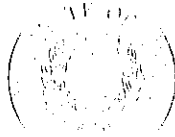


Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 7, 2011

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: DOS REPUBLICAS COAL PARTNERSHIP
TCEQ DOCKET NO. 2011-1565-IWD**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, reading "Amy Swanholm", is positioned above the typed name.

Amy Swanholm, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2011-1565-IWD

IN THE MATTER OF	§	BEFORE THE TEXAS
THE APPLICATION	§	COMMISSION ON
OF	§	ENVIRONMENTAL
DOS REPUBLICAS	§	QUALITY
COAL PARTNERSHIP	§	
FOR PERMIT NO.	§	
WQ0003511000		

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO
REQUESTS FOR HEARING AND REQUESTS FOR
RECONSIDERATION**

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

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) with a Response to Requests for Hearing in the above-referenced matter. Although Dos Republicas Coal Partnership (Dos Republicas) has applied for a renewal of their existing permit, OPIC recommends the Commission find there is a right to a hearing on this matter. OPIC also recommends the Commission find that the matter should be referred to SOAH for a contested case hearing and the following requesters are affected; Kickapoo Traditional Tribe of Texas, the City of Eagle Pass, Maverick County Environmental and Public Health Association, Maverick County, Texas, Mr. George Baxter, Albert and Tina Ellis, Humberto and Ana Maria Gomez, Alonzo and Eva E. Gonzalez, Mr. Mike P. Hernandez, Walter and Ladye Herring, Mr. Ernesto Ibarra, Jim and Rosa O'Donnell, and Betty & E.K. Taylor.

As a preliminary matter, OPIC notes that the applicant needs this permit only if it is granted a surface mining permit application, currently the subject of a contested case hearing at the Texas Railroad Commission (RRC), scheduled for October 17, 2011. Should the RRC not approve the surface mining application, Dos Republicas would have no need for a water quality discharge permit from the

TCEQ. Therefore, OPIC also recommends the Commissioners continue hearing this matter until after the RRC makes a final determination on the surface mining permit application. In the alternative, in the Commission Order granting a hearing and the subsequent referral of this matter to SOAH, OPIC recommends including instructions to incorporate an abatement into the procedural schedule until there is a final decision from the RRC.

I. INTRODUCTION

A. Background of Facility

Dos Republicas intends to operate the Eagle Pass Mine, a sub-bituminous coal mine. It 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. The draft permit contains no flow limit, but limits the daily average amount of Total Suspended Solids (TSS) to 35 mg/l, total Iron to 3.0 mg/l, total manganese to 2.0 mg/l. It also limits to maximum daily average of total selenium to 0.036 mg/l and requires a daily average pH of 6.0 (su minimum) mg/l, and a daily maximum pH of 9.0 (su minimum) mg/l.

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, and has never discharged under its current permit or any previous permit. 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; thenceforth 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.

B. Procedural Background

This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999. 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. The deadline to request a contested case hearing was August 31, 2011.

The following groups and individuals requested a contested case hearing; Kickapoo Traditional Tribe of Texas, City of Eagle Pass, Maverick County Hospital District, Anson Howard, Ryland Howard, Rio Grande International Study Center, Maverick County Environmental and Public Health Association, Maverick County, Texas, Mr. Keith Ayers, Mr. George Baxter, Mr. Jesus Castillon, Aureliano and Terri Contreras, Gabriel and Leticia De La Cerda, Dr. Carlos E. De La Pena, Albert and Tina Ellis, Mr. & Mrs. Raul Espinosa, Mr. and Mrs. Ramon Ferrer, Jesus Fuentes, Mr. and Mrs. Hierro, Claudio Sandoval Martinez, Mr. and

Ms. Jose M. Morales, Claudio H. Sandoval, Jesus Sandoval, Jose Sandoval, Mr. and Mrs. Santos Torres, Mr. and Mrs. Guillermo Villareal , Mr. and Mrs. Alfonso A. Trevino, Mr. and Mrs. Enrique Trevino, Eli and Sharo Perez, Walter and Lady Herring, Gabriel and Leticia De La Cerda, Betty and E.K. Taylor, Prosser Martin and Kim Wall, Jim and Rosa O'Donnell, Humberto and Ava Gomez, Tina and Alberta Ellis, Alonzo and Eva Gonzalez, Mike P Hernandez, Dr. Carlos Hernandez, Mr. Ernesto Ibarra, Jim and Rosa O'Donnell, Eil and Staro Perez, Ms. Martha M. Ramirez, and Ms. Martha S. Ramirez. All requests were timely with the exception of Gabriel and Leticia De La Cerda's request.

