flow calculations.

c. As noted in Findings of Fact Nos. 18, 19, and 27(b), the alluvium beneath Mining Areas A and B is generally dry and is unlikely to contain substantial groundwater to contribute to the mine pits.

d. The amount of fractures which develop in rock generally correlates to how brittle the formation is.

e. The general clay and coal composition of the Olmos formation (Finding of Fact No. 15) which underlies the project site is malleable and is not conducive to allowing the formation of fractures which might transmit groundwater through what is otherwise impermeable material. Should fractures develop, they will generally confine themselves to the boundaries of the clays and coal which make up the Olmos formation.

f. There are no known fractures in the Olmos formation at or in the vicinity of this mine site.

29. No special lining material is required for the sediment control ponds at this permit site.

a. No Commission or EPA regulations pertaining to the coal mining operations call for any special or artificial lining for coal mining sediment control ponds and no showing was made that unique circumstances exist at this site to warrant the installation of a special liner.

b. In-situ soils provide the lining for the sediment control ponds at this site. When in-situ soils serve as the lining material, the likelihood of leakage depends on the permeability of the ground beneath the ponds.

c. The sediment control ponds are either dug directly into the impermeable Olmos formation, which is essentially of liner quality and underlies the entire project site, or into the Elm Creek alluvium, which is underlined by the Olmos formation.

d. Even should some leakage from the sediment control ponds occur, the effluent will not contain any harmful constituents that may cause violations of applicable water quality standards.

30. The applicant's sediment control ponds and diversion ditches are adequately designed to control, retain, and route waters generated by the 10-year/24-hour storm event around the mining site, meet all applicable federal and state regulations, and will enable DRRC to meet permit requirements.

a. It is generally not possible to contain and control all waterflow generated in a major storm event such as the 25, 100, or 500-year storms on a site as large as the applicant's or involving a watershed as large as that which exists north of this site. No state or federal regulations mandate such a requirement.

b. Applicable state and federal regulations do set what are essentially identical limitations for discharges that

result from rainfalls greater and less than the 10-year/24-hour storm event. These limitations in 30 Tex. Admin. Code §321 and 40 CFR §434 are set out in Finding of Fact No. 21.

c. The EPA has determined that the above-referenced limitations found in Finding of Fact No. 21 can be met using EPA's BAT and NSPS.

d. The applicant's proposed system of ponds and ditches for discharge treatment complies with the above noted EPA standards and control technologies, referenced in Finding of Fact No. 23.

e. Pursuant to Findings of Fact Nos. 7 - 13, 26, and 30, DRRC's proposed system design is appropriate and will enable DRRC to comply with permit requirements.

31. DRRC provided adequate information on area groundwater without having to test three windmill wells and one hand-dug well located north on the permit area.

a. DRRC has gathered over two years of monitoring data from wells in the same area and has made over 200 boreholes in its efforts to characterize area groundwater.

b. DRRC did not specifically test the four noted wells for quality and permeability, but did perform "plop" tests on the three windmill wells to determine whether they contained any water.

c. The two of three windmill wells which contained water most likely draw their water from the San Miguel

formation due to their location northwest of the mine site and the fact that they contain water that would not generally be produced from the impermeable Olmos formations.

c. The one 1931 Getzendanar geologic map that differs from the conclusions reached by DRRC regarding the line of demarcation between the Olmos and San Miguel formations is not reliable or credible data. At least ten other more recently prepared geologic maps disagree with the 1931 Getzendanar map conclusion and support the conclusion reached by the applicant's expert.

32. Updated information related to estimated outfall drainage areas, pond dimensions, and flow data provided during the hearing does not constitute a "major amendment to DRRC's application under applicable Commission rules.

a. Commission rule 30 Tex. Admin. Code §281.23 provides that no amendment to an application that constitutes a "major" amendment can be made without new notice.

b. Section 281.23 uses the definition of a "major" amendment as that term is defined in 30 Tex. Admin. Code §305.62(c) pertaining to major amendments to permits. Substituting the term "application" for "permit," found in Section 305.62(c) defines a "major" amendment to an application as one that changes a substantive term, provision, requirement, or a limiting parameter of the application.

c. The additional information provided in the hearing does not change a substantive term, provision, requirement, or a limiting parameter of DRRC's application.

CONCLUSIONS OF LAW

1. The public hearing regarding the permit application was held under the authority of and in accordance with Chapter 26 of the Texas Water Code and the Texas Natural Resource Conservation Commission Permanent Rules.
2. The Commission has jurisdiction to consider the application and is authorized to issue a permit for the discharge of effluent into the waters of the State.
3. Discharge of effluent in compliance with the terms and conditions of Permit No. 03511 will maintain the quality of water in the State consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the State.
4. Discharge of effluent in compliance with the terms and conditions of Permit No. 03511 will not violate the antidegradation policy set forth in 30 Tex. Admin. Code §307.5.
5. In order to effectuate the policies of this state as set forth in Chapter 26 of the Texas Water Code and to administer all powers and duties described therein, the application should be approved and Permit No. 03511 be issued.

WHEREAS Chairman John Hall and Commissioners Pam Reed and Peggy Garner vote unanimously to issue this Order;

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION THAT:

1. The application of DRRC for Permit No. 03511 be approved in accordance with the terms and conditions contained in the final permit attached to this Order and all exceptions inconsistent therewith be overruled.
2. The Chief Clerk of the Texas Natural Resource Conservation Commission forward a copy of this Order and attached permit to all parties and, subject to the filing of motions for rehearing, issue the attached permit.
3. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: NOV 29 1994

Texas Natural Resource
Conservation Commission

John Hall, Chairman

ATTEST:

Gloria A. Vasquez, Chief Clerk

ATTACHMENT G

Marston & Marston, Inc.

Suite 400, 12443 Olive Blvd.
St.Louis, Missouri 63141
Telephone (314) 434-2662

FAX: (314) 434-2825

July 29, 1992

Mr. Patrick Hudson
Applications Unit
Texas Water Commission
Watershed Management Division
P.O. Box 13087, Capitol Station
Austin, TX 78711-3087

Re: **DOS REPUBLICAS RESOURCES CO., INC.**
Permit No. 03511

Dear Mr. Hudson:

As per requested, enclosed are 3 copies of an updated Property Map and listing of landowners with addresses. Note that the property tract boundary lines are approximate and not surveyed locations.

Please contact Lisa Kost of my staff or myself if you have any questions or need additional information.

Sincerely,

Donald D. Marston, P.E.
President

DDM/ss

Enc.

