

application has been supplemented or amended six times and gone through years of RRC-staff review. The consequences of these significant changes have impacts that warrant a hearing at the Texas Commission on Environmental Quality, just as a hearing was warranted at the Railroad Commission

For these reasons, Texas Commission on Environmental Quality (“TCEQ”), should grant the hearing request submitted by Maverick County.

II. THERE IS A RIGHT TO A CONTESTED CASE HEARING IN THIS MATTER

1. Locations of Discharge Points are Being Changed.

As a default, the Texas Water Code establishes the right to a hearing with regard to an application for a new water quality permit.² Dos Republicas and the Executive Director essentially argue that the application at issue falls into an exception applicable if the applicant does not seek to increase significantly the quantity of waste to be discharged, does not seek to change materially the pattern or place of discharge, and does not seek authorization for activities that will fail to maintain or improve the quality of waste to be discharged.³ As the party with the burden of proof, it is Dos Republicas burden to demonstrate that its application falls within this exception.

Maverick County does not dispute Dos Republicas’ claim that “straight renewals” generally meet the requirements of this exception, because a straight renewal does not involve any substantive change to the permit. The draft permit in this case **does** propose to substantively alter material terms of the permit, however, and cannot be called a “straight renewal.”

² Tex. Water Code § 26.028(c).

³ Tex. Water Code § 26.028(d).

Specifically, the proposed draft permit alters the location of the authorized discharge points. This is no small matter. By statute, each water quality permit issued by the Commission is required to prescribe the location of each point of discharge.⁴ The existing permit does this for 13 different outfalls associated with the facility.⁵ The locations of each of these discharge points is altered in the draft permit.⁶

The changes in outfall location proposed in the draft permit raise several issues. To begin with, several of the permitted outfalls define the discharge point in reference to a pond that is “to be determined.”⁷ This approach, wherein the location of the discharge point is not defined in the permit, is a flagrant violation of the Water Code’s requirement that every permit prescribe the location of each discharge.⁸ Putting this issue aside, the changes in the prescribed location for the discharge points constitute a change in the place of discharge which disqualifies the Application from the exemption claimed by the Executive Director and Dos Republicas.

The appropriate precedent for this case is the Commission’s recent consideration of a changed discharge location by Far Hills Utility District.⁹ In that matter, the permittee constructed a facility with a discharge point that varied from the location of the discharge point as understood by the agency during the permitting process.¹⁰ In considering the implications of this for the adequacy of notice, the Commission found that “the change in outfall location constitutes a major amendment since it is a material change in the pattern

⁴ Tex. Water Code § 26.029(a)(2).

⁵ Other Requirement 3, on page 13 of TPDES Permit No. WQ0003511000.

⁶ Other Requirement 3 on pp. 13-14 of Draft TPDES Permit No. WQ0003511000.

⁷ Outfall 002, 005, 009, 010, 011, 012, and 013.

⁸ Tex. Water Code § 26.029(a)(2).

⁹ The Matter of the Petition to Revoke TCEQ Water Quality Permit No. WQ0014555002 Issued to Far Hills Utility District (TCEQ Docket No. 2009-0290-MWD) and regarding an Application for Temporary Order Submitted by Far Hills Utility District (TCEQ Docket No. 2009-0290-MWD). See Attachment B to this brief.

¹⁰ Ibid., page 4, Finding of Fact No. 26.

or place of discharge under 30 TAC § 305.62(c)(1) and (2).”¹¹ In that case, effluent from the points described in the permit and as constructed would reach the main body of Lake Conroe within approximately 1000 feet.¹² The ED’s position that the discharges in the draft Dos Republicas permit are equivalent to those in the existing permit is akin to a position that both discharge points were equivalent in the Far Hills matter because both reached Lake Conroe. The Commission rejected such a policy in Far Hills, and it should likewise reject the same policy in this case.

The Executive Director further attempts to dismiss this change in the location of the discharge points by claiming that the prior permit authorized a change in the discharge points over the life of the permit. As discussed above, any such provision that left the discharge point undefined or subject to change would violate the Texas Water Code. Furthermore, the prior permit only says that the map of the facility may be revised. The permit includes no provision that would allow the change in discharge point location that the ED claims.

Applicant attempts to dismiss this alteration in the location of the discharge points by arguing that the draft permit does not involve a “material” change in the place of discharge.¹³ This argument also fails. The discharge points have been moved in a manner that has resulted in a change in the discharge route, which constitutes a material change in the discharge point. Applicant claims that “just like” the current permit “this renewal proposes that the effluent will be discharged to unnamed ditches; from there the effluent will flow to Elm Creek and eventually to the Rio Grande.”¹⁴ The draft permit,

¹¹ Ibid., page 4, Finding of Fact No. 27.

¹² Ibid., page 4, Finding of Fact No. 26.

¹³ Applicant’s Response to Hearing Requests, p. 5.

¹⁴ Applicant’s response at P. 5.

however, authorizes the discharge of effluent into *different* unnamed ditches, and the effluent will not necessarily enter Elm Creek at the same locations under the draft permit in comparison to the existing permit.¹⁵ Such changes constitute material changes in the place of discharge.

2. Alterations in the Quantity and Quality of Wastes Discharged.

The current Texas Pollution Discharge Elimination System (“TPDES”) permit held by DRCP authorizes treatment and discharge of wastes “from a sub-bituminous coal mine.”¹⁶ The draft permit currently under consideration by the Commission would authorize DRCP “to treat and discharge wastes from the Eagle Pass Mine, a sub-bituminous coal mine.”¹⁷ This begs the question: what is the Eagle Pass Mine? And: how is the “Eagle Pass Mine” different from the sub-bituminous coal mine previously permitted by TCEQ?

The currently proposed “Eagle Pass Mine” represents a significant departure from the mine previously permitted by the TCEQ and RRC in numerous respects, including: 1) the amount of area disturbed by mining activity and 2) the design details of proposed sedimentation ponds. These two departures have direct implications for the quantity and quality of wastes authorized to be discharged.

The strip mine under consideration here was originally permitted in 1994 by TCEQ’s predecessor agency, the Texas Natural Resources Conservation Commission.¹⁸ The Commission then described the proposed mine as “generally northwest of Eagle Pass,

¹⁵ Compare Other Requirement 3, on page 13 of draft TPDES Permit No. WQ0003511000 to requirements set forth in the same section of the existing permit.

¹⁶ TPDES Permit No. WQ0003511000, issued on November 16, 2006, page 1.

¹⁷ See page 1 of Draft Permit, Attachment C to Executive Director’s Response to Hearing Requests and Request for Reconsideration.

¹⁸ See attachment F to the Executive Director’s Response to Hearing Requests and Request for Reconsideration.

Texas on 2,700 acres, approximately **1,000 to 1,250 acres of which will be mined.**¹⁹

DRCP's current TCEQ application does not provide a total acreage of the proposed mine, but does state that "[s]urface acreage of **disturbance** area is approximately **2,700 acres**; however, active mining area will consist of approximately **1,410 acres.**"²⁰

An **increase of up to 1,700 additional acres** of disturbed area should be enough to warrant additional scrutiny into the quality and quantity of discharged wastes. However, there is persuasive evidence that the "Eagle Pass Mine" will be more massive than representations in the TCEQ renewal application. The application before the RRC represents that, within the first five years of activity, the active mining area would total **1,511 acres**; the RRC application further represents that, within the first seven years of activity, there would be **5,049 acres** of mining and ancillary disturbance.²¹ This is over **five times greater** an area of disturbance than the Commission originally authorized in 1994.