II. ANALYSIS OF REQUEST FOR RECONSIDERATION

A. Applicable Law

Section 55.201(e) of the TCEQ procedural rules states that any person may file a request for reconsideration of the Executive Director's decision, and the request must expressly state that the person is requesting reconsideration of the Executive Director's decision and give reasons why the decision should be reconsidered. 30 Tex. Admin. Code § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and response to comments. *Id.*

B. Request for Reconsideration

The Kickapoo Traditional Tribe of Texas, City of Eagle Pass, Maverick County Hospital District, Mr. Anson Howard and Mr. Ryland Howard requests that the matter be reconsidered. They have also requested a contested case hearing. They request the matter be reconsidered because the ED did not address several issues in its Response to Comments (RTC). These issues include; the impact that air pollution may have on nearby waterways, the impact of uncovered coal transport trains on county waterways, the impact on water levels in the Rio Grande, limitations on the duration of coal mining permits, and

whether this matter is premature, in light of the Railroad Commission's (RRC) current permit dispute.

The request for reconsideration relies on substantially similar issues cited to support the hearing request. An evidentiary record would be necessary for OPIC to make a recommendation to the Commission on whether the ED's decision to issue the permit should be reconsidered, based on these issues. Accordingly, OPIC recommends denying the request for reconsideration and considering those issues that are relevant and material during the contested case hearing.

III. RIGHT TO A CONTESTED CASE HEARING

Texas Water Code (TWC) §26.028(d) states that the Commission may approve an application to renew a permit without a public hearing, under certain conditions.¹ 30 TAC §55.201(i) also provides that no right to a hearing exists for an application under Texas Water Code, Chapter 26, to renew or amend a permit if:

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

A right to a hearing exists on this application because Dos Republicas, application does not meet all of the requirements to foreclose the right to a hearing on a renewal application. The draft permit appears to propose material changes in the pattern of discharge. In addition, due to Dos Republicas' application for an expansion of its current surface mining permit with the RRC, it

¹ See also 30 TAC § 50.113(d)(4), and 55.211(d)(4).

may increase the amount that the facility could discharge. Ultimately, though, the application does not fit neatly into the “no increase renewal” category for which there would not be a right to a hearing. Dos Republicas has never discharged under its existing permit, even though it has had a permit from TCEQ or TCEQ’s predecessor agencies since 1995. The permit would be for a facility permitted by the RRC, for which the RRC is currently holding a contested case hearing. Therefore OPIC recommends the Commission find that there is a right to a hearing on this matter.

First, it appears that the pattern or location of discharge would change materially from the current permit. The wastewater system at the mine will consist of sedimentation ponds draining disturbed areas of the active coal mining areas and reclamation operation. These sedimentation ponds would be used to hold mine tailings and contaminated water. The location of the sedimentation ponds is undefined in the current and draft permits; Dos Republicas is only required to keep a map on-site.

The drainage routes are described in the current and draft permit, however these descriptions differ. Dos Republicas requested several changes to the draft permit, adopted by the ED in its RTC, that indicate changes in the proposed discharge route.² Other parameters of the proposed holding ponds remain undefined in the TCEQ draft permit, and may change, should the RRC permit require different design from that proposed in the TCEQ draft permit. Therefore it appears that the draft permit proposes changes to the pattern of discharge.

Second, it is currently impossible to determine whether Dos Republicas’ application would increase the quantity of waste authorized to be discharged. The facility is permitted to discharge stormwater and mine seepage from active mining areas on an intermittent and flow variable basis. However, the current permit, issued on November 16, 2006, contains no flow limitations for any of the outfalls. Neither does the draft permit. Dos Republicas is required to report the daily average and daily maximum flow, and the ED’s Response to Comments on

² Please see Attachment A and B for a comparison of the 13 discharge routes in the current permit in comparison to the draft permit.

the most recent application states that it may amend the permit, should subsequent flow data indicate that additional limits would be necessary.³ But currently there is no way to determine whether the flow would be increasing, because there are no flow limitations in the current permit or the draft permit, and there has been no discharge reported under the current permit.

Furthermore, because there is no flow limit, the authorized amount of flow is directly related to the production capacity of the surface mining operation. And Dos Republicas has applied for an expansion of its existing permit with the RRC. This may lead to an increase in the permitted production levels, if permitted by the RRC. This may indicate that the flow from the facility would be greater under the draft permit than under the existing permit, as the draft permit would be permitting discharge from a facility with a larger production capacity.

Thirdly, it is also impossible to determine whether the proposed discharge will maintain or improve the quality of waste authorized to be discharged. Although the draft permit contains identical/more stringent effluent limitations, Dos Republicas has never discharged under the current permit, even though it has possessed a permit to do so since 1994. Furthermore, the ED stated in its draft permit that after Dos Republicas begins discharging, it may amend the permit based on effluent testing.