ATTACHMENT NO. 9

LANDOWNERS

Name	Address	Property Map Tract No.
KINCAID LEASE:		
Dr. Dan Kincaid	535 Greer Pittsburg, Texas 75686	2
Kenneth W. Kincaid	3030 McKinney #605 Dallas, Texas 75204	2
Hollis Kincaid	3619 Pinebluff San Antonio, Texas 78230	2
James G. Kincaid	Post Office Box 25 Sabinal, Texas 78881	2
John M. Kincaid	Post Office Box 25 Sabinal, Texas 78881	2
Lelia Kincaid Mathis	Post Office Box 569 Sabinal, Texas 78881	2
Joseph K. Kincaid	Post Office Box 25 Sabinal, Texas 78881	2
Jewel K. Kincaid	Post Office Box 25 Sabinal, Texas 78881	2
ABASCAL LEASE:		
Amado Abascal, Jr. and Rumalda M. Abascal	2406 Monterrey Circle Eagle Pass, Texas 78852	5
CONSOLIDATION COAL COMPANY LEASE:		
Reserve Coal Properties Company - John Schlueter	1800 Washington Road Pittsburgh, Pennsylvania 15241	1

ATTACHMENT NO. 9

LANDOWNERS
Page 2 of 5

Name	Address	Property Map Tract No.
OTHERS:		
Jose M. Gonzalez	2366 Lorilee Drive Eagle Pass, Texas 78852	11
Sturgis Robinson	1837 Ferry Street Eagle Pass, Texas 78852	3
Mike Hernandez	Post Office Box 1007 Eagle Pass, Texas 78852	19
Ernesto G. Ibarra	3187 Tina Street Eagle Pass, Texas 78852	4
Alicia Mireles	Post Office Box 2162 Eagle Pass, Texas 78852	8
Lang, Ladon, Green, Coughlan & Fisher A. Ryland Howard, III	NCNB Plaza, Suite 1700 300 Covent Street San Antonio, Texas 78205-3718	7
John Lettunich	818 Seymour Street Eagle Pass, Texas	15
Juan Antonio Valdez	887 Bibb Street Eagle Pass, Texas	13
E.K. Taylor	Route 2, Box 186 Eagle Pass, Texas 78852	12
Francisco Acosta	533 Nueces Eagle Pass, Texas 78852	21

ATTACHMENT NO. 9

LANDOWNERS
Page 3 of 5

Name	Address	Property Map Tract No.
OTHERS:		
Mr. & Mrs. John H. Jones	Rt. 2 Box 178 Eagle Pass, Texas 78853	17
Dr. Luis Gutierrez	2149 El India Hwy Eagle Pass, Texas 78852	18
Mrs. Virginia Herring	Rt. 2 Box 179 Eagle Pass, Texas 78853	14
Mr. Jay Taylor	P.O. Box 1657 Del Rio, Texas 78841	20
Mrs. Jamie Looney	P.O. Box 1657 Del Rio, Texas 78841	20
Mr. Gerald Baggett	Thompson Rd. Eagle Pass, Texas 78853	9
Mr. Paul Turney c/o Mrs. Elvie Davis Turney	P.O. Box 1428 Sonora, Texas 76950	16
Mr. Walter Herring	Rt. 2 Box 187 Eagle Pass, Texas 78853	6

ATTACHMENT NO. 9

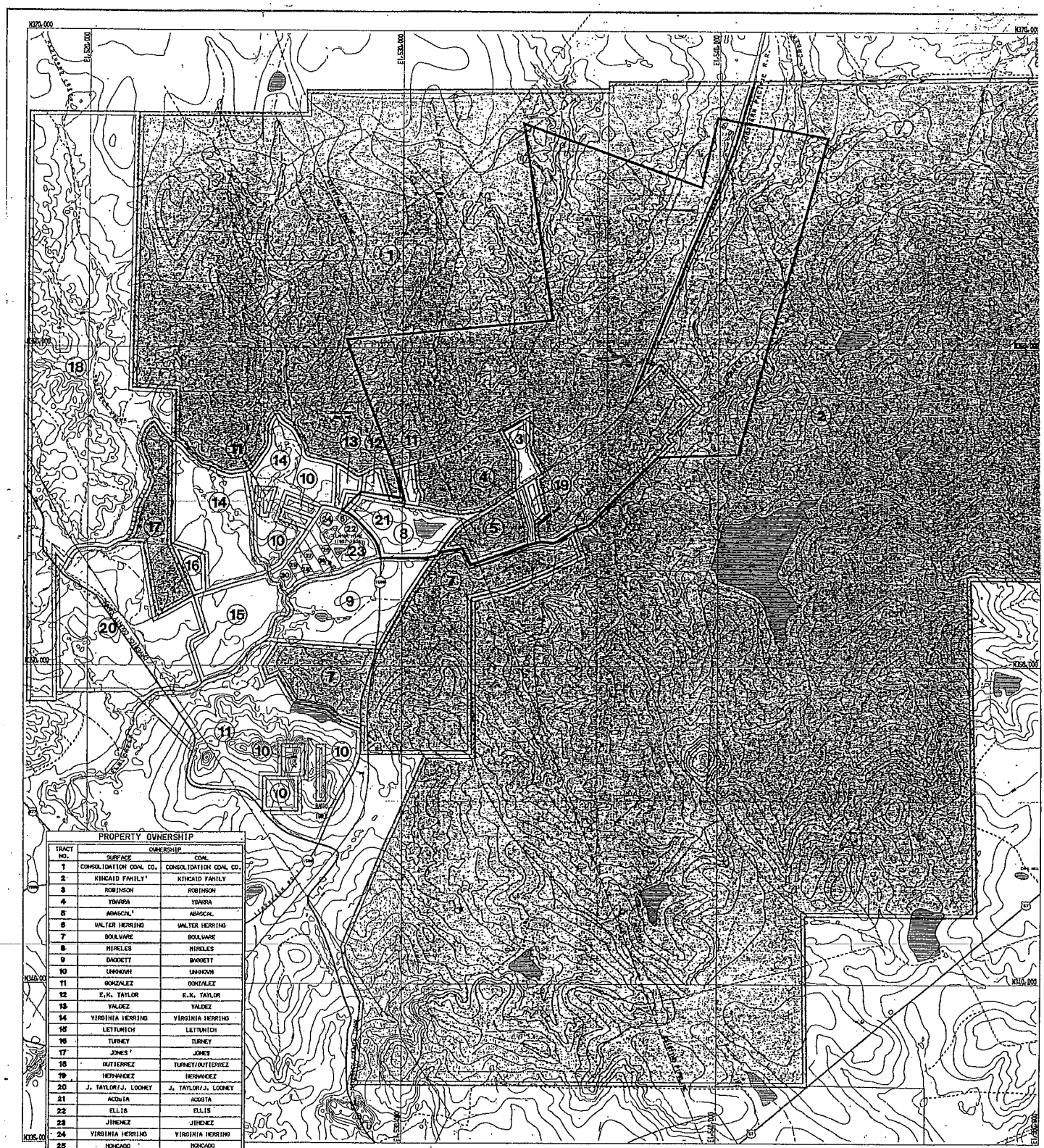
LANDOWNERS

Name	Address	Property Map Tract No.
OTHERS:		
Mr. Albert Ellis	Box 2162 Eagle Pass, Texas 78853	22
Mr. Fred Jimenez	898 Kifuri Eagle Pass, Texas 78853	23
Mrs. Virginia Herring	Rt. 2, Box 179 Eagle Pass, Texas 78853	24
Mr. Raymundo Moncado	455 E. Rio Grande Eagle Pass, Texas 78852	25
Mr. John Brandt	P. O. Box 2104 Eagle Pass, Texas 78852	26
Mr. J.R. Rubio	1226 Ricks Road Eagle Pass, Texas 78852	27
Mr. Dan Riskind	Box 2709 Eagle Pass, Texas 78852	28
Mr. Gabino Hernandez	Thompson Road Eagle Pass, Texas 78853	29