The authorization of discharges from this larger mine constitute an increase in the quantity and quality of discharged waste authorized in comparison to the mining operations permitted in the prior permit. Such an increase has the capacity to significantly alter the quantity and quality of waste to be discharged, especially through disturbance of soils and corresponding increases in Total Dissolved Solids discharged by the mine.

The currently proposed "Eagle Pass Mine" also represents a significant departure from the previously permitted facility in the size and number of its sedimentation ponds,

¹⁹ Finding of Fact No. 4, page 2, attachment F to the Executive Director's Response to Hearing Requests and Request for Reconsideration.

²⁰ See Industrial Administrative Report, page 11, section 11 of DRCP's February 26, 2010 Application for Renewal of TPDES Permit No. WQ0003511000.

²¹ See Attachment C to this Reply.

the mine's primary treatment mechanism. The application before the TCEQ represents that five sedimentation ponds will treat and discharge wastes from storm-water run-off.²² The application before the RRC, however, represents that nine sedimentation ponds will have been built during the first five years of the permit term.²³ This represents a significant increase in the quantity of wastes to be discharged.

The currently proposed "Eagle Pass Mine" also significantly alters the design and the size of the drainage/watershed areas for these ponds. Design details from the original mining permit application list no proposed sedimentation pond with a storage capacity greater than 50 acre-feet.²⁴ The largest drainage area amongst these ponds was 193 acres; most were below 100 acres.²⁵ The current design details, on the other hand, represent only two of the nine sedimentations ponds with a storage capacity **less than** 50 acre-feet; four of the sedimentation ponds would have storage capacity **greater than** 200 acre-feet.²⁶ The largest watershed area of the current application is 710 acres; all proposed ponds have a watershed area greater than 100 acres.²⁷ It has not been shown that increases in storage capacity and drainage area will not significantly change the quantity and quality of wastes to be discharged.

It is important to note that there is no indication that DRCP would *not* follow-through with representations made in its application before the RRC. That application was signed and sworn to as true and correct by an authorized agent of Applicant.²⁸ It has been

²² See Technical Report, page 4, revision 1, submitted May 18, 2011.

²³ See Attachment D to this Reply. This assumes a five-year permit term granted in 2011.

²⁴ See page three of Attachment E to this Reply.

²⁵ *Id.*

²⁶ See Attachment D to this brief.

²⁷ See Attachment H to this brief.

²⁸ See page 5 of Attachment F to this brief.

offered into evidence at the Railroad Commission.²⁹ There is no reason to believe representations made in the RRC application would differ from Applicant's intent with this mine.

Thus, DRCP does not surpass the threshold to evade a contested case hearing. The mining operation authorized by reference in the draft permit is significantly different than the mining operations authorized by reference in the existing permit. Simply put, the currently proposed "Eagle Pass Mine" is significantly different from the sub-bituminous coal mine previously permitted by the Commission. Both the quantity and quality of wastes to be discharged would be significantly altered or increased, necessitating a contested case hearing by law.

III. MAVERICK COUNTY IS AN AFFECTED PERSON

Dos Republicas challenges the status of Maverick County as an affected person, while OPIC recognizes the status of Maverick County as an affected person. Maverick County has authority to enforce the requirements of the Texas Water Code, and to enforce the terms of the draft permit. As such, Maverick County has authority over issues relevant to the application, and is properly considered an affected person.³⁰

IV. ISSUES TO BE REFERRED

Maverick County concurs with the list of issues recommended for referral by OPIC in that office's response to hearing requests.

V. DURATION OF HEARING

Maverick County concurs with OPIC's recommendation of one year regarding the anticipated duration of the hearing.

²⁹ See paragraph 7 of Attachment G to this brief, starting with "Exhibits".

³⁰ Tex. Water Code § 7.351.

VI. PRAYER AND CONCLUSION

For these reasons, Maverick County respectfully requests that the Commission find it to be an affected person, and grant a hearing on each issue designated above.

Respectfully Submitted,

By: 

Eric Allmon, TSB No. 24031819

David Frederick, TSB No. 07412300

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ATTORNEYS FOR MAVERICK
COUNTY

CC: Service List

CERTIFICATE OF SERVICE

By my signature, above, I certify that on October 24, 2012 Maverick County's Reply to Hearing Request Responses Submitted by the Executive Director, Public Interest Counsel, and Applicant were served upon the following *via* facsimile transmission or deposit in the U.S. mail. This document has been e-filed with the TCEQ Chief Clerk, and an original and seven copies have been deposited in the U.S. mail for Commission consideration.

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ATTACHMENT A

NORTH AMERICAN COAL CORPORATION

April 8, 2008

VIA OVERNIGHT MAIL

Mr. Melvin B. Hodgkiss, P. E.

Director

Surface Mining and Reclamation Division

Railroad Commission of Texas (RCT)

Capitol Station - P. O. Drawer 12967

Austin, TX 78711

SUBJECT: Dos Repúblicas Resources Co., Inc. (DRRC)
Docket No. C5-0003-SC-42-C
Eagle Pass Mine, Permit Renewal/Revision Application; Supplement No. 1

Dear Mr. Hodgkiss:

On behalf of Dos Repúblicas Resources Co., Inc. (DRRC), we are submitting an original and 6 copies of Supplement No. 1 in support of the Renewal/Revision of Permit No. 42. This Supplement No. 1 for the renewal/revision application includes modifications to the mine plan, updated ownership and control information and updated environmental baseline information that contains data collected since the permit was issued on April 11, 2000. An application for renewal/revision of Permit No. 42 for the Eagle Pass Mine in Maverick County, Texas, was filed by Dos Repúblicas Resources Co., Inc. (DRRC), on October 6, 2004. This application was determined to be administratively complete and was filed with the Commission's Office of General Counsel for docketing on October 8, 2004. Due to ongoing litigation, the Commission temporarily suspended processing of the renewal/revision application on March 8, 2005, except for completion of the initial Technical Analysis (TA) document, until resolution of the issue in the Texas Court of Appeals. The current submittal includes several changes to the mine plan. To facilitate the review of the proposed changes and consolidate the information in a single document, DRRC has opted to submit a new self contained document that includes all proposed revisions to the currently permitted mine plan. We believe this submittal addresses concerns raised in the comments included in the TA, with the changes included in each section of the updated document.

The Eagle Pass Mine area is located in western Maverick County approximately five miles north-northwest of the City of Eagle Pass, Texas. The revised permit area covers approximately 6,346 acres. DRRC understands this renewal/revision represents a significant revision. Our check No. 19318 in the amount of \$3,000 is included for this renewal document.

If you have any questions on the enclosed revision package or require any additional information, please contact us.

Respectfully,

The North American Coal Corporation,
Attorney-In-Fact for Dos Repúblicas Resources Co., Inc.

By: 

Thomas A. Koza

Vice President – Law and Administration, and Secretary

LRH/mpm

Enclosures: 1 Original Submittal
6 Copies

cc: C. N. Blevins (w/enclosure)
K. R. Huebner (w/enclosure)
Maverick County Courthouse (w/enclosure)

14785 Preston Road Suite 1100 • Dallas, Texas 75254-7891 • 972-239-2625 • Fax 972-387-1328 • www.nacoal.com

DRCP-0000196

IRREVOCABLE SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Dos Republicas Resources Co., Inc., a Texas corporation (the "Company"), does hereby make, constitute and appoint THE NORTH AMERICAN COAL CORPORATION, a Delaware corporation having its principal offices at 14785 Preston Road, Suite 1100, Dallas, Texas 75254-7891, its true and lawful attorney-in-fact, and in its name, place and stead to do and perform the following described acts and to execute, deliver and receive the following described instruments and documents relating to property, business and interests of the Company:

1. To make, execute, file and prosecute with the Railroad Commission of Texas (the "Commission") any and all renewals and revisions to Surface Mining and Reclamation Permit No. 42 (as the same may be renumbered) that was issued by the Commission to the Company (the "Mine Permit") as its attorney-in-fact shall deem necessary, advisable, convenient or proper and to do and perform all such acts and things and make, execute and file with the Commission and other persons all such further documents and instruments and take all such further steps that said attorney-in-fact may deem necessary, advisable, convenient or proper in order to so renew and revise the Mine Permit; and
2. To conduct in accordance with the terms of the Mine Permit, as it may be renewed and revised, and applicable laws, rules and regulations any and all activities and operations that may lawfully be performed under terms of the Mine Permit, as it may be renewed and revised, and perform all acts and do all things necessary to comply with the Mine Permit, as it may be renewed and revised, from and after the date of this Irrevocable Special Power of Attorney.