Fourth, there was a public meeting held on in Eagle Pass on January 25, 2011. The hearing requests raise an issue as to whether adequate consideration and response to all timely received and significant public comment has been given by the ED.⁴ Several requesters contend that the ED did not adequately address all significant issues raised during the comment period. The issues they believe have not been addressed by the ED include; the impact that air pollution may have on nearby waterways, the impact of uncovered coal transport trains on county waterways, the impact on water levels in the Rio Grande, limitations on the duration of coal mining permits, and whether this matter is premature, due to the Railroad Commission's (RRC) current permit dispute.

³ *Executive Director's Response to Public Comment on the Application by Dos Republicas Coal Partnership for TPDES Permit No. WQ0003511000 (RTC)*, July 20, 2011, at 8.

⁴ Texas Water Code § 26.028(d)(3).

Finally, the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit. However, the applicant has no compliance history for this site or any other site in Texas.

This is not a typical permit renewal. The Applicant has possessed a discharge permit since 1995, with renewals in 2000 and 2005. However it has never discharged under these permits. Thus, several of the requirements to foreclose a right to a hearing just do not apply to this application. There is no compliance history. Any discharge under the draft permit would cause the authorized quantity of waste to be discharged to increase. There are no flow limitations in the draft permit, and differences in the descriptions of the 13 discharge routes may constitute a material change in the pattern or location of discharge. However, because the surface mining permit is currently the subject of a contested case hearing at the RRC, it is impossible to determine what the actual design of the facility would be.

If an applicant meets all of the requirements in 30 TAC §55.201(i), then there is no right to a hearing on the renewal or amendment application. Dos Republicas has not met all of these requirements, therefore the public's right to a hearing on this application has not been foreclosed.

IV. ANALYSIS OF REQUESTS FOR CONTESTED CASE HEARINGS

A. Applicable Law

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code (TWC) § 5.556 added by Acts 1999, 76th Leg., ch 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be

adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application. 30 TAC § 55.201(d). Under 30 TAC § 55.203(a), 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.” This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

A group or association may request a contested case hearing if:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization’s purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). The ED, OPIC, or applicant may request the group or association provide an explanation of how the group or association meets these requirements. 30 TAC § 55.205(b).

The Commission shall grant an affected person’s timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the

comment period and that are relevant and material to the commission's decision on the application. 30 TAC §55.211(c).

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

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

B. Determination of Affected Person Status

The following groups and individuals requested a contested case hearing; Kickapoo Traditional Tribe of Texas, City of Eagle Pass, Maverick County Hospital District, Anson Howard, Ryland Howard, Rio Grande International Study Center, Maverick County Environmental and Public Health Association, Maverick County, Texas, Keith Ayers, George Baxter, Jesus Castillon, Aureliano and Terri Contreras, Gabriel and Leticia De La Cerda, Dr. Carlos E. De La Pena, Albert and Tina Ellis, Mr. & Mrs. Raul Espinosa, Mr. and Mrs. Ramon Ferrer, Jesus Fuentes, Mr. and Mrs. Hierro, Claudio Sandoval Martinez, Mr. and Ms. Jose M. Morales, Claudio H. Sandoval, Jesus Sandoval, Jose Sandoval, Mr. and Mrs. Santos Torres, Mr. and Mrs. Guillermo Villareal, Mr. and Mrs. Alfonso A. Trevino, Mr. and Mrs. Enrique Trevino, Eli and Sharo Perez, Walter and Lady Herring, Betty and EK Taylor, Prosser Martin and Kim Wall, Jim and Rosa O'Donnell, Humberto and Ava Gomez, Alonzo and Eva Gonzalez, Mike P Hernandez, Dr. Carlos Hernandez, Mr. Ernesto Ibarra, Martha M. Ramirez, Martha S. Ramirez. All requests were timely with the exception of Gabriel and Leticia De La Cerda's.

OPIC finds the following requesters affected; Kickapoo Traditional Tribe of Texas, the City of Eagle Pass, Maverick County Environmental and Public Health Association, Maverick County, Texas, Mr. George Baxter, Albert and Tina Ellis, Humberto and Ana Maria Gomez, Alonzo and Eva E. Gonzalez, Mr. Mike P. Hernandez, Walter and Ladye Herring, Mr. Ernesto Ibarra, Jim and Rosa O'Donnell, and Betty & E.K. Taylor.

1. Kickapoo Traditional Tribe of Texas, City of Eagle Pass, Maverick County Hospital District, Anson Howard, and Ryland Howard

TCEQ received timely hearing requests from attorneys Elizabeth Burkhardt and Gloria E. Hernandez on behalf of the Kickapoo Traditional Tribe of Texas ("Tribe") on January 24, 2011, January 31, 2011, and August 31, 2011, before the deadline to request a contested case hearing, and before the close of the comment period. All of these requests are substantially similar in form and substance. One of the August 31, 2011 hearing requests includes requests on behalf of the City of Eagle Pass, Texas, Anson Howard, Ryland Howard, and the Maverick County Hospital District. The hearing requests state the requesters are concerned that Dos Republicas' mine will adversely impact them by contaminating their water supply and their air quality. The requesters are concerned that coal dust will cause tumors, pneumoconiosis, bronchitis and emphysema, general lung damage, rubbery black tissue that of the adhered to the chest wall, decreases in breathing capacity, pulmonary hypertension, and premature death. Furthermore, the sulfur in the coal dust causes acid rain and can be harmful to vegetation. Most of the Tribe members obtain their sustenance directly from crops grown on the reservation, irrigated by waters from the Rio Grande River downstream from the Dos Republicas mining facility.

