

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 1, 2011

TO: Persons on the attached mailing list.

RE: Dos Republicas Coal Partnership
Permit No. WQ0003511000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Maverick County Courthouse, 500 Quarry Street, Suite 2, Eagle Pass, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and

- (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

Melissa Chao, Acting Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

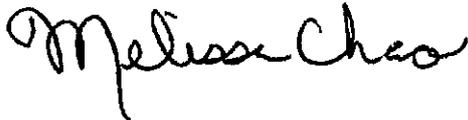
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



Melissa Chao
Acting Chief Clerk

MC/lg

Enclosure

MAILING LIST
for
Dos Republicas Coal Partnership
Permit No. WQ0003511000

FOR THE APPLICANT:

Andres Gonzales-Saravia Coss
Dos Republicas Coal Partnership
5150 North Loop 1604 West
San Antonio, Texas 78249

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

Lisa O. McCurley, P.E.
Hill Country Environmental, Inc.
1613 South Capitol of Texas Highway,
Suite 201
Austin, Texas 78746

PROTESTANTS/INTERESTED
PERSONS:

See Attached List.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Robert Brush, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Melinda Luxemburg, P.E., Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental
Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

Melissa Chao
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

AGERS , LETICIA
1100 INDUSTRIAL BLVD
EAGLE PASS TX 78852

AYERS , KEITH
PO BOX 1290
EAGLE PASS TX 78853-1290

BALDERAS , LYNN
EAGLE PASS JUNIOR HIGH SCHOOL
1750 N BIBB AVE
EAGLE PASS TX 78852

BARES , ELCIRA
MAVERICK COUNTY HOSPITAL DISTRICT
STE 140
3406 BOB ROGERS
EAGLE PASS TX 78852-5941

BARRERA , RODOLFO L
1637 GEORGE ST
EAGLE PASS TX 78852

BATRES , ROSIE
1378 ERLINE DR
EAGLE PASS TX 78852

BATRES , SERGIO R
1378 ERLINE DR
EAGLE PASS TX 78852

BAXTER , GEORGE
PO BOX 951
EAGLE PASS TX 78852

BENAVIDES , JEANNIE
PO BOX 164
EAGLE PASS TX 78853-0164

BENAVIDES , JEANNIE
1237 KENNOR DR
EAGLE PASS TX 78852

BRACAMONTES , OLIZES
1315 ANTELOPE DR
EAGLE PASS TX 78852

BURKHARDT , ELIZABETH
REPRESENTING THE KICKAPOO TRADITIONAL
9821 SHADOW WOOD DR
HOUSTON TX 77080-7107

CABALLERO , PEDRO
1373 RIVERA DR
EAGLE PASS TX 78852

CANTU , RAMSEY ENGLISH CITY MAYOR
THE CITY OF EAGLE PASS
100 S MONROE ST
EAGLE PASS TX 78852-4830

CASTILLO , ISMAEL
1797 COX ST
EAGLE PASS TX 78852

CASTILLON , JESUS
APT 304
3131 MEMORIAL CT
HOUSTON TX 77007-6175

CERDA , CAROLINA
3700 N US HWY 277
EAGLE PASS TX 78852

CHAPA , ISABEL
2109 N POINT DR
EAGLE PASS TX 78852

CISNEROS , GABRIELA
4112 MARGARITA
EAGLE PASS TX 78852

CONCERNED CITIZEN ,
EAGLE PASS BUSINESS JOURNAL INC
PO BOX 2160
EAGLE PASS TX 78853-2160

CONTRERAS , AURELIANO & TERRI