ATTACHMENT NO. 9

LANDOWNERS
Page 5 of 5

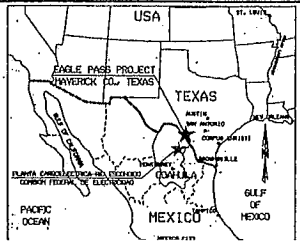
Name	Address	Property Map Tract No.
OTHERS:		
Mr. Amador Martinez	277 E. San Antonio Way Eagle Pass, Texas 78853	30

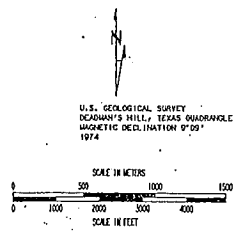


PROPERTY OWNERSHIP

TRACT NO.	OWNERSHIP	
	SURFACE	COAL
1	CONSOLIDATION COAL CO.	CONSOLIDATION COAL CO.
2	KINCAID FAMILY	KINCAID FAMILY
3	ROBINSON	ROBINSON
4	YBARRA	YBARRA
5	ABASCAL	ABASCAL
6	WALTER HERRING	WALTER HERRING
7	BOULWARE	BOULWARE
8	MIRELES	MIRELES
9	BAGGETT	BAGGETT
10	UNKNOWN	UNKNOWN
11	GONZALEZ	GONZALEZ
12	E.K. TAYLOR	E.K. TAYLOR
13	VALDEZ	VALDEZ
14	VIRGINIA HERRING	VIRGINIA HERRING
15	LETTUNICH	LETTUNICH
16	TURNEY	TURNEY
17	JONES	JONES
18	GUTIERREZ	TURNEY/GUTIERREZ
19	HERNANDEZ	HERNANDEZ
20	J. TAYLOR/J. LOONEY	J. TAYLOR/J. LOONEY
21	ACOSTA	ACOSTA
22	ELLIS	ELLIS
23	JIMENEZ	JIMENEZ
24	VIRGINIA HERRING	VIRGINIA HERRING
25	MONCADO	MONCADO
26	BRANDT	BRANDT
27	RUBIO	RUBIO
28	RISKIND	RISKIND
29	HERNANDEZ	HERNANDEZ
30	MARTINEZ	MARTINEZ

(1) SURFACE LEASE APPLICABLE TO DISTURBED AREA ONLY.





DRRC PROPERTY CONTROL LEGEND

- DRRC FEE
- DRRC LEASE
- DRRC OPTION
- DRRC PARTIAL CONTROL
- UNCONTROLLED
- PERMIT AREA BOUNDARY

- TOPOGRAPHY (CONTOUR INTERVAL 10 FEET)
- INTERMITTENT STREAM
- PERENNIAL STREAM
- WATER
- STOCK POND
- EXISTING PIPELINE
- EXISTING POWERLINE
- PRIMARY HIGHWAY
- SECONDARY HIGHWAY
- IMPROVED ROAD
- UNIMPROVED ROAD
- STATE ROUTE
- U.S. ROUTE

DOS REPUBLICAS RESOURCES CO., INC

EAGLE PASS MINE

PROPERTY MAP

MAVERICK COUNTY, TEXAS

DATE:	FEBRUARY 1992	REVISION NO.	ITEM / DATE
DRAWN BY:	RSH/LRK/PHG		
TRACE/PATH/MAP:			
SCALE:	1" = 2000'	EXHIBIT II.6	
SHEET	OF		

ATTACHMENT H

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq; the "Act"),

Dos Republicas Resources Co., Inc.
Eagle Pass Mine
5797 Dietrich Rd
P.O. Box 200350
San Antonio, Texas 78220

is authorized to discharge from a facility located five miles northeast of the City of Eagle Pass in Maverick County, Texas,

to receiving waters named Elm Creek; thence to the Rio Grande River, Waterbody Segment Code No. 2304 of the Rio Grande River Basin, from

Outfalls 001-016: See map kept at the facility, per Part II D (16) and Appendix A for outfall locations.
Final Outfall D1: Latitude - 28°47'51"N; Longitude - 100°27'57"W
Final Outfall D2: Latitude - 28°47'51"N; Longitude - 100°28'07"W

in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II and III hereof.

This permit shall become effective on August 1, 1995

This permit and the authorization to discharge shall expire at midnight, July 31, 2000

Prepared By:

Brian W. Mueller
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Industrial Permits Section (6W-PI)

Signed and issued on June 2, 1995

Myron O. Knudson, P.E.
Director
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PART I
REQUIREMENTS FOR NPDES PERMITS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

OUTFALLS 001 thru 016

During the period beginning the effective date of the permit and lasting through the expiration date of the permit,

the permittee is authorized to discharge from Outfalls 001 thru 016 (Outfall locations are listed in Appendix A) : the intermittent discharge of mine drainage, stormwater runoff from active mining areas and stormwater runoff from coal preparation areas of a coal strip mine prior to Phase II SMCRA Bond release.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTIC	DISCHARGE LIMITATIONS			
	MASS (LBS/DAY)		OTHER UNITS (mg/L UNLESS STATED)	
CONVENTIONAL	DAILY AVG	DAILY MAX	DAILY AVG	DAILY MAX
TSS	----	----	35	70
Iron (Total)	----	----	3.0	6.0
pH Minimum/Maximum Values (Standard Units)	----	----	6.0 *1 (Min)	9.0 *1 (Max)
Flow (MGD)	----	----	Report	Report

EFFLUENT CHARACTERISTIC	MONITORING REQUIREMENTS	
CONVENTIONAL	MEASUREMENT FREQUENCY	SAMPLE TYPE
TSS	Once/week *3	Grab
Iron (Total)	Once/week *3	Grab
pH Minimum/Maximum Values (Standard Units)	Once/week *3	Grab
Flow (MGD)	Once/week	Estimate *2

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Outfalls 001 thru 016 (*4) prior to discharge.

FOOTNOTES

*1 The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units. The permittee shall report on the Discharge Monitoring Reports both the minimum and maximum instantaneous (rather than the daily average and daily maximum) pH values measured during the sampling month.

*2 See Part II.D.11

*3 When discharging

*4 See Appendix A

OUTFALL D1 and D2 (FINAL)

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted),

the permittee is authorized to discharge from Final Outfalls D1 & D2: the intermittent discharge of stormwater from industrial activities to Elm Creek.

Such discharges shall be limited and monitored by the permittee as specified below:

PARAMETER/STORET	DISCHARGE LIMITATIONS AND REPORTING REQUIREMENTS			
	QUANTITY/LOADING (LBS/DAY UNLESS STATED)		QUALITY/CONCENTRATION (mg/L UNLESS STATED)	
CONVENTIONAL	DAILY AVG	DAILY MAX	DAILY AVG	DAILY MAX
pH (Standard Units)	----	----	Report (Min)	Report (Max)
TSS	----	----	----	Report
Oil and Grease	----	----	----	Report

PARAMETER/STORET	MONITORING REQUIREMENTS	
	MEASUREMENT FREQUENCY	SAMPLE TYPE
CONVENTIONAL		
pH (Standard Units)	1/Quarter	Grab
TSS	1/Quarter	Grab
Oil and Grease	1/Quarter	Grab

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Outfalls D1 & D2.

FOOTNOTES

NO DISCHARGE REPORTING

If there is no discharge event at this outfall during the sampling month, place an "X" in the NO DISCHARGE box located in the upper right corner of the preprinted Discharge Monitoring Report.