The requesters also state that due to the remoteness of Eagle Pass, there will not be an appropriate or effective level of monitoring and sampling of air and water. The closest environmental response companies are located in Laredo and San Antonio, which will not be able to provide timely environmental monitoring. They argue that TCEQ should grant a contested hearing because the RRC has

granted a contested hearing, since a permit for discharge without a permit to operate would be inappropriate.

a. Kickapoo Traditional Tribe of Texas

The Tribe's reservation is located approximately 12 miles from the proposed mining operation. However, the tribe rents agricultural lands in the vicinity of the proposed mines. Members also live and work throughout Maverick County. They also consume water from the City of Eagle Pass, which withdraws water from the Rio Grande River, along the proposed discharge route. The Tribe identified Mr. Juan Garza, Jr. as an individual member of the Tribe, who will be adversely impacted by Dos Republicas mining operation. Mr. Garza lives on the reservation of the Tribe. According to the Tribe, Mr. Garza believes the quality of both the air and water will be adversely affected by water discharge from the Dos Republicas mine into Elm Creek. The Tribe is also a party to the contested case hearing currently underway at the Railroad Commission.

A group or association may request a hearing if (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right; (2) the interests the group or association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Although the Tribe does not include enough information to show that they would have standing as a group or association, the Tribe would have standing as a governmental entity with an interest in the issues relevant to the application. 30 TAC § 55.203. The Tribe is a governmental entity under the Indian Recognition Act of June 19, 1934, (48 Stat. 984), Public Law 97-429. It has expressed interest in water quality issues that would impact its members. Further, the Tribe states that it has an interest in environmental quality as Native Americans who enjoy a close relationship to the land and obtain sustenance directly from crops grown on the reservation and irrigated with water taken from the proposed receiving waters.

b. City of Eagle Pass

In addition to raising the above issues, the City of Eagle Pass (the City) states that the facility from which the discharge would be made is within the City's boundaries. The City is a governmental entity that would be affected under 30 TAC § 55.203(b) and (c)(6). It is responsible for ensuring the safety and health of its citizens. Therefore OPIC finds the City is affected.

c. Anson Howard and Ryland Howard

Anson and Ryland Howard (the Howards) claim that they own land very close to the proposed facility. However the hearing request includes no information about the location of this land. Neither has the ED included either of these names on their map. Without more information about their personal justicable interest, OPIC cannot conclude that they are affected.

2. Rio Grande International Study Center

TCEQ received timely hearing requests from Ms. Tricia Cortez on behalf of the Rio Grande International Study Center on January 31, 2011, before the deadline to request a contested case hearing.

The hearing request states Ms. Cortez is concerned with the potential adverse impact to the river and public water supply in Laredo, Texas. Ms. Cortez is specifically concerned with chemicals from the mining operation being brought to the surface and impacting the downstream water supply in Laredo, Texas.

A group or association may request a hearing if (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right; (2) the interests the group or association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

The Rio Grande International Study Center has not met any of the requirements for group standing. Therefore OPIC finds that the Rio Grande International Study Center is not affected.

3. Maverick County Environmental and Public Health Association

TCEQ received timely hearing requests from Maverick County Environmental and Public Health Association (Association) on August 31, 2011, before the deadline to request a contested case hearing.

The hearing request states the Association is concerned that the proposed discharge of storm water and mine seepage and dust from the proposed sub-bituminous coal mine will contaminate and degrade the quality of the water on Elm Creek and its tributaries such as Maverick County Water Control & Improvement District No. 1 Canal Lateral 20.

The Association contends the discharge from the mining operations will cause serious health issues for its members and eliminate recreational privileges from members, such as fishing and hunting. In addition, the property value of some of their members will decrease due to the mining operations.

The Association also contends the permit application is incomplete and inaccurate in that it fails to include all required information. The permit fails to provide clear and enforceable terms as to the character of the discharge, flow limitations, and adequate monitoring and reporting. In addition, the application does not include a complete list of all names and addresses of person affected by the proposed application nor is it consistent or compatible with applicable water quality management plans.