RT 2 BOX 211
EAGLE PASS TX 78852-0211

CONTRERAS , TERRI
RT 2 BOX 211
EAGLE PASS TX 78852

COOLEY , ROY GENERAL MANAGER
MAVERICK COUNTY WCID 1
RT 2 BOX 4700
EAGLE PASS TX 78852

CORTEZ , TRICIA
LAREDO COMMUNITY COLLEGE
P-11, 1ST FLOOR
WEST END WASHINGTON ST
LAREDO TX 78040-4395

CULLAR , CAROL
1345 SIMPSON DR
EAGLE PASS TX 78852

DE HOYOS , JULIA
1967 SUENO CIR
EAGLE PASS TX 78852

DE LA CERDA , GABRIEL & LETICIA
307 CR 307
EAGLE PASS TX 78852

DE LA CERDA , GABRIEL
307 CR 307
EAGLE PASS TX 78852-4994

DE LA PENA , CARLOS E
6106 N US HWY 277
EAGLE PASS TX 78852

DIAZ , ENRIQUETA
1242 ROYAL HAVEN DR
EAGLE PASS TX 78852

ELLIS , ALBERT & TINA
HC 2 BOX 172
EAGLE PASS TX 78852-9603

ESPINOZA , EDNA
1884 MISTY HOLLOW DR
EAGLE PASS TX 78852

ESPINOZA , IVAN
1884 MISTY HOLLOW DR
EAGLE PASS TX 78852

ESPINOZA , MR & MRS RAUL
3420 DEL RIO BLVD
EAGLE PASS TX 78852

ESPINOZA , SANTIAGO
1884 MISTY HOLLOW DR
EAGLE PASS TX 78852

FERRER, MRS RAMON & RAMON,MR RAMON
1298 AGARITA DR
EAGLE PASS TX 78852

FLORES , ANEL P
3658 DEER RUN BLVD
EAGLE PASS TX 78852

FLORES , JOSE
683 RIO DR
EAGLE PASS TX 78852

FLORES , VICTOR M
1315 SALINAS ST
EAGLE PASS TX 78852

FREDERICK , DAVID
LOWERRE FREDERICK PERALES ALLMON & RO
STE 200
707 RIO GRANDE ST
AUSTIN TX 78701-2719

FUENTES , JESUS
3949 DEER RUN BLVD
EAGLE PASS TX 78852

GARCIA , MARGARITA R
3245 SUENO CIR
EAGLE PASS TX 78852

GARZA , ALFREDO & CARMEN
1373 RIVERA DR
EAGLE PASS TX 78852

GARZA , ELSA & MARCO
RT 2 BOX 427
EAGLE PASS TX 78852

GARZA , GRICBLDA
3235 SUENO CIR
EAGLE PASS TX 78852

GARZA , JESSICA A
1225 PECAN DR
EAGLE PASS TX 78852

GARZA , MINERVA R
2874 RODRIGUEZ ST
EAGLE PASS TX 78852

GOMEZ , ANA & HUMBERTO
HC 2 BOX 190
EAGLE PASS TX 78852-9603

GOMEZ , MARIA D LOURDES VALENCIA
COLONIA CENTRO
VICTORIA #603 NORTE
PIEDRAS NEGRAS, COAHUILA, MEXICO 26000

GONZALEZ , ALONZO & EVA E
HC 2 BOX 185
EAGLE PASS TX 78852-9603

GONZALEZ , RAUL & ROSALINDA B
2008 RICKS DR
EAGLE PASS TX 78852

HEREDIA , RUDY
PO BOX 913
EAGLE PASS TX 78853

HERNANDEZ , CARLOS
STE 6
1975 N VETERANS BLVD
EAGLE PASS TX 78852

HERNANDEZ , GLORIA
490 HILLCREST BLVD
EAGLE PASS TX 78852

HERNANDEZ , MIKE P
HC 2 BOX 171B
EAGLE PASS TX 78852

HERNANDEZ , NORMA
HC 6 BOX 137
EAGLE PASS TX 78852

HERRING , LADYE & WALTER
3959 FM 1588
EAGLE PASS TX 78852

HERRING , LADYE
HC 2 BOX 187
EAGLE PASS TX 78852-9603

HIERRO , MR & MRS
1942 SUENO CIR
EAGLE PASS TX 78852

HURLEY , SOCORRO
2913 DIAZ ST
EAGLE PASS TX 78852

IBARRA, GRACE A & RODRIGUEZ, EKUTERIO
2978 SANCHEZ AVE
EAGLE PASS TX 78852

JIMENEZ, JUAN JOSE
PO BOX 5462
EAGLE PASS TX 78853

KING, THE HONORABLE TRACY O TX
REPRESENTATIVE
TX HOUSE OF REPRESENTATIVES
ROOM EXT E1.304
PO BOX 2910
AUSTIN TX 78768-2910