The Company hereby ratifies and confirms all that its attorney-in-fact shall lawfully do or cause to be done by virtue hereof.

The attorney-in-fact appointed hereby is irrevocably vested with the powers granted herein, and the Company hereby forever renounces all right to revoke this Irrevocable Special Power of Attorney or any of the powers conferred upon its attorney-in-fact hereby or to appoint any other person to execute the said powers and also renounces all right on the Company's part to do any of the acts itself that the said attorney-in-fact is authorized hereby to perform.

IN WITNESS WHEREOF, the Company has caused its name to be subscribed hereto on this 1st day of April, 2008.

DOS REPUBLICAS RESOURCES CO., INC.

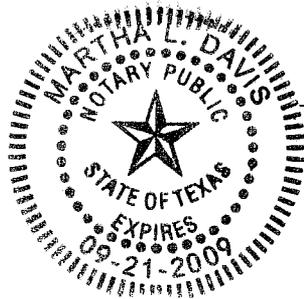
By: Kenneth R. Huebner
Name: Kenneth R. Huebner
Title: Secretary

STATE OF TEXAS

COUNTY OF BEXAR

On this the 1st day of April, 2008, before me a Notary Public in and for said County and State, the undersigned officer, personally appeared Kenneth R. Huebner, known to me (or satisfactorily proved) to be the person and officer whose name is subscribed to the within instrument, and acknowledged to me that the same was the act of said DOS REPUBLICAS RESOURCES CO., INC., a Texas corporation, and that said officer executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Martha L. Davis
Notary Public

ATTACHMENT B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Regarding the Petition to Revoke TCEQ Water Quality Permit No. WQ0014555002 Issued to Far Hills Utility District (TCEQ Docket No. 2009-0290-MWD; SOAH Docket No. 582-09-5727) and regarding an Application for Temporary Order submitted by Far Hills Utility District (TCEQ Docket No. 2009-0290-MWD; SOAH Docket No. 582-11-0471)

On September 21, 2011, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Proposal for Decision (PFD) on the Petition to Revoke TCEQ Water Quality Permit No. WQ0014555002 Issued to Far Hills Utility District and the Application for a Temporary Order Submitted by Far Hills Utility District, which was presented by the Honorable Thomas Walston, Administrative Law Judge (ALJ), in place of the Honorable Henry Card, the ALJ with the State Office of Administrative Hearings (SOAH), who issued the PFD on July 21, 2011.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Procedural History

1. Far Hills Utility District (Far Hills), which is located in Montgomery County, Texas, filed a request for a Texas Pollutant Discharge Elimination System (TPDES) permit with the Commission on April 11, 2007.
2. Far Hills' application for a TPDES permit was uncontested and posted to the Executive Director's uncontested agenda.
3. The Executive Director granted Far Hills' application and issued TPDES Permit No. WQ0014555002 to Far Hills on November 11, 2007.

4. On March 3, 2009, Suzanne O'Neal and Judith Spencer (Petitioners) filed a Petition to Revoke TPDES Permit No. WQ0014555002.
5. The Commission considered the Petition to Revoke at its June 26, 2009, agenda, granted Petitioners' hearing requests, and referred the matter to SOAH in an Interim Order dated July 2, 2009.
6. Notice of the SOAH hearing was mailed on September 14 and September 23, 2009.
7. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
8. The SOAH preliminary hearing, at which jurisdiction was determined, party status granted, and a procedural schedule established, was held on October 29, 2009.
9. After an agreed continuance, a contested case hearing before SOAH was held on February 22, 2010. Petitioners, Far Hills, the Executive Director, and the Office of Public Interest Counsel (OPIC) participated in the hearing, which was adjourned the same day. The record closed on April 22, 2010, with the filing of the parties' replies to closing arguments.
10. The PFD on the Petition to Revoke was filed on June 22, 2010. The Commission considered the matter at its September 15, 2010 agenda, and remanded the matter to SOAH in an Interim Order dated September 22, 2010.
11. On November 2, 2009, Far Hills submitted a sworn Application for a Temporary Order to continue discharging treated wastewater in the event that TPDES Permit No. WQ0014555002 was suspended or revoked. As required by Section 5.502 of the Texas Water Code, Far Hills stated that the issuance of a temporary order was necessary to avoid serious injury, severe property damage, and severe economic loss in the event that TPDES Permit No. WQ0014555002 was suspended or revoked. Far Hills also stated other matters and information required by Section 5.502 and relating to the findings required by Section 5.509 of the Texas Water Code.
12. Far Hills' Application for a Temporary Order requested a discharge of up to 0.23 million gallons per day (MGD) of treated Municipal Wastewater to a storm sewer, thence to a man-made canal, thence directly to Lake Conroe in Segment No. 1012 of the San Jacinto River Basin.
13. The Commission considered the Application for a Temporary Order at its September 15, 2010 agenda, granted the requested hearing, and referred the matter to SOAH in an Interim Order dated September 22, 2010. The remanded issues for the Petition to Revoke were referred concurrently with the Application for Temporary Order to SOAH.

14. The SOAH preliminary hearing on the Application for a Temporary Order and the remanded Petition to Revoke, at which jurisdiction was determined, party status granted, and a procedural schedule established, was held on November 8, 2010.
15. A contested case hearing on the Application for a Temporary Order and the remanded Petition to Revoke was held on November 15-16 and December 10, 2010. Petitioners, Far Hills, the Executive Director, and OPIC participated in the hearing. The record closed on February 15, 2011 with the filing of the parties' replies to closing arguments.
16. On April 15, 2011, Petitioners filed a request to withdraw as parties to the Petition to Revoke and Application for a Temporary Order proceedings.
17. The Administrative Law Judge granted Petitioners' requested withdrawals by written order dated April 25, 2011.
18. Subsequent to Petitioners' withdrawal, Far Hills, the Executive Director, and OPIC convened to discuss all remaining case issues left unresolved by Petitioners' withdrawal. As a result, Far Hills, the Executive Director, and OPIC stipulated to the terms and conditions of this Order as an agreed resolution of all issues raised in the Petition to Revoke and Application for Temporary Order proceedings.

Notice of Permit No. WQ0014555002

19. In relation to Permit No. WQ0014555002, the Commission finds that Far Hills did not provide proper published notice under 30 TAC § 39.405(f)(1).
20. In relation to Permit No. WQ0014555002, the Commission finds that Far Hills failed during the application and/or hearing process to disclose fully all relevant facts regarding its ownership and configuration of the property.
21. In relation to Permit No. WQ0014555002, the Commission finds that Far Hills failed to fully disclose all relevant facts, misrepresented relevant facts, or made false or misleading statements with respect to mailed notice.
22. In relation to Permit No. WQ0014555002, the Commission finds that Far Hills misrepresented relevant facts regarding the appropriate newspaper for publication of notice.
23. In relation to Permit No. WQ0014555002, the Commission finds that Far Hills intentionally or knowingly published notice in the wrong newspaper.
24. In relation to Permit No. WQ0014555002, the Commission finds that Far Hills' failure to disclose fully all relevant facts regarding ownership and configuration of the property was not done intentionally or knowingly.

