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August 29, 2011

Bridget Bohac
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P.O. Box 13087
Austin, TX 78711-2967

CHIEF CLERKS OFFICE

2011 OCT 24 PM 4:55

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Dos Republicas Coal Partnership
Permit No. WQ0003511000
CONTESTED CASE HEARING REQUEST

Via Fax No. 512-239-3311 and Regular Mail

Dear Ms. Bohac:

Enclosed please find an original and seven copies of Maverick County Environmental and Public Health Association's Response to the Executive Director to be filed in the above referenced case. Please call me at 210-212-3707 if you have any questions regarding this filing.

Sincerely,

Enrique Valdivia
Attorney at Law

CC: Service List

TCEQ DOCKET NO. 2011-1565-IWD

**IN THE MATTER OF
THE APPLICATION
OF
DOS REPUBLICAS
COAL PARTNERSHIP
FOR PERMIT NO.
WQ0003511000**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

MCEPHA'S RESPONSE TO THE EXECUTIVE DIRECTOR

**TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:**

CHIEF CLERKS OFFICE

2011 OCT 24 PM 4:55

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

I. Introduction

Maverick County Environmental and Public Health Association (MCEPHA) is composed of 118 members, many of who have asked for party status and a contested case hearing in their individual capacity. In a parallel administrative proceeding involving a coal mining permit at the same site also filed by Applicant Dos Republicas Coal Partnership, the Railroad Commission of Texas has granted party status to the Association; and Association members Gabriel and Leticia De La Cerda, Albert and Tina Ellis, Humberto and Ana Gamez, Alonzo and Eva Gonzalez, Mike P. Hernandez, Ernesto Ibarra, James and Rosa O'Donnell, E.K. and Betty Taylor.¹ These Association members are all land owners who live in close proximity to the proposed Eagle Pass Mine.

II. Issues Raised

The Association and the foregoing members raise a number of issues concerning contamination and degradation of water quality in Elm Creek, its tributaries such as Maverick County Water Control & Improvement District No. 1 Canal Lateral 20 and the Rio Grande. MCEPHA and it's members have also commented that there have been recent sightings of the endangered species of ocelot and jaguarondi.

MCEPHA alleges in its hearing request that the application is incomplete and inaccurate in that it fails to include all required information regarding the outfalls. Also, that the current and draft versions of the permit fail to provide clear and enforceable terms. And that renewal of this

¹ Railroad Commission Docket No. C5-0003-SC-42-C, Dos Republicas Coal Partnership, Permit No. 42A, Eagle Pass Mine Renewal/Revision/Expansion Application

permit without granting a contested case hearing would not comply with agency rules and precedent.

III. Right to a Contested Case Hearing

A right to a hearing exists in this case because the draft permit on its face proposes material changes in the pattern of discharge.² A review of both the current and draft permits reveals that drainage routes in outfalls 1 through 13 are described differently. Many routes previously having at least some bare verbiage indicating a flow pattern are now "to be determined" and thus left without any description at all. As MCEPHA has previously pointed out in its comments and request for party status the both current and draft versions of the permit fail to provide clear and enforceable terms. Rather than a "straight renewal" what the Commission is presented with here is an under the radar major amendment to this TPDES permit.

Applicant's reliance on the Commissions Order in Nueces County Water Control and Improvement District No. 5 for renewal of TPDES Permit No. WQ0011583001 is misplaced because that Order did not base its decision on changes to pattern of discharge. MCEPHA submits that the controlling precedent is Commission Order in Far Hills Utility District Regarding the Petition to Revoke TCEQ Water Quality Permit No. WQ0014555002 a copy of which is attached as Exhibit A. Of particular import to this case is Finding of Fact 27: "The change in outfall location constitutes a major amendment since it is a "material change in the patter or place of discharge" under 30 TAC 305.62 [c](1) and (2).

IV. Proposed Issues for Referral

1. Whether the proposed discharge and dust from the facility would contaminate or degrade the quality of Elm Creek and its Tributaries.
2. Whether the proposed discharge would impact Protestants' use of the waterways.
3. Whether the proposed facility would impact wildlife and endangered species in the area.
4. Whether the proposed facility would comply with TCEQ rules prohibiting groundwater contamination.
5. Whether the proposed discharge would adversely impact the City of Eagle Pass Water Works System's ability to treat and supply water to its customers.
6. Whether the application meets TCEQ rules.

² 30 TAC 55.201(i) (1) provides in pertinent part that there is no right to a hearing to renew or amend a permit if the applicant is not applying to change materially the pattern or place of discharge.

7. Whether Dos Republicas complied with TCEQ rules governing mailed and published notice of the application.
8. Whether the proposed permit includes clear and enforceable terms, including character of the discharge, flow limitations, and monitoring and reporting.
9. Whether the draft permit includes best available technology.
10. Whether the draft permit would allow violation of water quality standards.
11. Whether the draft permit would degrade receiving waters.
12. Whether the draft permit would adversely impact the public, the health of surrounding communities, and the environment.
13. Whether the facility would cause health hazards and nuisance conditions.
14. Whether the facility can comply with TCEQ monitoring and sampling requirements.
15. Whether the applicant complied with TCEQ rules regarding local rules and permits.
16. Whether the cleanup costs are accurately estimated.
17. Whether the facility complies with TCEQ rules on dust abatement.
18. Whether there are proper precautions taken to ensure post closure cleanup and restoration of the area, including setting an appropriate bond amount.
19. Whether the proposed discharge would impact water quality, aquatic life and contact recreation on Canal 20, Elm Creek and Rio Grande River.
20. Whether the retention ponds are adequately sized.
21. Whether the proposed discharge would contaminate drinking water sources.
22. Whether adequate study has been undertaken on the potential impacts from the proposed permit.
23. Whether the TCEQ's fact sheet was adequately prepared.
24. Whether the facility is a "new source".
25. Whether TCEQ staff properly designated Elm Creek as not a perennial stream within 3 miles of a discharge point.

26. Whether TCEQ staff properly calculated the water quality-based effluent limits and accurately concluded that the discharge would comply with Texas water quality standards.

27. Whether Dos Republicas' compliance history should take into account the operating history of other facilities it owns or operates outside of Texas.

28. Whether the potential expansion of the RRC permit to cover more acres than previously permitted would impact TCEQ's draft permit.

29. Whether the proposed facility would impact seismic faults in the area.

30. Whether the facility is located in a floodplain.

V. MAXIMUM EXPECTED DURATION OF HEARING

MCEPHA anticipates the maximum duration of the hearing to be five days. In addition, MCEPHA requests that at least part of the hearing be held in Eagle Pass.

VI. CONCLUSION

There is a right to a hearing on this matter under TCEQ rules and precedents regarding material changes to pattern of place of discharge in a TPDES permit.

Respectfully submitted,

Javier Riojas / w/ permission

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2011 the original and seven copies of Maverick County Environmental and Public Health Association's Repsonse to the Executive Director were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list.



Enrique Valdivia

MCEPHA Exhibit A

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).

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

- 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.
- 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.
- There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
- Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
- 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(9) 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.

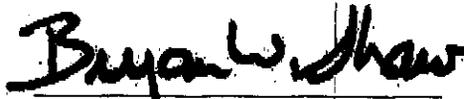
WQ0014555002 and set the matter on Commission agenda prior to expiration of this Order. Notwithstanding the above, this Order will expire upon the successful application and issuance by the Commission of a major amendment to TPDES Permit No. WQ0014555002.

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

**MAILING LIST
DOS REPUBLICAS COAL PARTNERSHIP
TCEQ DOCKET NO. 2011-1565-IWD**

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