KYPUROS, JAIME
STE 300
700 N SAINT MARYS ST
SAN ANTONIO TX 78205-3507

LANDA, JOSE G
2937 RODRIGUEZ ST
EAGLE PASS TX 78852

LAWRENCE, RANDY
4289 FM 1664
QUEMADO TX 78877-7815

LIBSON JR, CARLOS
2798 SANCHEZ AVE
EAGLE PASS TX 78852

LIBSON SR, CARLOS S
108 WICHITA CIR
EAGLE PASS TX 78852

LIRA, RAFAEL S
1513 AGARITA DR
EAGLE PASS TX 78852

LOPEZ, ROBERTO
4162 BUCK DR
EAGLE PASS TX 78852-4500

LOZANO JR, CESAR R
1203 KIRIAKA DR
EAGLE PASS TX 78852

MARTIN, PROSSER & WALL, KIM
2781 FM 1588
EAGLE PASS TX 78852

MARTINEZ, CLAUDIO SANDOVAL
3913 DEER RUN BLVD
EAGLE PASS TX 78852

MARTINEZ, FRANCISCO A
PO BOX 808
EAGLE PASS TX 78853-0808

MARTINEZ, JUANITA V
3220 EL INDIO HWY
EAGLE PASS TX 78852

MARTINEZ, LUIS F
PO BOX 3511
EAGLE PASS TX 78853

MARTINEZ, RUBEN
1859 WILLOW CRBEK DR
EAGLE PASS TX 78852

MARTINEZ, SOCORRO
1859 WILLOW CREEK DR
EAGLE PASS TX 78852

MELCHOR, ELVIRA
1275 LAZAR DR
EAGLE PASS TX 78852

MONCADA, ROSIE M
1216 ROYAL CLUB DR
EAGLE PASS TX 78852

MONSIVAIS, ARMANDO
RT 2 BOX 346
EAGLE PASS TX 78852

MORALES JR, HERIBERTO
401 QUARRY ST
EAGLE PASS TX 78852

MORALES, MRS JOSE M
1232 ROYAL HAVEN DR
EAGLE PASS TX 78852

MURR, JAMES C
CITY OF JUNCTION
730 MAIN ST
JUNCTION TX 76849-4608

NAVEJAS, EDUARDO
1296 AGARITA DR
EAGLE PASS TX 78852

O'DONNELL, JIM & ROSA
HC 2 BOX 194
EAGLE PASS TX 78852-9603

O'DONNELL, ROSA
HC 2 BOX 194
EAGLE PASS TX 78852

ORTIZ, BEATRIZ
1710 NELLY MAE GLASS DR
EAGLE PASS TX 78852

OVERBO, CELINA
PO BOX 2910
AUSTIN TX 78768-2910

PALMER, MARTHA
3427 TINA DR
EAGLE PASS TX 78852

PALOMO , SONIA
2632 CENIZO HTS
EAGLE PASS TX 78852

PERALES , JORGE EDUARDO
PO BOX 487
EAGLE PASS TX 78853

PEREZ , ELI & SHARO
PO BOX 4728
EAGLE PASS TX 78853

RAMIREZ , MARTHA M
PO BOX 2020
EAGLE PASS TX 78853

RAMIREZ , MARTHA S
PO BOX 2020
EAGLE PASS TX 78853

RAMIREZ , MARTHA S
410 CR 501
EAGLE PASS TX 78852

RAMOS , RICARDO
931 WEBSTER ST
EAGLE PASS TX 78852-3957

REYNA , GLORIA E
1340 GAZELLE DR
EAGLE PASS TX 78852

ROBINSON , REBECCA
104 SIOUX CIR
EAGLE PASS TX 78852

ROCHA , MOISES
3674 DEER RUN BLVD
EAGLE PASS TX 78852

RODRIGUEZ , GLORIA A
RT 2 BOX 563
EAGLE PASS TX 78852

RODRIGUEZ , MRS HENRY P
2908 RODRIGUEZ ST
EAGLE PASS TX 78852

RODRIGUEZ , JOE & RACHEL
2092 LUCINO LOOP
EAGLE PASS TX 78852-3238

RODRIGUEZ , OLYVIA
HC 2 BOX 171
EAGLE PASS TX 78852-9603

ROPER , PAULA M
11180 N US HWY 277
EAGLE PASS TX 78852

ROSALES , JOSE LUIS
3737 DEER RUN BLVD
EAGLE PASS TX 78852

RUIZ , ROBERTO
STE 3
500 QUARRY ST
EAGLE PASS TX 78852-4576

SANCHEZ , DIANA L
PO BOX 2975
EAGLE PASS TX 78853

SANCHEZ , JESUS
1003 STEPHANIE DR
EAGLE PASS TX 78852

SANDOVAL , CLAUDIO H
3907 DEER RUN BLVD
EAGLE PASS TX 78852

SANDOVAL , EDWARD M
2590 BECOS ST
EAGLE PASS TX 78852

SANDOVAL , JESUS H
3903 DEER RUN BLVD
EAGLE PASS TX 78852

SANDOVAL , JOSE
3853 FAWN DR
EAGLE PASS TX 78852

SIFUENTES , LUIS E
1685 ROCKHILL DR
EAGLE PASS TX 78852

SULLIVAN , JOHN P
48 ARNULFO DIAZ ST
EAGLE PASS TX 78852

TAYLOR , BETTY & B K
HC 2 BOX 186
EAGLE PASS TX 78852-9603

TORRES , MR & MRS SANTOS
RT 2 BOX 361
EAGLE PASS TX 78852

TORRES , YADIRA
PO BOX 2974
EAGLE PASS TX 78853

TREVINO , MR & MRS ALFONSO A
B
1298 ZARETTE CIR
EAGLE PASS TX 78852

TREVINO , MR & MRS ENRIQUE
1298 ZARETTE CIR
EAGLE PASS TX 78852

TREVINO , HECTOR R
70 ACADEMY RD
EAGLE PASS TX 78852

URESTI , THE HONORABLE CARLOS I
THE SENATE OF THE STATE OF TEXAS DISTRICT
ROOM E1.810
PO BOX 12068
AUSTIN TX 78711-2068

URRUTIA , MARIBEL
PO BOX 5462
EAGLE PASS TX 78853

VALLEJO , ALMA R
APT 1
3810 DEER RUN BLVD
EAGLE PASS TX 78852

VELA , JUAN B
1309 ERLINE DR
EAGLE PASS TX 78852

VELA , SANDRA
1309 ERLINE DR
EAGLE PASS TX 78852

VIETHS , TERESA
2600 CENIZO DR
EAGLE PASS TX 78852

VILLARREAL , BLANCA
1324 ALAMOS A ST
EAGLE PASS TX 78852

VILLARREAL , MRS & MR GULLERMO
3572 OLMOS CIR
EAGLE PASS TX 78852

TPDES PERMIT NO. WQ0003511000

APPLICATION BY §
DOS REPUBLICAS COAL §
PARTNERSHIP FOR TPDES §
PERMIT NO. WQ0003511000 §

BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

JUN 20 PM 1:44

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

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

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

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

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

BACKGROUND

Description of Facility