25. In relation to Permit No. WQ0014555002, the Commission finds that Far Hills' misrepresentations regarding ownership and configuration of the land, mailed notice, and published notice were significant.

Water Quality for Permit No. WQ0014555002

26. In its April 11, 2007 application leading to TPDES Permit No. WQ0014555002, Far Hills applied for a discharge outfall into the main body of Lake Conroe. However, after TPDES Permit No. WQ0014555002 was issued, Far Hills constructed the discharge outfall into the landward end of an approximately 830-foot-long, man-made canal that empties into the main body of Lake Conroe.
27. The change in outfall location constitutes a major amendment since it is a "material change in the pattern or place of discharge" under 30 TAC §§ 305.62(c)(1) and (2).
28. Far Hills has not applied for a major amendment to TPDES Permit No. WQ0014555002 for the new outfall location, and thereby has not provided proper notice to nearby property owners of the change in outfall location.
29. The current effluent limitations contained on pages 2, 2a, and 2b of TPDES Permit No. WQ0014555002 are not protective of water quality under the Texas Surface Water Quality Standards given the existing outfall location.
30. The effluent limitations for a discharge into the man-made canal, contained on page 6 of this Order and recommended by the Executive Director during the contested case hearing on the Application for a Temporary Order, are protective of water quality under the Texas Surface Water Quality Standards.

Transcript Costs

31. The Executive Director of the TCEQ provided a court reporter for the preliminary and contested case hearings on the Application for Temporary Order and incurred \$3,899.92 in costs associated with the creation of the transcripts.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to its enabling statutes and 30 TEX. ADMIN. CODE (TAC) §§ 35.301, 35.303, 50.117, 305.21, 305.66 and 305.68.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a PFD with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.

3. Adequate and timely notice of the hearings on the Petition to Revoke and the Application for a Temporary Order was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. As provided by 30 TAC § 80.25(e), the Application by Far Hills for a Temporary Order shall be dismissed without prejudice by the Commission.
5. The Petition to Revoke filed by Suzanne O'Neal and Judith Spencer shall be dismissed with prejudice by the Commission.

III. STATEMENT OF CHANGES

1. The Commission agreed with the ALJ's preferred language stated in his July 21, 2011 Proposal for Decision. Accordingly, the Commission adopted the following modifications to Findings of Fact Nos. 19-25 in the Order which are incorporated therein and are as follows:
 - a.) the terms that read "ALJ" are changed to read "Commission"; and
 - b.) the phrases "Far Hills generally denies this finding" are removed.

IV. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The Petition to Revoke filed by Suzanne O'Neal and Judith Spencer is dismissed with prejudice.
2. The Application for a Temporary Order filed by Far Hills Utility District is dismissed without prejudice.
3. During the duration of this Order, all discharges from Far Hills' wastewater treatment facility shall meet the following effluent limitations, conditions, and monitoring requirements:

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning from the date of issuance and lasting through the date of expiration, Far Hills shall discharge treated domestic wastewater subject to the following effluent limitations:¹

The daily average flow of effluent shall not exceed 0.175 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 479 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>		
	<u>Daily Avg</u> mg/(lbs/day)	<u>7-day Avg</u> mg/l	<u>Daily Max</u> mg/l	<u>Report Daily Avg. & Max.</u>	<u>Single Grab</u> mg/l	<u>Measurement Frequency</u> Sample Type
Flow, MGD	Report	N/A	Report	N/A	N/A	Five/week Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (7.3)	10	20	30	30	One/week Grab
Total Suspended Solids	12 (18)	20	40	60	60	One/week Grab
Ammonia Nitrogen	1.5 (2.2)	5	10	15	15	One/week Grab
Total Phosphorus	1 (1.5)	2	4	6	6	One/week Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 6.0 mg/l and shall be monitored once per week by grab sample.

¹ Far Hills shall have 180 days from the date of issuance of this Order under 30 TAC Chapter 217 and 30 TAC § 307.2(f) to undertake all modifications to the Far Hills facility necessary to comply with these effluent limitations and monitoring requirements, and shall comply with the above effluent limitations and monitoring requirements immediately upon expiration of this compliance period. During this compliance period, Far Hills shall comply with the effluent limitations and monitoring requirements on page 2 of TPDES Permit No. WQ0014555002, issued on November 1, 2007.

Far Hills shall comply with all the provisions in TPDES Permit No. WQ0014555002, with the exception of the effluent limitations and monitoring requirements on pages 2, 2a, and 2b, issued on November 1, 2007. Instead of the effluent limitations and monitoring requirements on pages 2, 2a, and 2b of the existing TPDES permit, the discharge shall meet the effluent limitations, conditions, and reporting requirements on page 6 of this Order.

4. During the compliance period described in Footnote 1 of page 6 of this Order, Far Hills shall comply with the effluent limitations and monitoring requirements on page 2 of TPDES Permit No. WQ0014555002, issued on November 1, 2007.
5. Prior to construction of any treatment facility necessary to comply with the effluent limitations in page 6 of this Order, Far Hills shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 217.6(c). If requested by the Wastewater Permitting Section, Far Hills shall submit plans, specifications and a final engineering design report that comply with 30 TAC Chapter 217, Design Criteria for Wastewater Treatment Systems. Far Hills shall clearly show how the treatment system will meet the effluent limitations required on page 6 of this Order.
6. Prior to construction of any treatment facility necessary to comply with the effluent limitations in page 6 of this Order, Far Hills shall submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by Far Hills according to 30 TAC §309.13(e)(3). The evidence of legal restrictions shall be submitted to the Executive Director in care of the TCEQ Wastewater Permitting Section (MC 148). Far Hills shall comply with the requirements of 30 TAC §309.13(a) through (d).
7. Far Hills shall notify the TCEQ Regional Office (MC Region 12) and the Applications Review and Processing Team (MC 148) of the Water Quality Division, in writing at least forty-five (45) days prior to the completion of any new treatment facility necessary to comply with the effluent limitations in page 6 of this Order on Notification of Completion Form 20007.
8. Far Hills shall submit monthly status reports to the TCEQ Regional Office (MC Region 12) and the Applications Review and Processing Team (MC 148) of the Water Quality Division, summarizing the progress of the project and including any analytical sampling conducted relating to Provisions (3) and (4) of this Order. The monthly status reports shall also include the status of Far Hills' efforts to obtain a major amendment to TPDES Permit No. WQ0014555002 for a new discharge outfall location, and construction and other activities related to compliance with the effluent limitations in page 6 of this Order.
9. The term of this Order is two (2) years from the date of issuance. Far Hills shall cease discharges within two (2) years of issuance or apply to the Commission for a renewal for an additional reasonable period of time not to exceed one hundred eighty (180) days in sufficient time to evaluate the application for a major amendment to TPDES Permit No.

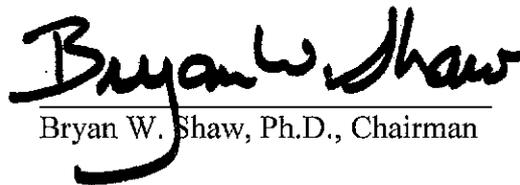
WQ0014555002 and set the matter on Commission agenda prior to expiration of this Order. Notwithstanding the above, this Order will expire upon the successful application and issuance by the Commission of a major amendment to TPDES Permit No. WQ0014555002.