The requirements of Section D of Part II of this permit are not applicable to Outfalls D1 and D2

B. SCHEDULE OF COMPLIANCE

The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule:

NONE

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

C. REPORTING OF MONITORING RESULTS (MINOR DISCHARGERS)

Monitoring results shall be reported in accordance with the provisions of Part III.D.4 of the permit. Monitoring results obtained during the previous three (3) months shall be summarized monthly and reported on Discharge Monitoring Report forms postmarked no later than the 28th day of the month following the completed quarterly reporting period.

The first report is due on July 28, 1995 .

D. STORM WATER FROM CONSTRUCTION SITES

The permittee is authorized to discharge storm water associated with industrial activity from construction sites not covered by Part I.A of this permit and occurring after the effective date of this permit to Elm Creek. Such discharges shall be subject to the requirements as specified below:

Storm Water Pollution Prevention Plan

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. The permittee shall retain a copy of the storm water pollution prevention plan at the construction site from the date of project initiation to the date of final stabilization.

1. Deadlines for Plan Preparation and Compliance.

The plan shall be completed and implemented prior to commencement of construction on site.

2. Signature and Plan Review

a. The plan shall be signed in accordance with Part III of this permit, and be retained on-site at the facility.

b. The permittee shall make plans available upon request to the Regional Administrator; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans.

c. The Regional Administrator, or authorized representative, may notify the permittee at any time that the plan is deficient. Such notification shall identify those provisions of this permit which are not being met by the plan, and identify which provisions of the plan require modification. Within 7 days of such notification, the permittee shall make the required changes to the plan and shall submit to the Regional

Administrator a written certification that the requested changes have been made.

3. Keeping Plans Current. The permittee shall amend the plan whenever there is new construction, a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States that has not been addressed in the plan and if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified by the plan. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan. Amendments to the plan may be reviewed by EPA in the same manner as Part I.D.2 above.

4. Contents of Plan. The storm water pollution prevention plan shall include the following items:

a. Site Description. Each plan shall, provide a description of pollutant sources and other information as indicated:

(1). A description of the nature of the construction activity;

(2). A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

(3). Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

(4). An estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;

(5). A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which are not to be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and

(6). The name of the receiving water(s), and areal extent of wetland acreage at the site.

b. Controls. Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part I.D.4.a.(2) appropriate control measures and the timing during the construction process that the measures will be implemented. The description and implementation of controls shall address the following minimum components:

(1). Erosion and Sediment Controls.

(a). Stabilization Practices. A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when

major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Except as provided in Part I.D.4.b.(1).(a).(i), (ii), and (iii) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(i). Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

(ii). Where construction activity will resume on a portion of the site within 21 days from when activities ceased, (e.g. the total time period that construction activity is temporarily ceased is less than 21 days) then stabilization measures do not have to be initiated on that portion of site by the 14th day after construction activity temporarily ceased.

(iii). In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonal arid conditions, stabilization measures shall be initiated as soon as practicable.

(b). Structural Practices. A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(i). For common drainage locations that serve an area with 10 or more disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment traps and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(ii). For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

(2). Storm Water Management. A description of measures that will be installed during the construction process to control pollutants in storm

water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(a). Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(b). Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. no significant changes in the hydrological regime of the receiving water).

(3). Other Controls.

(a). Waste Disposal. No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit.

(b) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(c). The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

(4). Approved State or Local Plans.

(a) The plan shall include procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. The permittee shall provide a certification in the storm water pollution prevention plan that the storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. The permittee shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(b) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

c. Maintenance. A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating condition.

d. Inspections. Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches) such inspection shall be conducted at least once every month.

(1). Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

(2). Based on the results of the inspection, the site description, and pollution prevention measures, the plan shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

(3). A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit.

5. Contractors

a. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part I.D.6.b. All certifications must be included in the storm water pollution prevention plan.

b. Certification Statement. All contractors and subcontractors identified in a storm water pollution prevention plan shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

> "I certify under penalty of law that I understand the terms and conditions of this National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

The certification must include the name and title of the person providing the signature; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

6. Definitions

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Commencement of Construction" - The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

"Final Stabilization" means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

PART II
OTHER CONDITIONS

A. STORET/CAS CROSS-REFERENCE

For the proper identification of parameters being regulated in this permit, the following table lists the corresponding EPA Storet Number and the Chemical Abstract Service (CAS) Registry Number where applicable. In the case of most chemical and physical parameters, the classification numbers can be used to identify the appropriate analytical, apparatus and materials, sample collection, preservation, handling, etc., procedures listed at 40 CFR Part 136 and at "Methods of Chemical Analysis of Water and Wastes," EPA 600/4-79/020, 1979 (revised March 1983). The EPA Storet number is additionally used to identify parameters on the Discharge Monitoring Report described at Part III.D.4.

PARAMETERS	STORET	CAS
CONVENTIONAL		
pH Range (Grab - Field Test)	00400	----
TSS	00530	----
Oil and Grease	00556	----
METALS AND CYANIDE		
Iron (Total)	01045	----
NONCONVENTIONAL		
Flow (MGD)	50050	----

B. DAILY MAXIMUM LIMITATION VIOLATIONS

Under the provisions of Part III.D.7.b.(3) of this permit, violations of daily maximum limitations for following pollutants shall be reported orally to EPA Region 6, Water Management Division, Enforcement Branch, Dallas, Texas, within 24 hours from the time the permittee becomes aware of the violation followed by a written report in five days.

NONE

C. 40 CFR PART 136 ANALYTICAL REQUIREMENTS

Unless otherwise specified in this permit, monitoring shall be conducted according to analytical, apparatus and materials, sample collection, preservation, handling, etc., procedures listed at 40 CFR Part 136 in effect on the effective date of this permit. Appendices A, B, and C to 40 CFR Part 136 are specifically referenced as part of this requirement. Amendments to 40 CFR Part 136 promulgated after the effective date of this permit shall supersede these requirements as applicable.

D. SPECIAL CONDITIONS

1. The term "active mining area" is defined as the areas, on or beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.

2. The term "reclamation area" is defined as the area of a coal or lignite mine which has been returned to the required contour and on which revegetation (satisfactory seeding and plant) work has commenced.

3. The term "coal preparation plant" is defined as a facility where coal is subjected to cleaning, concentrating or other processing or preparation in order to separate coal from its impurities and then is loaded for transit to a consuming facility.

4. The term "coal preparation plant associated area" is defined as the coal preparation plant yards, immediate access road, coal refuse piles and coal storage pile and facilities.

5. The term "coal preparation plant water circuit" is defined as all pipes, channels, basins, tanks and other storage structures and equipment that convey, contain, treat or process any water that is used in coal preparation processes within a coal preparation plant.

6. There shall be no discharge of process wastewater from a coal preparation plant water circuit to waters of the United States.

7. The term "bond release" is defined as the time which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work has been satisfactorily completed.

8. The term "controlled surface mine drainage" means any surface mine drainage that is pumped or siphoned from the active mining area.

9. The following procedure shall be used to determine settleable solids:

Fill an Imhoff cone to the one-liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cones as milliliters per liter. When a separation of settleable and floating materials occurs, do not include the floating material in the reading.

The method detection limit for measuring settleable solids shall be 0.4 ml/l.

10. The term "10-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in ten years as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, or equivalent regional or rainfall probability information developed therefrom.