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

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

Procedural Background

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

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

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

Access to Rules, Laws and Records

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

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

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

COMMENTS AND RESPONSES

COMMENT 1:

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

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

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

RESPONSE 1:

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

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

COMMENT 2:

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

RESPONSE 2:

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

COMMENT 3:

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

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

RESPONSE 3:

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

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

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

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

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

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

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

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

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

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

COMMENT 4:

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

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

RESPONSE 4:

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

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

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

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

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

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

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

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

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

Assumptions used in deriving the effluent limitations include segment values for hardness, chlorides, pH, and total suspended solids (TSS) according to the segment-specific values contained in the TCEQ guidance document, *Procedures to Implement the Texas Surface Water Quality Standards (IPs)*. The Segment No. 2304 values are 250 mg/l CaCO₃ for hardness, 119 mg/l chlorides, 7.8 standard units for pH, and 5 mg/l for

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

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

COMMENT 5:

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

RESPONSE 5:

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

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

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

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

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

COMMENT 6:

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

RESPONSE 6:

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

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

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

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

2. Active Mining Area:

- A. The term "active mining area" is defined as the areas, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.
- E. For discharges from "active mining area" ponds that do not contain mine pit water (or water that has contacted acid forming or toxic forming spoil) the following effluent limitations shall apply, and shall replace the effluent limitations listed on page 2 of this permit.

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

EFFLUENT LIMITATIONS DURING PRECIPITATIONS:

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

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

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

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

COMMENT 7:

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

RESPONSE 7:

The ED acknowledges receipt of this information.