10. Far Hills shall apply for a major amendment to TPDES Permit No. WQ0014555002 by filing a complete application with the TCEQ for the existing facility within thirty (30) days from the date of issuance of this Order. In connection with the major amendment application, Far Hills shall comply with all applicable application and notice requirements under the Texas Water Code and the TCEQ rules. Additionally, Far Hills shall give "mailed" notice of filing of the major amendment application to Petitioners Suzanne O'Neal and Judith Spencer, as well as all landowners who were entitled to receive mailed notice in connection with Far Hills April 11, 2007 TPDES permit application.
11. The Executive Director will withhold any enforcement action for discharges occurring at the Far Hills' wastewater treatment facility that are compliant with the terms and conditions of this Order.
12. Far Hills shall reimburse the Executive Director, Office of Legal Services, for all transcription costs associated with the hearing for the Temporary Order Application. Within thirty (30) days of the effective date of this Order, Far Hills shall tender payment in the amount of three thousand eight hundred ninety-nine dollars and ninety-two cents (\$3,899.92). Far Hills shall submit a check made payable to "TCEQ" with the language "Office of Legal Services re: Far Hills" in the description line. Far Hills shall make timely payment by either: 1) personal delivery on or before the payment date to the TCEQ Cashier's Office, 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753; or 2) deposit of a check in the United States Mail, proper postage prepaid, and post-marked on or before the payment due date. Any mailed check shall be sent to TCEQ, P.O. Box 13087, Austin, Texas 78711-3087, MC-214, Attention: Cashier's Office.
13. The issuance of this Order does not convey any property rights in either real or personal property, or any exclusive privileges; nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations; nor does it obviate the necessity of obtaining any federal or local assent that may be required by law for the discharge.
14. The issuance of this Order shall not be considered a component of compliance history under Texas Water Code Section 5.753 and 30 TAC Section 60.1.
15. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

16. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Texas Government Code § 2001.144.
17. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.
18. The Office of the Chief Clerk is directed to forward a copy of this Order to Far Hills and all other parties and to issue said Order and cause the same to be recorded in the files of the Commission.

ISSUE DATE: **SEP 29 2011**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Bryan W. Shaw, Ph.D., Chairman

ATTACHMENT C

**Table 139-1
Size, Sequence and Timing of Subareas of Permit for Total Life of Mine**

Permit	Year of Approval	Approximate Permit/LOM Acreage
Eagle Pass	2010**	6346
Eagle Pass Second Renewal*	2015***	6346

Size of Subareas		
Year	Acres Mined	Area
Period 1#	383	B
Period 2	55	B
Period 2	393	C1A
Period 2	88	C1B
Period 3	215	C1B
Period 3	67	C2
Period 4	37	C2
Period 4	40	D1
Period 4	233	A1
Period 5-7	1058	A2-D2
Total	2569	

* No new acreage is proposed for life of mine
 ** Permit term initiates on date of renewal/revision/expansion permit 42A approval
 *** 5 years after approval of renewal/revision/expansion permit 42A is approved
 # A period is one complete calendar year consisting of 365 days
 Period 1 is Year 2 of Permit 42A

LAND DISTURBANCE-LOM

MINING DISTURBANCE
 3,228 Acres

ANCILLARY DISTURBANCE
 1,821 Acres

Renewal/Revision/Expansion
 Supplement 3
 5903532v.1

139-11

Eagle Pass Mine
 August 2010

"Acres Mined" includes the subareas labeled B, C1A, C1B, C2, A1, A2, D1, and D2, as shown on EXHIBIT 139-2.

MINING DISTURBANCE includes all of the "Acres Mined" and all of STP-1 through STP-28, as shown on EXHIBIT 139-2.

ANCILLARY DISTURBANCE includes the SHOP/OFFICE FACILITIES, railroad loop, COAL LOADOUT AREA, diversions and ponds, as shown on EXHIBIT 139-2.

Table 139-2
Major Equipment Used for Coal Extraction Process

Land Clearing

Dozers	Backhoes
Root plows	Trackhoes
Dozers or tractors with multi-application rakes, chains, or disks	

Topsoil and Overburden Removal

Scrapers	Dozers
Front-end loaders	Continuous surface miners
Excavators	Trucks and shovels
Trackhoes	Backhoes
Motor graders	

Coal Loading and Hauling

Continuous surface miner	Loaders
Trackhoes	Backhoes
Bottom or end dump trucks	Motor graders

Regrade

Dozers	Motor graders
Scrapers	

Topsoil and Overburden Placement

Trucks	Shovels
Loaders	Motor graders
Dozers	Scrapers

Revegetation and Seedbed Preparation

Standard farm and farm-related equipment
Standard ranch and ranch-related equipment

ATTACHMENT D

TABLE 148-1

**SEDIMENTATION POND STORAGE DATA
AND
CONSTRUCTION AND RECLAMATION SCHEDULE**

<u>Sedimentation Pond Number</u>	<u>Sediment Storage (ac-ft)</u>	<u>Runoff Storage (ac-ft)</u>	<u>Total Storage (ac-ft)</u>	<u>Projected Year Constructed</u>	<u>Projected Year Reclaimed</u>
P003 ¹	1.3	7.2	8.5	2005	2011
SP-1	21.3	233.1	254.4	2011	2024
SP-2	22.7	194.9	217.6	2011	2024
SP-3	37.8	230.5	268.3	2012	2024
SP-4	34.1	50.1	84.2	2014	2027
SP-5	10.8	34.9	45.6	2014	2027
SP-6	13.9	121.8	135.7	2014	2027
SP-7	12.8	56.2	69.0	2014	2027
SP-8 ²	43.5	319.4	362.9	2016	2029
SP-9 ²	5.5	40.0	45.5	2017	2030
SP-10 ²	24.3	169.8	194.1	2017	2030
SP-11 ²	21.8	155.8	177.6	2018	2031
SP-12	31.1	18.0	49.1	2012	2031
SP-13	21.1	18.0	39.1	2017	2031
SP-14	22.2	18.0	40.2	2012	2031

¹ Existing pond to be reclaimed and replaced by the construction of SP-2 in 2011

² Proposed sedimentation pond depicted on the life-of-mine operation map in Exhibit 139-1. Sedimentation pond will be constructed after the 5-year permit renewal term, so it is not included in Exhibit 148-1

Evaporation/No discharge retention pond. Design and construction details to be made available to the commission prior to construction of the pond. For additional information, refer to section 139-1.1.