11. Methods of flow estimating shall be by the "California Pipe Method" as described in Section 7.4.2.2 of the Handbook for Monitoring Industrial Wastewater, August 1973, U.S. Environmental Protection Agency, Technology Transfer.

12. The following standards apply to discharges from reclamation areas until SMCRA bond release:

	Effluent Limitations	
Pollutant or Pollutant Property	Maximum for any one day	Average of daily values for thirty consecutive days
Settleable Solids	0.5 ml/l	N/A
pH	Within the range of 6.0 to 9.0 at all times	

13. EFFLUENT LIMITATIONS FOR PRECIPITATION EVENTS

a. Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

Effluent Limitations During Precipitation

Pollutant or Pollutant Property	Maximum for any one day	Average of daily values for thirty consecutive days
Settleable Solids	0.5 ml/l	N/A
pH	Within the range of 6.0 to 9.0 at all times	

b. Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

Effluent Limitations During Precipitation

Pollutant or Pollutant Property	Maximum for any one day	Average of daily values for thirty consecutive days
pH	Within the range of 6.0 to 9.0 at all times	

c. The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in subsections 1 and 2.

14. All discharges from all retention ponds shall comply with the limitations for hazardous metals as regulated under the Texas Natural Resource Conservation Commission, Permanent Rule, Title 30 Texas Administrative Code (TAC) Chapter 319, Subchapter B, 319.21 - 319.29, "Hazardous Metals".

15. The permittee shall notify the EPA and the Texas Natural Resource Conservation Commission (TNRCC) when each SMCRA Phase I or Phase II bonds are released.

16. Locations may be revised and added by the permittee if it becomes necessary to eliminate or establish new holding ponds. For any revision, the permittee shall submit appropriate maps to the EPA, TNRCC Austin and TNRCC regional offices redesignating the holding pond locations. The permittee shall also maintain a map at the mine site which shows the location of all ponds. This map shall be available to the EPA and TNRCC inspectors.

Any revised pond or outfall location shall be consistent with and fall within the mining area boundary as defined in the Environmental Impact Statement.

Any revised pond or outfall location shall be limited to discharging to the same receiving body of water.

E. DOMESTIC SEWAGE

There shall be no discharge of domestic sewage.

F. DUST SUPPRESSION

The permittee may use water contained in any pond for dust suppression purposes.

APPENDIX A

Outfall Locations

		RECEIVING WATER
Outfall 001:	Latitude - N28°48'53"; Longitude - W100°26'11"	ELM CREEK
Outfall 002:	Latitude - N28°48'59"; Longitude - W100°26'35"	ELM CREEK
Outfall 003:	Latitude - N28°48'34"; Longitude - W100°26'54"	ELM CREEK
Outfall 004:	Latitude - N28°48'58"; Longitude - W100°26'45"	ELM CREEK
Outfall 005:	Latitude - N28°49'07"; Longitude - W100°26'02"	ELM CREEK
Outfall 006:	Latitude - N28°48'40"; Longitude - W100°27'27"	ELM CREEK
Outfall 007:	Latitude - N28°49'59"; Longitude - W100°25'50"	ELM CREEK
Outfall 008:	Latitude - N28°48'29"; Longitude - W100°27'41"	ELM CREEK
Outfall 009:	Latitude - N28°49'33"; Longitude - W100°27'07"	ELM CREEK
Outfall 010:	Latitude - N28°49'43"; Longitude - W100°27'08"	ELM CREEK
Outfall 011:	Latitude - N28°48'49"; Longitude - W100°28'13"	ELM CREEK
Outfall 012:	Latitude - N28°49'02"; Longitude - W100°26'41"	ELM CREEK
Outfall 013:	Latitude - N28°49'03"; Longitude - W100°26'23"	ELM CREEK
Outfall 014:	Latitude - N28°48'44"; Longitude - W100°26'32"	ELM CREEK
Outfall 015:	Latitude - N28°48'10"; Longitude - W100°26'48"	ELM CREEK
Outfall 016:	Latitude - N28°47'50"; Longitude - W100°27'38"	ELM CREEK

III. STANDARD CONDITIONS FOR NPDES PERMITS (REVISED 12-08-93)

A. GENERAL CONDITIONS

1. INTRODUCTION

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable regulations.

2. DUTY TO COMPLY

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. TOXIC POLLUTANTS

a. Notwithstanding Part III.A.5, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. DUTY TO REAPPLY

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR Part 122.6 and any subsequent amendments.

5. PERMIT FLEXIBILITY

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62-64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. PROPERTY RIGHTS

This permit does not convey any property rights of any sort, or any exclusive privilege.

7. DUTY TO PROVIDE INFORMATION

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

8. CRIMINAL AND CIVIL LIABILITY

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

9. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

10. STATE LAWS

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

11. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

B. PROPER OPERATION AND MAINTENANCE

1. NEED TO HALT OR REDUCE NOT A DEFENSE

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. PROPER OPERATION AND MAINTENANCE

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. BYPASS OF TREATMENT FACILITIES

a. BYPASS NOT EXCEEDING LIMITATIONS

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III.B.4.b. and 4.c.

b. NOTICE

(1) ANTICIPATED BYPASS

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) UNANTICIPATED BYPASS

The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part III.D.7.

c. PROHIBITION OF BYPASS

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part III.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part III.B.4.c(1).

5. UPSET CONDITIONS

a. EFFECT OF AN UPSET

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part III.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. CONDITIONS NECESSARY FOR A DEMONSTRATION OF UPSET

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part III.D.7; and,

(4) The permittee complied with any remedial measures required by Part III.B.2.

c. BURDEN OF PROOF

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. REMOVED SUBSTANCES

Solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

7. PERCENT REMOVAL (PUBLICLY OWNED TREATMENT WORKS)

For publicly owned treatment works, the 30-day average percent removal for Biochemical Oxygen Demand and Total Suspended Solids shall not be less than 85 percent unless otherwise authorized by the permitting authority in accordance with 40 CFR 133.103.

C. MONITORING AND RECORDS

1. INSPECTION AND ENTRY

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or

conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. REPRESENTATIVE SAMPLING

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. RETENTION OF RECORDS

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

4. RECORD CONTENTS

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;
b. The individual(s) who performed the sampling or measurements;
c. The date(s) and time(s) analyses were performed;
d. The individual(s) who performed the analyses;
e. The analytical techniques or methods used; and
f. The results of such analyses.

5. MONITORING PROCEDURES

a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

6. FLOW MEASUREMENTS

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

D. REPORTING REQUIREMENTS

1. PLANNED CHANGES

a. INDUSTRIAL PERMITS

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part III.D.10.a.

b. MUNICIPAL PERMITS

Any change in the facility discharge (including the introduction of any new source or significant discharge or significant changes in the quantity or quality of existing discharges of pollutants) must be reported to the permitting authority. In no case are any new connections, increased flows, or significant changes in influent quality permitted that will cause violation of the effluent limitations specified herein.