The Association identified several members who are affected persons; Gabriel and Leticia De La Cerda, Albert and Tina Ellis, Humberto and Ana Gomez, Alonzo and Eva Gonzalez, Mike P. Hernandez, Ernesto Ibarra, James and Rosa O'Donnell, E.K. and Betty Taylor. These individuals have standing in the RRC contested case hearing and state that they own land in close proximity to the facility. Gabriel and Leticia De La Cerda state that they are concerned about

the impact on bird and fish populations in Elm Creek. The De La Cerda family states that it owns 10 acres of land along Elm Creek. They have also submitted a separate hearing request, which OPIC would recommend granting, but for its untimeliness. Betty Taylor and Jim and Rosa O'Donnel have also submitted individual hearing requests, which OPIC recommends granting. Please see Sections IV.B.10, 19, and 22 for an analysis of these hearing requests.

The interest the group seeks to protect is related to the protection of the environment and public health, issues that are central to the group's purpose. The relief requested also does not appear to require the participation of individual members. Therefore OPIC finds that the Association is affected.

4. Maverick County, Texas

TCEQ received timely hearing requests from Maverick County, Texas on January 25, 2011, before the deadline to request a contested case hearing.

The hearing request states Maverick County is concerned with its parkland property located on Elm Creek and the proximity of this property to the proposed mining operation. Maverick County is also concerned with its ability to protect the health and welfare of Maverick County residents. The County is claiming, due to their responsibility of protecting the citizens of Maverick County, it is affected differently than general members of the public at large by the activities to be authorized by the Dos Republicas mining operation. The County claims discharge of chemically treated water and mine seepage into Elm Creek creates a risk of adverse impacts to Elm Creek and the drinking water source for the county.

The County is concerned their citizens are much more likely to suffer from an array of chronic life-threatening health problems, such as higher rates of cardiopulmonary disease, chronic obstructive pulmonary disease, hypertension diabetes, lung and kidney disease. The County claims the mining operation will have an adverse impact on children attending local schools in the county. It is also concerned with the potential destruction of their infrastructure caused by heavy vehicular traffic and usage of heavy equipment.

The County questions the adequacy of the fact sheet prepared by TCEQ for the proposed permitting of the mining operation. The County argues the fact sheet does not meet the standards of 40 CFR § 124.8, specifically relating to the quantities of waste to be discharged. The County also challenges the conclusion that the facility is not a “new source”, the determination that Elm Creek is not a perennial stream within 3 miles of a discharge points and the attendant analysis of water-quality-based effluent limitations and compliance of the would –be discharge with the State’s water quality standards.

The County is a governmental entity that would be affected under 30 TAC § 55.203(b) and (c)(6). Maverick County states that it is charged with safeguarding the health and welfare of its citizens. It is also exercises local enforcement authority over TCEQ permits. And the Maverick County Commissioners Court passed a resolution formally opposing the proposed permit. Therefore OPIC finds that the County is affected.

5. Requester Group ¹⁵

TCEQ received a timely hearing request from Requester Group 1 on January 20, 2011, before the deadline to request a contested case hearing.

The hearing request states the requesters live close to the proposed coal mine and state that they will be adversely affected by the mining operation. Although several of these individuals live very close to the facility, OPIC cannot find that these requesters are affected, as this hearing request does not show that they have a personal justicable interest not common from the general public. However, OPIC notes that some of these hearing requestors also submitted

⁵⁵ Mr. & Mrs. Raul Espinosa, Mr. and Mrs. Ramon Ferrer, Jesus Fuentes, Mr. and Mrs. Hierro, Claudio Sandoval Martinez, Mr. and Ms. Jose M. Morales, Claudio H. Sandoval, Jesus Sandoval, Jose Sandoval, Mr. and Mrs. Santos Torres, Mr. and Mrs. Guillermo Villareal, Mr. and Mrs. Alfonso A. Trevino, Mr. and Mrs. Enrique Trevino, Eli and Sharo Perez, Walter and Lady Herring, Gabriel and Leticia De La Cerda, Betty and EK Taylor, Prosser Martin and Kim Wall , Jim and Rosa O'Donnell, Humberto and Ava Gomez, Tina and Alberta Ellis, Alonzo and Eva Gonzalez, Mike P Hernandez.

individual hearing requests and may have party status through those separate hearing requests.

6. Mr. Keith Ayers

TCEQ received a timely hearing request from Keith Ayers on January 17, 2011, before the deadline to request a contested case hearing. The hearing request states that Mr. Ayers is concerned about the Dos Republicas Coal Partnership's mine, which will be constructed near Eagle Pass, Texas. Mr. Ayers is concerned that discharge from the mine will adversely impact the public water supply of the City of Eagle Pass and aquatic life on the Elm Creek and the Rio Grande River. As a citizen of Maverick County and Eagle Pass, Texas, Mr. Ayers is specifically concerned that his drinking water will be contaminated by the Dos Republicas Coal Partnership's Mine.

He states that he is a citizen of Maverick County and the City of Eagle Pass, however he has listed no information on how his concerns are separate from that of the general public. Therefore OPIC cannot find that Mr. Ayers is affected.