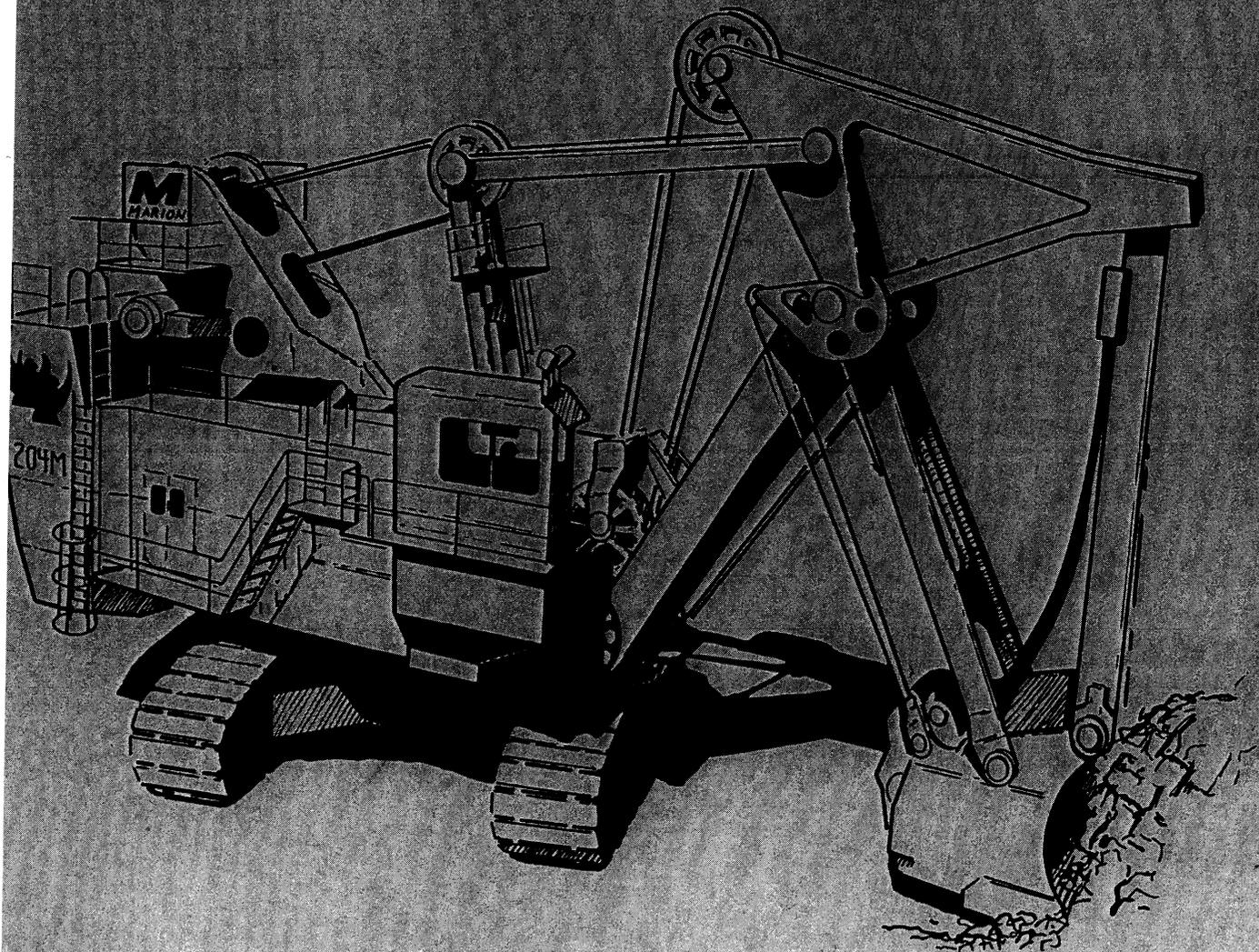
ATTACHMENT E



DOS REPUBLICAS RESOURCES CO., INC.

EAGLE PASS MINE

VOLUME II



ATTACHMENT 780.148

SEDIMENT POND DESIGNS

**ATTACHMENT 780.148
SEDIMENT POND SUMMARY
SEPTEMBER, 1992**

POND #	DRAINAGE AREA (acres)	VOLUME (ac-ft)¹	SEDIMENT STORAGE (ac-ft)²	TYPE OF DESIGN³	PERMIT YEAR DESIGNS SUBMITTED	PERMIT YEAR OF CONSTRUCTION
P001	101	20.87	3.54	Detail	-----	1
P002	45	8.69	1.58	Detail	-----	1
P003	38	7.20	1.33	Detail	-----	1
P004	124	24.43	4.34	Detail	-----	1
P005	83	15.40	2.90	Detail	-----	2
P006	97	21.01	3.40	Detail	-----	2
P007	68	13.60	2.38	General	2	3
P008	103	20.60	3.60	General	2	3
P009	112	22.40	3.62	General	2	3
P010	66	13.20	2.31	General	3	4
P011	57	11.40	2.00	General	3	4
P012	193	38.60	6.76	General	3	4
P013	65	13.00	2.28	General	3	4
P014	45	8.23	1.58	Detail	-----	1
P015	56	11.20	1.96	General	2	3
P016	110	22.00	3.85	General	3	4

¹ Volume below emergency spillway excluding sediment storage

² Calculated at 0.035 ac-ft/ac

³ Refer to Attachment 780.148 for detailed designs

ATTACHMENT F

**RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION**

Application for Coal Mining Operations Permit

All items should be as complete as possible. Please submit your application on standard size paper. File seven (7) complete copies with the Director of the Surface Mining and Reclamation Division. See "Rules of the Surface Mining and Reclamation Division" and "Texas Surface Coal Mining and Reclamation Act" for information.

I. General Information

A. Name

1. Name of applicant: Dos Republicas Coal Partnership
Name of mining operation: Eagle Pass Mine
Permanent mailing address: 425 Madison Street
Street or P.O. Box
Eagle Pass TX 78852
City State Zip Code
Telephone: 830-421-5017; 830-421-5018

2. Name, address, and telephone number of person or persons authorized to act for applicant during consideration of this application (attorneys, engineering firms, applicant's mining superintendent, etc.)

Andrés González-Saravia Coss
Dos Republicas Coal Partnership
425 Madison Street
Eagle Pass, TX 78852
830-421-5017
830-421-5018

John L. Wilson
McGinnis, Lochridge & Kilgore, LLP
600 Congress Ave., Suite 2100
Austin, Texas 78701
512-495-6015

Joel Trouart
The North American Coal Corporation
14785 Preston Road, Suite 1100
Dallas, Texas 75254
972-239-2625

Pete Nielson
President, Camino Real Fuels, L.L.C.
14785 Preston Road, Suite 1100
Dallas, Texas 75254
972-239-2625

3. Name, address, and telephone number of ownership, and management officers of the permit applicant and affiliated persons engaged in surface mining.

This information is contained in the Permit Application

- B. Type of permit application: Regular Original Revision Renewal
C. Product to be mined: Coal Lignite
D. Type of mining operation Open-pit Strip mining Underground

E: Location

1. County or counties

Maverick County, Texas

2. Give a general description of the location of the proposed mining area with respect to cities, streets, highways, churches, schools, water courses, landmarks, etc.

**1.5 Miles Northeast of Highway 1588 ear Lateral 20, Northwest of Eagle Pass,
Maverick County, Texas.**

II. Administrative Information

- A. Interested persons (Rule 116). Give name and address of:

1. Every owner of record of property to be mined.
2. Leaseholders of record.
3. Real estate contract holders of record.
4. Owners of record of all surface and subsurface areas contiguous to application area.
5. Operator, if different from owner, for application area.
6. Resident agent and telephone number.

B. Applicant's Organization (Rule 116). Provide:

1. A statement of organization: single proprietorship, corporation, etc.
2. If other than single proprietorship:
 - (a) Name and address of any person functioning like a director of the applicant.
 - (b) Name and address of any principal shareholder.
 - (c) Names under which the applicant operated surface coal mines in the U.S. in the previous five years.
 - (d) Name and address of their principal officers and resident agent.
3. A list of current or previous coal mining permits held in U.S. since 1970 by applicant and by principal shareholders and authority issuing the permit.
4. If it exists, the Mining Safety and Health Administration identification number.
5. A statement of lands contiguous to application area in which the applicant is interested.

C. Compliance History (Rule 116). Provide:

1. A statement of:
 - (a) Suspended or revoked permits in the last five years for applicant or person controlled by or with applicant.
 - (b) Any forfeited bond on security.
2. For any of the above include:
 - (a) Identification of the permit issued, date and amount of bond.
 - (b) Identification of authority taking action.
 - (c) Current status of situation causing suspension or revocation.
 - (d) Date, location and type of any administrative or judicial proceeding.
 - (e) Status of proceeding.
3. A list of violations for the past three years for applicant or persons controlled by or with applicant. Include violations of mining and environmental statutes, rules, regulations -- state or federal.