2. ANTICIPATED NONCOMPLIANCE

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements

3. TRANSFERS

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

4. DISCHARGE MONITORING REPORTS AND OTHER REPORTS

Monitoring results must be reported on Discharge Monitoring Report (DMR) Form EPA No. 3320-1 in accordance with the "General Instructions" provided on the form. The permittee shall submit the original DMR signed and certified as required by Part III.D.11 and all other reports required by Part III.D. to the EPA at the address below. Duplicate copies of DMR's and all other reports shall be submitted to the appropriate State agency(ies) at the following address(es):

EPA:
Water Management Division
Enforcement Branch (6W-E)
U.S. Environmental Protection
Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

New Mexico:
Program Manager
Surface Water Quality Bureau
New Mexico Environment Department
1190 Saint Francis Drive
Santa Fe, NM 87501-4182

Oklahoma (Industrial Permits Only):
Director
Oklahoma Department of
Environmental Quality
1000 NE 10th Street
Oklahoma City, OK 73117-1212

Louisiana:
Assistant Secretary for Water
Water Pollution Control Division
Louisiana Department of
Environmental Quality
P.O. Box 82215
Baton Rouge, LA 70884-2215

5. ADDITIONAL MONITORING BY THE PERMITTEE

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. AVERAGING OF MEASUREMENTS

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

7. TWENTY-FOUR HOUR REPORTING

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in Part II (industrial permits only) of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. OTHER NONCOMPLIANCE

The permittee shall report all instances of noncompliance not reported under Parts III.D.4 and D.7 and Part I.B (for industrial permits only) at the time monitoring reports are submitted. The reports shall contain the information listed at Part III.D.7.

9. OTHER INFORMATION

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10. CHANGES IN DISCHARGES OF TOXIC SUBSTANCES

All existing manufacturing, commercial, mining, and silvacultural permittees shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 µg/L);
(2) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
(3) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
(4) The level established by the Director.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 µg/L);
(2) One milligram per liter (1 mg/L) for antimony;
(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
(4) The level established by the Director.

11. SIGNATORY REQUIREMENTS

All applications, reports, or information submitted to the Director shall be signed and certified.

a. ALL PERMIT APPLICATIONS shall be signed as follows:

(1) FOR A CORPORATION - by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) FOR A PARTNERSHIP OR SOLE PROPRIETORSHIP - by a general partner or the proprietor, respectively.

(3) FOR A MUNICIPALITY, STATE, FEDERAL, OR OTHER PUBLIC AGENCY - by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(a) The chief executive officer of the agency, or

(b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. ALL REPORTS required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. CERTIFICATION

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. AVAILABILITY OF REPORTS

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

13. ARCHEOLOGICAL/HISTORICAL SITES (TEXAS PERMITS ONLY)

If during the life of this permit, new construction or land acquisition or any construction related activity where previously undisturbed ground is proposed for disturbance by the permittee which is related to an activity authorized by this permit, the permittee shall send the following items to the Texas State Historic Preservation Officer (SHPO): (1) a description of the new construction and the potential impact that this activity may have upon the ground (including sludge application methods, if applicable), and (2) a copy of a USGS topographic map outlining the location of the project and associated sludge disposal areas or other ancillary impact areas. The address of the Texas SHPO is:

Texas State Historic Preservation Officer
Department of Antiquities Protection
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711

This information will be used by the Texas SHPO and EPA to consult according to the requirements of 36 CFR Part 800.4-800.6 on methods to minimize harm to historical properties. The applicant will be contacted within 30 days about further actions that may be needed to meet the requirements of 36 CFR Part 800.

E. PENALTIES FOR VIOLATIONS OF PERMIT CONDITIONS

1. CRIMINAL

a. NEGLIGENT VIOLATIONS

The Act provides that any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. KNOWING VIOLATIONS

The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. KNOWING ENDANGERMENT

The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. FALSE STATEMENTS

The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act)

2. CIVIL PENALTIES

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. ADMINISTRATIVE PENALTIES

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. CLASS I PENALTY

Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

b. CLASS II PENALTY

Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

F. DEFINITIONS

All definitions contained in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. ACT means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. ADMINISTRATOR means the Administrator of the U.S. Environmental Protection Agency.

3. APPLICABLE EFFLUENT STANDARDS AND LIMITATIONS means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.

4. APPLICABLE WATER QUALITY STANDARDS means all water quality standards to which a discharge is subject under the Act.

5. BYPASS means the intentional diversion of waste streams from any portion of a treatment facility.

6. DAILY DISCHARGE means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day. "Daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

7. DAILY AVERAGE (also known as monthly average) discharge limitations means the highest allowable average of "daily discharge(s)" over a calendar month, calculated as the sum of all "daily discharge(s)" measured during a calendar month divided by the number of "daily discharge(s)" measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all "daily discharge(s)" of concentration determined during the calendar month where C = daily concentration, F = daily flow and n = number of daily samples; daily average discharge =

$$\frac{C_1F_1 + C_2F_2 + \ldots + C_nF_n}{F_1 + F_2 + \ldots + F_n}$$

8. DAILY MAXIMUM discharge limitation means the highest allowable "daily discharge" during the calendar month.

9. DIRECTOR means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

10. ENVIRONMENTAL PROTECTION AGENCY means the U.S. Environmental Protection Agency.

11. GRAB SAMPLE means an individual sample collected in less than 15 minutes.

12. INDUSTRIAL USER means a nondomestic discharger, as identified in 40 CFR 403, introducing pollutants to a publicly owned treatment works.

13. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM means the national program for issuing, modifying, revoking

and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Act.

14. SEVERE PROPERTY DAMAGE means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

15. SEWAGE SLUDGE means the solids, residues, and precipitates separated from or created in sewage by the unit processes of a publicly owned treatment works. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

16. TREATMENT WORKS means any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage and industrial wastes or a liquid nature to implement Section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances, extension, improvement, remodeling, additions, and alterations thereof.

17. UPSET means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

18. FOR FECAL COLIFORM BACTERIA, a sample consists of one effluent grab portion collected during a 24-hour period at peak loads.

19. The term "MGD" shall mean million gallons per day.

20. The term "mg/L" shall mean milligrams per liter or parts per million (ppm).

21. The term "µg/L" shall mean micrograms per liter or parts per billion (ppb).

22. MUNICIPAL TERMS

    a. 7-DAY AVERAGE, other than for fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. The 7-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.

    b. 30-DAY AVERAGE, other than for fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. The 30-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar month.

    c. 24-HOUR COMPOSITE SAMPLE consists of a minimum of 12 effluent portions collected at equal time intervals over the 24-hour period and combined proportional to flow or a sample collected at frequent intervals proportional to flow over the 24-hour period.

    d. 12-HOUR COMPOSITE SAMPLE consists of 12 effluent portions collected no closer together than one hour and composited according to flow. The daily sampling intervals shall include the highest flow periods.

    e. 6-HOUR COMPOSITE SAMPLE consists of six effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.

    f. 3-HOUR COMPOSITE SAMPLE consists of three effluent portions collected no closer together than one hour (with the first portion collected no earlier than 10:00 a.m.) and composited according to flow.

ATTACHMENT I

PERMIT NO. 03511
(corresponds to
NPDES PERMIT NO. TX0)

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
P.O. Box 13087
Austin, Texas 78711-3087

PERMIT TO DISPOSE OF WASTES
under provisions of Chapter 26
of the Texas Water Code

DOCKET 94-0446-IWO

Dos Republicas Resources Co., Inc.
Eagle Pass Mine

whose mailing address is

P.O. Box 200350
San Antonio, Texas 79220-0350

is authorized to treat and dispose of wastes from a sub-bituminous coal mine (SIC 1211)

located approximately 5 miles northeast of the City of Eagle Pass and may be reached by traveling north on US Highway 277 then north and east on State Highway 1588 or Thompson Road. The mine area is located on "Deadmans Hill", Maverick County, Texas

to a series of unnamed ditches, thence to Elm Creek, thence to the Rio Grande River in Segment No. 2304 of the Rio Grande River Basin

only in accordance with effluent limitations, monitoring requirements and other conditions set forth herein, as well as the rules of the Texas Natural Resource Conservation Commission ("Commission"), the laws of the State of Texas, and other orders of the Commission. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the herein described discharge route. This includes property belonging to but not limited to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the herein described discharge route.