7. Mr. George Baxter

TCEQ received a timely hearing request from George Baxter on August 25, 2011, before the deadline to request a contested case hearing. Mr. Baxter is concerned that the retention ponds designed to contain storm water runoff are designed for a 10 year rain event; however, the mine is projected to be in operation for 19 years. Mr. Baxter contends the storm water runoff will not be properly contained, thus releasing minerals and other pollutants into Elm Creek. In addition, Mr. Baxter argues this will in fact adversely impact the drinking water of the City of Eagle Pass, Texas and "cut off the entire population from potable water".

Mr. Baxter states that his residence is less than one-half mile from Elm Creek, on Kypuros Road in the Hopedale area. He contends in the event of the retention ponds overflowing and Elm Creek rising over its banks, his property

will be flooded. Mr. Baxter argues, a potential flood would cause mineral, compound, and pollutant deposits on his property. These deposits would adversely impact the health of his wife, cause property damage, and decrease the market value of his property. Mr. Baxter also claims he has invested money in the acquisition and care for his trees and shrubs on his one acre lot. Any damage caused by deposits from a potential flood would cause Mr. Baxter to lose his investment and adversely affect his quality of life. Mr. Baxter has shown that he has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to that of the general public. OPIC finds he is affected.

8. Jesus Castillon

TCEQ received a timely hearing request from Jesus Castillon on behalf his parents and immediate family on January 24, 2011, before the deadline to request a contested case hearing.

The hearing request states Mr. Castillon would like a hearing to fully explore the adverse effects that the Dos Republicas mining operation will have on the community and surrounding area. He argues that as of his request for a hearing, no environmental studies have been conducted to determine the long term effects of the proposed mining operation.

Jesus Castillon has raised several issues that would be appropriate for a hearing; however he is not shown no personal justiciable interest not common from the general public. Therefore OPIC finds that he is not affected.

9. Aureliano and Terri Contreras

TCEQ received a timely hearing request from Aureliano and Terri Contreras on January 24, 2011, before the deadline to request a contested case hearing.

The hearing request states the Contreras family is concerned about the proximity of the mining operation to their home and the adverse impact on their

livestock. The Contreras family home is located at US Hwy 277 Lehman Ranch Road, which is approximately 5 miles north from the proposed mining facility. The Contreras family is specifically concerned about water contamination since their water source is from a local well. In addition, they are concerned the chemicals released from the facility will be lethal to their livestock, thus creating economic hardship.

The Contreras' have raised several issues that would be appropriate for a hearing, however they are located over 2 miles away from the facility, and are not located on the downstream waterway. Nor have they stated how they would have a personal justicable interest not common from the general public. Therefore OPIC finds that they are not affected.

10. Gabriel and Leticia De La Cerda

TCEQ received an untimely hearing request from Gabriel and Leticia De La Cerda on September 1, 2011.

The hearing request states the De La Cerda family is concerned about the proximity of their home to the proposed mining operation. Their home is located at 307 County Rd 307 Eagles Pass, Texas, on the Elm Creek bank. The De La Cerda family is concerned with water contamination and the adverse impact on wildlife that reside on their property.

The family argues that pollution from the mining operation will harm fish in the Elm Creek, which they regularly consume. The request states the sulfuric acid will be washed into Elm Creek, which will make it dangerous for wildlife to drink from the creek and will eradicate fish in the creek. In addition, the De La Cerda family argues there will be a decrease in the value of their property due to the adverse impact caused by the rise in sulfuric acid washing into Elm Creek. In addition, the De La Cerda family was granted party status in the proceeding involving Dos Republicas Coal Partnership before the Rail Road Commission. Therefore OPIC finds they would be affected. However, the hearing request was submitted after the deadline to request a contested case hearing, so OPIC cannot

conclude that the De La Cerda family submitted a timely hearing request, and cannot recommend that the Commission refer them to SOAH as affected parties.

11. Dr. Carlos E. De La Pena

TCEQ received a timely hearing request from Dr. Carlos De La Pena on January 25, 2011, before the deadline to request a contested case hearing. In oral comments at the public meeting, Dr. De La Pena stated that he is concerned with the numerous risks associated with the proposed mining operation. He is also concerned that the mining operation will be extremely harmful to the health, safety and economic growth of Eagle Pass, Texas. Dr. De La Pena argues that a mining operation will deter physicians and dentists from relocating to Eagle Pass, which will be detrimental to the city of Eagle Pass as its population continues to grow. His home is located at 6106 N. Hwy 277 Eagle Pass, Texas.

Although he submitted oral comments, Dr. De La Pena's hearing request does not include enough information to find him affected.

12. Albert and Tina Ellis

TCEQ received a timely hearing request from Albert and Tina Ellis on August 30, 2011, before the deadline to request a contested case hearing.