Details should include:

- (a) Date and identification or authority.
- (b) Description of violation.
- (c) Descriptions of administration of judicial proceedings.
- (d) Status of proceedings.
- (e) Abatement action taken by applicant.

D. Right to Mine (Rule 117 and 118).

1. Provide descriptions and/or copies of all documents conveying rights (surface and subsurface) to enter and mine including consent of surface owners or authority under state

- law to extract coal at the site.
 - 2. Designate on a map areas designated as unsuitable for mining.
 - 3. Provide statement regarding Lands Unsuitable as designated procedurally under Subchapter F or under study or exemptions under Rule 216.
 - 4. Provide waivers from dwelling owners within 300 feet of the mining area.
- E. Permit tenure and sequences Rule 119). Provide
- 1. Size, sequence and timing for each phase of mining and number of acres affected for the life of the permit. (Attach map)
 - 2. If application is for greater time than five years, additional information relating to financing and operations for the longer period.
- F. Certificate of liability or self-insurance (Rule 120).
- G. Other licenses and permits required (Rule 121). Include:
- 1. Issuing authority
 - 2. Status
 - 3. Identification number if issued.
- H. Locations where application may be reviewed by the public (Rule 122).
- I. Copies of published notice and proof of publication when available. (Rule 123).

III. Environmental Resources Information - Premining (PART 779 and Rule 107).
Provide:

- A. Archeological survey. (Rule 125)
- B. Analysis of geological and hydrological resources. (See Rules 126-130) Where applicable, the applicant may request that the Surface Mining and Reclamation Division provide environmental resource information, to the extent that it is available from an appropriate Federal or State agency. The request shall be in writing.
- C. Climatological information. (Rule 131)
- D. Vegetative cover. (Rule 132)
- E. Fish and wildlife resources. (Rule 133)
- F. Soils resources. (Rule 134)
- G. Land use information. (Rule 135)
- H. Maps, plans and cross-sections. (Rules 136 and 137)
- I. Prime farmland investigation. (Rule 138)

IV. Mining Plan (See Rule 107 for format and general requirements, subchapter K and Rules 139 through 144). Provide narrative including:

- A. Mining procedures.
- B. Engineering techniques.
- C. Equipment to be used.
- D. Production rates.
- E. Operation plan including design and handling of the following new facilities:
 - 1. Dams, embankments, and impoundments
 - 2. Storage areas (noncoal)
 - 3. Coal handling
 - 4. Waste handling and disposal
 - 5. Mine
 - 6. Air pollution control (Rule 143, if applicable)
- F. Existing facilities use, modification, destruction and environmental plan. (Rule 140)
- G. Blasting plan. (Rule 141)
- H. Fish and wildlife plan. (Rule 144)

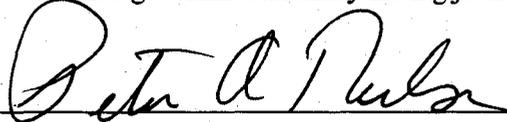
V. Reclamation Plan (See Rule 107 for format and general requirements and Rules 145 through 154).

- A. Demonstrate compliance with environmental standards. Include:
 - 1. Timetable for each step in reclamation plan.
 - 2. Detailed cost of reclamation.
 - 3. Plans and maps for soil handling and final disposition.
 - 4. Revegetation plan.
 - 5. Plan for maximization and conservation of coal resource.
 - 6. Plan for handling and disposal of waste, toxic and fire hazard material, contingency plan to preclude sustained combustion.
 - 7. Maps, cross-sections, and narrative for sealing or managing wells and openings.
- B. Demonstrate compliance with air and water quality laws and regulations, and health and safety standards.

C. Reclamation Plan should emphasize:

1. Protection of the hydrologic balance.
2. Post mining land use.
3. Design, operation and final disposition of ponds, impoundments, banks, dams and embankments.
4. Surface mining near underground mining.
5. Maps and cross-sections of stream and channel diversions.
6. Protection of public and historic facilities.
7. Spoil disposal.
8. Design, handling and final disposition of transportation facilities.

I, (name) Pete Nielsen, (title) President, Camino Real Fuels, L.L.C. state that I have knowledge of the facts herein set forth and that the same are true and correct to the best of my knowledge and belief. I further state that to the best of my knowledge and belief, the project for which application is made will not in any way violate any law, rule ordinance, or decree of any duly authorized governmental entity having jurisdiction.

Date: September 15, 2011Signature: 

APPENDIX A

Water Analysis References:

- American Public Health Association, American Water Works Association and Water Pollution Control Federation, Standard Methods for the Examination of Water and Wastewater, 14th Edition: New York, American Public Health Association, 1975.
- American Society for Testing and Materials, "Water and Atmospheric Analysis", Annual Book of ASTM Standards, Part 23, Philadelphia, American Society Testing Material, 1975.
- Brown, Eugene, M. W. Skougstad, and M. J. Fishman, Methods for Collection and Analysis of Water Samples for Dissolved Minerals and Gases: Techniques of Water Resources Investigations of the U.S. Geological Survey, Book 5 Chapter A-1, Washington, D.C., Superintendent of Documents, U.S. Printing Office, 1970.
- Environmental Protection Agency, Methods for Chemical Analysis of Water and Wastes, Environmental Monitoring and Support Laboratory, Office of Research and Development, Cincinnati, Ohio, (EPA-600/4-79-020), 1979.

Soil Analysis References:

- Black, C.A., (editor), "Part I: Physical and Mineralogical Properties", "Part II: Chemical and Microbiological Properties", Methods of Soil Analysis, American Society of Agronomy and American Society for Testing and Materials, Agronomy Series Number 9.
- Brown, K.W. and L. E. Deuel, "Final Report: The Suitability of Overburden as a Medium for Plant Growth and Growth and Characteristics of existing Soils at the Proposed Mine Area in Grimes County", Texas A&M Research Foundation and Texas Agricultural Experiment Station, Department of Soil & Crop Sciences, College Station, Texas February 1977.
- Sobek, A.A., et al, "Field and Laboratory Methods Applicable to Overburdens and Minesoils", USEPA (600/2-78/054-NTIS PB 280 495), Industrial Environmental Research Laboratory, Cincinnati, Ohio, 1978
- USDA, "Diagnosis and Improvement of Saline and Alkali Soils", Agricultural Handbook No. 60, U.S. Government Printing Office, Washington, D.C., 1969.
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ATTACHMENT G



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

October 19, 2011

EXAMINER'S ORDER NO. 9

RE: Docket No. C5-0003-SC-42-C, Application by Dos Repúblicas Coal Partnership
For Renewal/Revision/Expansion of Permit No. 42A, Eagle Pass Mine

TO ALL PARTIES:

Please be advised of the following determinations and rulings on motions filed in the above-referenced docket.

All requests/motions for continuance are hereby deemed moot. All requests/motions to hold the hearing on the merits in Eagle Pass are denied.

Subsequent to the pre-hearing conference, on October 14, 2011, DRCP filed a request that the examiner not reopen the discovery period in this docket. In response to DRCP's request, the examiner will not allow new discovery requests. There are outstanding motions to compel as addressed by the response to the request filed by counsel for Maverick County, and response by DRCP, and these motions will be ruled upon as soon as possible. Supplementation to previous answers will be allowed up to 30 days before the continuation of the hearing. That continuation, at the earliest, will occur during the second half of January, 2012. Therefore, supplementation can continue, unless otherwise extended by the examiner when a hearing date is set, through December 15.

The examiner would like to hold the hearing during the second half of the month of January or during February 2012. All parties are requested to file with the examiner on or before November 1, 2011 any dates with which you have conflicts during the above-referenced time period. The examiner will attempt to avoid such conflicts but cannot guarantee that conflicts with other schedules will be avoided. Only conflicts with matters that have already been scheduled will be considered.