This permit and the authorization contained herein shall expire at midnight, five years after the date of Commission approval.

ISSUED DATE:

ATTEST: _____ _____
For the Commission

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Numbers 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, and 013

1. During the period beginning upon date of issuance and lasting through date of expiration, the permittee is authorized to discharge alkaline mine drainage from area retention ponds subject to the following effluent limitations:

Effluent Characteristic	Discharge Limitations			Minimum Self-Monitoring Requirements	
	Daily Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Daily Max. Measurement Frequency	Sample Type
Flow (MGD)	(Report)	(Report)	N/A	1/week (*1)	Estimate
Total Suspended Solids	35	70 (*2)	70	1/week (*1)	Grab
Iron, Total	3.0	6.0 (*2)	6.0	1/week (*1)	Grab
Selenium, Total	N/A	0.1 (*2)	0.1	1/month (*1)	Grab

(*1) When discharge occurs.
(*2) Instantaneous maximum.

2. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week (*1), by grab sample.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

4. Effluent monitoring samples shall be taken at the following locations:

Outfall 001 at the spillway of retention pond 001 prior to mixing with any other waters;
Outfall 002 at the spillway of retention pond 002 prior to mixing with any other waters;
Outfall 003 at the spillway of retention pond 003 prior to mixing with any other waters;
Outfall 004 at the spillway of retention pond 004 prior to mixing with any other waters;
Outfall 005 at the spillway of retention pond 005 prior to mixing with any other waters;
Outfall 006 at the spillway of retention pond 006 prior to mixing with any other waters;
Outfall 007 at the spillway of retention pond 007 prior to mixing with any other waters;
Outfall 008 at the spillway of retention pond 008 prior to mixing with any other waters;
Outfall 009 at the spillway of retention pond 009 prior to mixing with any other waters;
Outfall 010 at the spillway of retention pond 010 prior to mixing with any other waters;
Outfall 011 at the spillway of retention pond 011 prior to mixing with any other waters;
Outfall 012 at the spillway of retention pond 012 prior to mixing with any other waters; and
Outfall 013 at the spillway of retention pond 013 prior to mixing with any other waters.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 31 Texas Administrative Code (TAC) Chapter 305 certain regulations appear as standard conditions in waste discharge permits. All definitions contained in Section 26.001 of the Texas Water Code shall apply to this permit and are incorporated herein by reference. Additional definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

   a. Daily average flow - the arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

   b. Instantaneous flow - the measured flow during the minimum time required to operate the flow measuring device.

   c. 2-hour peak (domestic wastewater treatment plants) - the maximum flow sustained for a two hour period during the period of daily discharge. Multiple measurements of instantaneous maximum flow within a two-hour period may be compared to the permitted 2-hour peak flow.

   d. Daily maximum flow - the highest total flow permitted for a 24-hour period.

2. Concentration Measurements

   a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements. (i) For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration. (ii) For all other wastewater treatment plants - When four samples are not available in calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

   b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab, within a period of one calendar week, consisting of at least three separate measurements.

   c. Daily maximum concentration - the maximum concentration measured on a single day (by composite sample).

   d. Fecal Coliform bacteria-the number of colonies per 100 milliliters effluent.

3. Sample Type

   a. Composite sample - a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow collected no closer than two hours; or a sample continuously collected, proportional to flow, in a continuous 24-hour period or during the period of daily discharge if less than 24 hours.

   b. Grab sample - an individual sample collected in less than 15 minutes.

4. Treatment Facility (facility) - Wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of municipal sewage, industrial wastes, agricultural wastes, recreational wastes or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.

5. The term "sludge" shall mean the solids and precipitates separated from wastewater by unit processes, which are not regulated as hazardous waste.

MONITORING AND REPORTING

1. Self-Reporting

   31 TAC §305.125(17) Monitoring results shall be provided at the intervals specified in the permit.

Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 31 TAC §§319.4-319.7.

Unless otherwise specified, a monthly effluent report must be submitted each month by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Knowingly making any false statement on any such report may result in the imposition of criminal and/or civil penalties as provided by State law.

2. Test Procedures

Test procedures for the analysis of pollutants shall comply with procedures specified in 31 TAC §§319.10-319.11. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.

3. Records of Results

31 TAC §305.125(11) Monitoring and reporting requirements are as follows:

(a) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(b) Monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, and the certification required by 40 Code of Federal Regulations §264.73(b)(9) shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, or certification. This period may be extended at the request of the executive director.

(c) Records of monitoring activities shall include the following:

(i) date, time and place of sample or measurement;
(ii) identity of individual who collected the sample or made the measurement;
(iii) date of analysis;
(iv) identity of the individual and laboratory who performed the analysis;
(v) the technique or method of analysis; and
(vi) the results of the analysis or measurement.

The period during which records are required to be kept shall be automatically extended to and through the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, the results of such monitoring that indicate permit noncompliance shall be included in the calculation and reporting of the value submitted on the required monthly effluent report. The results of such monitoring that indicate permit compliance may also be reported and included in calculations. Increased frequency of sampling shall be indicated on the report.

5. Calibration of Instruments

All automatic flow measuring and/or recording devices and/or totalizing meters required by the permit for measuring permit limited flows shall be accurately calibrated by a trained person at plant startup and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be kept at the plant site for at least three years.

6. Compliance Schedule Reports

31 TAC §305.125(18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

7. Noncompliance Notification

a. 31 TAC §305.125(9) Unless specified otherwise, the permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment. Report of such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission of such information shall also be provided within five working days of the time the permittee becomes aware of the noncompliance.

The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

b. Any noncompliance which is 40% over the permitted effluent limitation shall be reported orally within 24 hours and in writing to the District Office within 5 working days of becoming aware of the condition.

c. 31 TAC §305.125(12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the executive director as promptly as possible. (This requirement means to report these types of noncompliance on the monthly self-report form)

8. Signatories To Reports

31 TAC §305.125(14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by 31 TAC §305.128 (relating to Signatories to Reports).

PERMIT CONDITIONS

1. General

a. 31 TAC §305.125(19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the executive director, it shall promptly submit such facts or information.

b. This permit is granted on the basis of the information supplied and representations made by the permittee during the application process and in reliance upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part in accordance with 31 TAC 305.61-305.68, during its term for cause including, but not limited to, the following:

(i) Violation of any terms or conditions of this permit;

(ii) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or

(iii) A change in any condition that requires either a temporary or permanent reduction or elimination of
the authorized discharge.

c. 31 TAC §305.125(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking or, suspending, or terminating the permit. The permittee shall also furnish to the executive director, upon request, copies of records required to be kept by the permit.