COMMENT 8:

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

RESPONSE 8:

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

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

5. Post Mining Areas:

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

- B. The term "Reclamation area" is defined as the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.
- C. The term "Bond Release" is defined as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed. Phase Two completion is that point in the reclamation process where the property has been recontoured and replanted but prior to final bond release.
- D. Discharges from post mining areas are not authorized under this permit. The permittee shall obtain a permit amendment prior to initiation of any discharge from post mining operations.

COMMENT 9:

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

RESPONSE 9:

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

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

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

COMMENT 10:

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

RESPONSE 10:

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

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

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

COMMENT 11:

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

RESPONSE 11:

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

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

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

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

COMMENT 12:

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

RESPONSE 12:

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

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

COMMENT 13:

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

RESPONSE 13:

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

COMMENT 14:

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

RESPONSE 14:

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

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

- b) Upon petition, an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will:
- (1) be incompatible with existing state or local land-use plans or programs;
 - (2) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;
 - (3) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or
 - (4) affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

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

COMMENT 15:

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

RESPONSE 15:

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

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

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

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

COMMENT 16:

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

RESPONSE 16:

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

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

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

(*) When /discharge occurs.

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

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

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

COMMENT 17:

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

RESPONSE 17:

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

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

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

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

COMMENT 18:

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

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

RESPONSE 18:

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

COMMENT 19:

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

RESPONSE 19:

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

COMMENT 20:

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

RESPONSE 20:

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

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

COMMENT 21:

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

RESPONSE 21:

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

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

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

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

COMMENT 22:

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

RESPONSE 22:

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

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

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

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

COMMENT 23:

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

RESPONSE 23:

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

COMMENT 24:

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

RESPONSE 24:

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

COMMENT 25:

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

RESPONSE 25:

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

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

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

- (1) the permittee has failed or is failing to comply with the conditions of the permit or a commission order, including failure to construct, during the life of the permit, facilities necessary to conform with the terms and conditions of the permit;
 - (2) the permit or the operations thereunder have been abandoned;
 - (3) the permit or other order is no longer needed by the permittee;
 - (4) the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time;
 - (5) a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm;...or
 - (6) (10) such other cause sufficient to warrant termination or suspension of the authorization.
- d) When the executive director determines revocation or suspension proceedings are warranted, a petition requesting appropriate action may be filed by the executive director with the commission. A person affected by the issuance of a permit or other order of the commission may initiate proceedings for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.
- e) If the executive director or an affected person intends to file a petition to revoke or suspend a permit, notice of the intention and a copy of the petition to be filed shall be personally served on or sent by registered or certified mail to the permittee at the last address of record with the commission. This notice shall be given at least 15 days before a petition for revocation or suspension is submitted to the executive director or filed with the commission for further proceedings. Failure to provide such notice shall not be jurisdictional....
- f) The commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if the commission finds after notice and hearing, that:
- (1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;
 - (2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;
 - (3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;
 - (4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by a rule of the commission;

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

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

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

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

COMMENT 26:

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

RESPONSE 26:

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

COMMENT 27:

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

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

RESPONSE 27:

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

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

COMMENT 28:

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

RESPONSE 28:

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

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

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

COMMENT 29:

Maverick County challenges the ED’s conclusion that this facility is not a “new source” under the federal rules.

RESPONSE 29:

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

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

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

COMMENT 30:

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

RESPONSE 30:

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

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

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

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

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

COMMENT 31:

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

RESPONSE 31:

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

COMMENT 32:

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

RESPONSE 32:

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

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

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

COMMENT 33:

The following comments were received from various commenters:

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

RESPONSE 33:

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

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

COMMENT 34:

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

RESPONSE 34:

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

COMMENT 35:

The following comments were also received from various commenters:

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

RESPONSE 35:

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

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

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

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

COMMENT 36:

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

RESPONSE 36:

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

COMMENT 37:

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

RESPONSE 37:

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

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

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

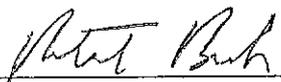
Secondly, when the Applicant submitted their renewal application in February, 2010, they requested that the discharge descriptions of a number of the ponds be updated in Other Requirements No. 3 to reflect their new location on the facility map. The ED failed to make the requested change. Therefore,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

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

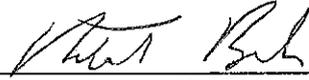
Robert Martinez, Director
Environmental Law Division

By 
Robert Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-5600

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

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



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