Please be advised that I will be out of the office during the week of October 24-28, 2011 due to a serious illness in the family. Pending motions will be ruled upon shortly after my return to the office during the week of October 31, 2011.

The following reiterate some of the determinations made at the pre-hearing conference held on October 12, 2011, set out rulings made at the pre-hearing conference, and make certain revised rulings:

Exhibits: Jurisdictional Exhibits will be copied and sent to the parties as soon as possible. The application, as supplemented, was recognized as Applicant's Exhibits 1a-1j, 2, 3, 4, and 5. Staff's Technical Analysis document and addenda were recognized as Exhibits 1-6. (Applicant's Exhibit 2 is the same as Staff's Exhibits 1-6). These exhibits were recognized as marked for identification as the application as supplemented filed by the applicant and the Staff TA and Addenda filed in the docket.

These were not admitted for the purpose of the truth of the matters asserted at this time. The objections made by Maverick County and the Kickapoo Traditional Tribe of Texas to the application being in its current form (application, as supplemented) are overruled. Mr. Baxter's objection to copies of the application being provided electronically was overruled at the pre-hearing conference.

Burden of Proof: At the pre-hearing conference, the examiner confirmed that the burden of proof is on parties opposing renewal of the application. The examiner further confirmed that the burden of proof is on the applicant for new proposals.

DRCP's Motion in Limine was heard as well as objections to the motion. Rulings were made at the pre-hearing conference and have been reviewed by the examiner. As to Paragraph 1 of the motion, the examiner ruled at the pre-hearing conference that responses to this portion of the motion could be made by Friday, October 14, 2011. The only responses to the motion were made at the pre-hearing conference. I did not receive any responses following the pre-hearing conference regarding paragraph 1 or any other portions of the motion. It is the examiner's determination that, if certain facts are established at the hearing, the issues set forth in paragraph 1 may have some relevance to §134.003(5) of the Natural Resources Code as purposes of the Texas Surface Coal Mining and Reclamation Act. For this limited purpose only, DRCP's motion to exclude the matters set out in paragraph 1 is denied. For all other purposes, the motion set out in paragraph 1 is granted, with the following proviso: The examiner would like to state to the parties that pollution from Mexico, if proved, and if proved to affect the permit area, has limited relevance only as to the current condition of the permit area and contributions, if any, and their effects, if any, that might be made to air and water from mining operations.

DRCP's motion was granted as to paragraphs 2, 3, 4, 5, and 6. The granting of DRCP's motion is confirmed as to paragraphs 2, 3, 4, and 5.

The examiner has re-considered the motion as set out in paragraph 6 and makes the following determination: The motion is granted as to the marketability of coal from the DRCP mine, except as to how the quality of coal might affect the marketability. As to the possible sale or use of the coal after it is mined, limited questions may be asked consistent with the preceding sentence to establish testimony that relates to §134.003(5) of the Act only.

DRCP's motion as to paragraph 7 is granted; however, the ownership of DRCP must be established in accordance with §12.116 of the Regulations and, therefore, evidence as to ownership and control will be received and may be cross-examined, but not for the purpose of establishing fraud on the Commission or for establishing that the permit was improvidently granted due to fraud. Improvident issuance is addressed by separate proceeding and grounds for improvident issuance are limited as set out in §12.225(e).

DRCP's motion as to paragraph 8 was granted, and this ruling is confirmed. It is my understanding that all parties are being provided with or have been provided with a copy of the public liability insurance policy (appropriately redacted).

DRCP's motion as to paragraph 9 was granted, and this ruling is confirmed. Because of Ms. Burkhardt's questions regarding the bond amount, however, the examiner requests, however, that if the Staff reclamation cost estimate memorandum and attachments have not been made available to the parties that this be done as soon as possible.

This is to confirm that DRCP's motion as to paragraph 10 of the Motion in Limine was withdrawn by DRCP as to the life of mine plan contained in the application, as supplemented. Excerpts of the unsigned deposition were filed with the examiner and copied to all parties. It appears to the examiner that the

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Docket No. C5-0003-SC-42-C
October 19, 2011

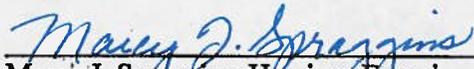
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deposition excerpts referred to a separate document apart from the life of mine plan in the application, as supplemented. DRCP claims that the information in the document, or parts of it, are confidential and proprietary.

No ruling was made as to paragraph 11. The examiner declines to make a ruling on this paragraph at this time. It is hoped that this issue may become moot with further rulings by the examiner on motions made and considering the time that will pass until the hearing on the merits begins, and it is hoped that the parties will cooperate with each other.

As to paragraph 12, documents were filed by the Kickapoo Traditional Tribe of Texas including the Constitution of the Tribe and Chapter 1 of the Tribal Codes. The Tribe asserts that testimony regarding impacts to tribal members wherever located is admissible in addition to impacts to the tribe as a whole or the tribal property held in trust, adjacent to that held in trust and purchased for the tribe as a whole. Responses to these documents filed by the Kickapoo Tribe shall be filed on or before October 26, 2011.

I received DRCP's response to the Tribe's objections made at the pre-hearing conference to notice based on Federal law. The Tribe's objections are overruled.



Marcy J. Spraggins, Hearings Examiner
Office of General Counsel – Hearings Section
Railroad Commission of Texas

xc: Revised Service List (10/12/11, edited)
Mr. Tim Walter, Permit Coordinator, Surface Mining and Reclamation Division
Case File
Legal File

ATTACHMENT H

148(a)(1) Each general plan shall --

148(a)(1)(A) be prepared by or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture;

The designs, plans, and specifications for all sedimentation ponds and impoundments at the Eagle Pass Mine are prepared by, or under the direction of, and certified by a qualified registered professional engineer. Certification for all structures requiring such are included within each proposed detailed design plan and general design plan.

148(a)(1)(B) contain a description, map, and cross-section of the structure and its location;

The detailed design plan submitted for approval prior to construction for each pond contains a description, a map showing the location of the structure, and cross-sections. The operation plan (Exhibit 139-1) shows the location of all sedimentation ponds planned for the entire life of this project. Exhibit 148-1 shows the location and watershed for sedimentation ponds and diversions planned for the term of this permit and discussed in this section and section 12.150. A typical cross-section for proposed sedimentation ponds is shown in Figure 148-1.

148(a)(1)(C) contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

Since all sedimentation ponds located within the permit area are designed to detain surface runoff for 24 hours or until water quality is acceptable for discharge in accordance with TPDES Permit No03511 of the Texas Commission of Environmental Quality, no adverse hydrologic impacts are anticipated. The probable hydrologic consequences associated with pond construction are discussed under the response to §12.146.

During the term of this permit, seven sedimentation ponds are proposed for construction. The following is a list of the ponds, their respective watershed areas, and the percentage of the watershed to be disturbed by mining:

Sediment Pond Watershed Areas

<u>Pond Number</u>	<u>Watershed</u>	<u>Percent Disturbed</u>
	<u>Acres</u>	
SP-1	710.0	100
SP-2	609.0	100
SP-3	685.0	100
SP-4	132.0	100
SP-5	107.0	100
SP-6	317.0	100
SP-7	153.0	100

In the design of these ponds, pond sizing has been done by using the NRCS (formerly SCS) runoff curve number method. The runoff curve number is used to describe the infiltration and runoff generating capacity of the soils in the watershed based upon hydrologic soil group (HSG), land use and vegetative cover. Attachment 148-A contains a more detailed discussion on pond sizing procedures.