2. Compliance

a. 31 TAC §305.124 Acceptance of the permit by the person to whom it is issued constitutes an acknowledgement and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the commission.

b. 31 TAC §305.125(1) The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Solid Waste Disposal Act, and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or of an application for a permit for another facility.

c. 31 TAC §305.125(3) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

d. 31 TAC §305.125(4) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit and shall carry out such measures as are reasonable to prevent signficant adverse impacts on human health or the environment.

e. 31 TAC §305.125(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

f. 31 TAC §305.125(15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

g. There shall be no unauthorized bypasses of wastewater. For purposes of this permit a bypass is considered the discharge of untreated or partially treated wastewater which exceeds the permit limits and is not caused solely by an act of God. Routing wastewater around a treatment unit or units resulting in a discharge which does not exceed permit limits is not a bypass. In the event that a discharge of partially or untreated wastewater is anticipated to cause a violation of permit limits application shall be submitted to the Commission for authorization to discharge untreated or partially treated wastewater pursuant to Section 26.0191 of the Texas Water Code and 31 TAC 305.21-305.30.

3. Inspections and Entry

a. 31 TAC §305.125(10) Inspection and entry shall be allowed as prescribed in the Texas Water Code, Chapters 26, 27 and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §7.

b. The members of the commission and employees and agents of the commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Texas Water Code Section 26.123.

4. Permit Amendment

a. 31 TAC §305.125(7) The permittee shall give notice to the executive director prior to physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

b. Prior to any facility modifications, additions and/or expansions of a permitted facility that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.

c. 31 TAC §305.125(2) The permittee must apply for an amendment or renewal prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity will terminate upon the effective denial of said application.

d. Prior to accepting wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.

e. Texas Water Code §26.029(b) After a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, to conform to new or additional conditions. The Commission shall allow the permittee a reasonable time to conform to the new or additional conditions, and on application of the permittee, the Commission may grant additional time.

5. Permit Transfer

a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified, in writing, of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Permit Application Unit in the Water Quality Division.

b. 31 TAC §305.125(13) A permit may be transferred only according to the provisions of 31 TAC §305.64 (relating to Transfer of Permits) and 31 TAC 305.97 (relating to Action on Application for Transfer).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous solid waste storage, processing, or disposal which requires a permit or other authorization pursuant to the Texas Solid Waste Disposal Act, Article 4477-7, Vernon's Annotated Texas Civil Statutes.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to the waters in the state must be specifically authorized in this permit and may require a permit pursuant to Chapter 11 of the Texas Water Code.

8. Property Rights

31 TAC §305.125(16) A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

OPERATIONAL REQUIREMENTS

1. 31 TAC §305.125(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

2. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all provisions of 31 TAC §§319.21 - 319.29 concerning the discharge of certain hazardous metals, and upon request of the executive director, the permittee shall take samples of the final effluent and provide proper analysis of such samples in order to demonstrate compliance with these rules.

3. In accordance with 31 TAC §335.6:

a. The permittee shall notify the Executive Director in writing of any closure activity or facility expansion at least 90 days prior to conducting such activity.

b. Closure activities include those associated with any pit, pond, lagoon, or surface impoundment regulated by this permit.

4. The permittee is responsible for installing prior to plant startup, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or a means by which effluent flow may be determined based upon influent measuring.

6. The permittee shall remit an annual waste treatment inspection fee to the Commission as required by 31 TAC 305 (Subchapter M). Failure to pay this fee may result in revocation of this permit.

7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification, upon the same basis as self-monitoring data are required to be kept and made available.

OTHER REQUIREMENTS

1. Sanitary wastewater shall be discharged to a septic tank/drainage field system.

2. The permittee shall maintain a map at the mine site which shows the location of all ponds and discharge routes. The map and pond list shall be available to the Texas Natural Resource Conservation Commission personnel.

3. The pond location map may be revised. Upon revision, the permittee shall submit revised maps to the Permitting Section, Watershed Management Divison of the Texas Natural Resource Conservation Commission in Austin and the TNRCC Region 13 office.

4. As each discharge point is developed, the TNRCC Region 13 office shall be notified.

5. Any discharge caused by a precipitation event within any 24 hour period less than or equal to the 10 year, 24 hour precipitation event, or snowmelt of equivalent volume shall comply with the limitations listed below.

   ADDITIONAL EFFLUENT LIMITATIONS DURING PRECIPITATION EVENTS

Pollutant or Pollutant Property	Maximum for any 1 Day
Setteable Solids *	0.5 ml/l
pH within range of 6.0 to 9.0 standard units at all times	

   * This limit does not apply when the discharge is caused by a precipitation event greater than the 10 year, 24 hour precipitation event.

6. The term "10 year, 24 hour precipitation event" shall mean a rainfall event with the probable recurrence interval of once in ten years as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States", and subsequent amendments, or equivalent regional or state rainfall probability information developed thereform.

7. The term "post mining area" is defined as a reclamation area or the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.

8. The term "reclamation area" is defined as the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

9. The term "bond release" is defined as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed.

OTHER REQUIREMENTS (Continued)

10. The permittee shall notify the Executive Director of the TNRCC at least 90 days prior to conducting any activity of closure of any pit, pond, lagoon, or surface impoundment regulated by this permit.

11. Discharges from the retention ponds shall be monitored in accordance with the requirements of this permit from the time the overburden removal begins until reclamation of the disturbed soils is complete and the performance bond issued by the appropriate authority has been released. At least 10 days prior to such action, the TNRCC Region 13 office and the TNRCC Permitting Section of the Watershed Management Division in Austin shall be notified in writing of the permittee's intent to close any retention pond or discontinue monitoring.

12. The outfalls, discharge routes, and pond designations are specified below:

OUTFALL	POND	DISCHARGE ROUTE
001	001	From the spillway on the south side of the pond to a ditch, thence to Elm Creek;
002	002	From the spillway on the southwest side of the pond to a ditch, thence to Elm Creek;
003	003	From the spillway on the southwest side of the pond to a ditch, thence to a diversion, thence to Elm Creek;
004	004	From the spillway on the east side of the pond to a culvert, thence to a ditch, thence to Elm Creek;
005	005	From the spillway on the east side of the pond to a ditch, thence to a culvert, thence to Elm Creek;
006	006	From the spillway on the southeast side of the pond to a ditch, thence to the diversion, thence to Elm Creek;
007	007	From the spillway on the east side of the pond to a ditch, thence to Elm Creek;
008	008	From the spillway on the east side of the pond to a ditch, thence to the diversion, thence to Elm Creek;
009	009	From the spillway on the west side of the pond to a ditch, thence to Elm Creek;
010	010	From the spillwasy on the west side of the pond to a ditch, thence to Elm Creek;
011	011	From the north side of the pond to a series of ditches, thence to Elm Creek;
012	012	From the spillway on the south side of the pond to a ditch, thence to Elm Creek; and
013	013	From the spillway on the south side of the pond to a ditch, thence to Elm Creek.

13. The permittee shall provide to the Texas Natural Resource Conservation Commission's Permitting Section of the Watershed Management Division copies of all surface and groundwater quality monitoring results that it is required to send to the Railroad Commission of Texas (RCT) pursuant to its RCT mining and reclamation permit.

OTHER REQUIREMENTS (Continued)

14. On pages 3 through 7 of this permit, Texas Natural Resource Conservation Commission supercedes and replaces Texas Water Commission, TNRCC supercedes and replaces TWC, Region Office supercedes and replaces District Office.