The hearing request states the Ellis family is concerned about the proximity of their home to the proposed mining operation. The Ellis family was granted party status in the proceeding involving Dos Republicas Coal Partnership before the Rail Road Commission. The Ellis family states that their home is located "across the road" from the proposed mining operation. They are concerned about their health and the contamination of their household and irrigation water. Therefore OPIC finds that they are affected.

13. Humberto and Ana Maria Gomez

TCEQ received a timely hearing request from Humberto and Ana Maria Gomez on August 30, 2011, before the deadline to request a contested case hearing.

The hearing request states the Gomez family is concerned about the proximity of their home to the proposed mining operation and the adverse impact on their health.

The Gomez home, they state, is located on 100 County Road in Eagle Pass, Texas, very close to the mine. The Gomez family was granted party status in the proceeding involving Dos Republicas Coal Partnership before the Rail Road Commission. Mr. Gomez is surviving cancer patients and his family is concerned that water contamination will cause bring Mr. Gomez's cancer out of remission. Mr. Gomez was diagnosed with Lymphoma and gastric cancer, and that his health could be adversely affected by unclean water. In addition, the Gomez family is concerned with the adverse impact of the mining operations on the environment surrounding their home. Therefore OPIC finds that they are affected.

14. Alonzo and Eva E. Gonzalez

TCEQ received a timely hearing request from Alonzo and Eva E. Gonzalez on August 30, 2011, before the deadline to request a contested case hearing. They also submitted an untimely hearing request on September 6, 2011. The timely hearing request states that the Gonzalez family is concerned that coal dust will settle in canal Lateral 20, which will adverse impact on their water supply. In addition, the Gonzalez family was granted party status in the proceeding involving Dos Republicas Coal Partnership before the Rail Road Commission. The Gonzalez family claims they live very close to the permit area and use canal Lateral 20 for all of their household water needs and to irrigate their pasture. Therefore OPIC finds that they are affected.

15. Dr. Carlos Hernandez

TCEQ received a timely hearing request from Dr. Carlos Hernandez on January 31, 2011, before the deadline to request a contested case hearing. Dr. Hernandez is located at 1975 N Veterans Blvd Ste 7 Eagle Pass, Texas. The hearing request does not include enough information, therefore OPIC cannot conclude that Dr. Hernandez is affected.

16. Mike P. Hernandez

TCEQ received a timely hearing request from Mr. Mike Hernandez on August 30, 2011, before the deadline to request a contested case hearing. Mr. Hernandez is concerned with the proximity of his home to the permit area. He states that his property is surrounded by the permit area; Elm Creek and canal Lateral 20 run through his property. He was granted party status in the proceeding involving Dos Republicas Coal Partnership before the Rail Road Commission. Mr. Hernandez is also concerned with the adverse impact on his business and his ability to use water for household purposes. Mr. Hernandez uses water from the canal Lateral 20 to water his crops, which are fed to his livestock. He and his family use Elm Creek for recreation and fishing. Mr. Hernandez sells his livestock and is concerned he will not be able to continue this business if he is unable to water his crops due to water contamination. Therefore OPIC finds he is affected.

17. Walter and Ladye Herring

TCEQ received a timely hearing request from Walter and Ladye Herring on August 29, 2011, before the deadline to request a contested case hearing. The hearing request states the Herring family is concerned that coal dust and chemicals will contaminate the canal Lateral 20, which they use for household purposes, irrigation purposes, and drinking water for their livestock. The Herring home is located at 3959 FM 1588 Eagle Pass, Texas 78852, adjacent to the proposed coal mine. OPIC finds that they are affected.

18. Ernesto Ibarra

TCEQ received a timely hearing request from Ernesto Ibarra on August 30, 2011, before the deadline to request a contested case hearing.

The hearing request states Mr. Ibarra is concerned about the proximity of his property to the proposed mining operation. Mr. Ibarra is located at 3187 Tina Drive Eagle Pass, Texas 78852. He was granted party status in the Dos Republicas contested case hearing before the RRC. Mr. Ibarra property includes both the Elm Creek and canal Lateral 20 and he is concerned that coal dust and mine seepage discharge will damage his property and his only source of water. He states that he uses Elm Creek for recreation. Therefore OPIC finds that he is affected.

19. Jim and Rosa O'Donnell

TCEQ received a timely hearing request from Jim and Rosa O'Donnell on August 23, 2011, before the deadline to request a contested case hearing.

The hearing request states the O'Donnell family is concerned about the proximity of their property to the proposed mining operation. The O'Donnells are concerned with water contamination in canal Lateral 20, adverse health effects caused by coal dust, wildlife and endangered species, and expansion of the permit.

The O'Donnells state they live very close to the facility. They were also granted party status in the proceeding involving Dos Republicas Coal Partnership before the Rail Road Commission. Mr. O'Donnell suffers from skin cancer and the O'Donnell's are concerned that any advanced environmental contaminations will only exacerbate his condition. The O'Donnells are also concerned with how the mining operations will be a burden on Maverick County due to its current severe drought. Therefore OPIC finds they are affected.

20. Martha M. Ramirez

TCEQ received a timely hearing request from Martha M. Ramirez on January 31, 2011, before the deadline to request a contested case hearing. Ms. Ramirez, who resides at 548 County Road South 501 Eagle Pass, Texas 78853, is concerned with the discharge of industrial waste, mine seepage, storm waters into Elm Creek and the Rio Grande River. Ms. Ramirez contends that the discharge will include chemicals that are carcinogenic to humans, livestock, agriculture, wildlife, and aquatic life. Ms. Ramirez is concerned the daily discharge will adversely affect subsurface streams, aquifers, water wells, and water in the Maverick Basin and Zacatosa Aquifer through seepage and contamination. Ms. Ramirez is also concerned with dynamite blasting, shockwaves, traffic created by mining equipment, oil and grease from the mining heavy equipment and vehicles, and the daily noise and pollution from the mining equipment.

Ms. Ramirez argues that there are seismic faults in the Maverick Basin geological formation, which will be adversely impacted by the mining operations conducted by Dos Republicas. Ms. Ramirez further argues that any floods of the Elm Creek and other creeks and the Rio Grande River will affect the public water supply of Eagle Pass and Piedras Negras. She also contends that man has yet to invent a strip coal mine that hasn't leaked, seeped, leached or flooded the underground water, streams, and aquifers as well as surface water and Dos Republicas is no exception. She is concerned with the general welfare of the citizens of Maverick County because the Rio Grande River is the main source of water for the county.

Although Ms. Ramirez raises many issues, she has not included enough information about her personal justiciable interest, or how she would be impacted beyond that of the general public. Therefore OPIC cannot find that she is affected.

21. Martha S. Ramirez

TCEQ received a timely hearing request from Martha S. Ramirez on January 25, 2011, before the deadline to request a contested case hearing. The

hearing request states Ms. Ramirez is concerned with the potential pollution caused by the mining operation and the adverse impact on the health of citizens of Eagle Pass, Texas and Maverick County, Texas. Ms. Ramirez has not included enough information about her personal justicable interest, or how she would be impacted beyond that of the general public. Therefore OPIC cannot find that she is affected.

22. Betty & E.K. Taylor

TCEQ received a timely hearing request from Betty and E.K Taylor on January 31, 2011, before the deadline to request a contested case hearing. The hearing request states the Taylor family is concerned with proximity of the mining operation to their home. The Taylor home is located along side the permit area with only a fence and canal Lateral 20 separating the home and the proposed permit area. The Taylor family was granted party status in the proceeding involving Dos Republicas Coal Partnership before the Rail Road Commission. The y are concerned contaminated water will have an adverse impact on their ability to use water for household purposes and recreational purposes. Therefore OPIC finds they are affected.

C. Issues Raised in the Hearing Requests

OPIC finds that the following hearing requesters affected: Kickapoo Traditional Tribe of Texas, Maverick County Environmental and Public Health Association, Maverick County, Texas, Mr. George Baxter, Albert and Tina Ellis, Humberto and Ana Maria Gomez, Alonzo and Eva E. Gonzalez, Mr. Mike P. Hernandez, Walter and Ladye Herring, Mr. Ernesto Ibarra, Jim and Rosa O'Donnell, and Betty & E.K. Taylor

OPIC provides the following analysis on what issues may be appropriate for the subsequent hearing. Issues that are not related to water quality or TCEQ's permitting authority have been excluded. Protestants raise the following issues related to water quality:

1. Whether the proposed discharge and dust from the facility would contaminate or degrade the quality of Elm Creek and its Tributaries.
2. Whether the proposed discharge would impact Protestants' use of the waterways.
3. Whether the proposed facility would impact wildlife and endangered species in the area.
4. Whether the proposed facility would comply with TCEQ rules prohibiting groundwater contamination.
5. Whether the proposed discharge would adversely impact the City of Eagle Pass Water Works System's ability to treat and supply water to its customers.
6. Whether the application meets TCEQ rules, including lists of adjacent landowners, compatibility with water quality management plans, adequate facility designs and specifications, and dust abatement plans.
7. Whether Dos Republicas complied with TCEQ rules governing mailed and published notice of the application.
8. Whether the proposed permit includes clear and enforceable terms, including character of the discharge, flow limitations, and monitoring and reporting.
9. Whether the draft permit includes best available technology.
10. Whether the draft permit would allow violation of water quality standards.
11. Whether the draft permit would degrade receiving waters.
12. Whether the draft permit would adversely impact the public, the health of surrounding communities, and the environment.
13. Whether the facility would cause health hazards and nuisance conditions.
14. Whether the facility can comply with TCEQ monitoring and sampling requirements.
15. Whether the applicant complied with TCEQ rules regarding local rules and permits.
16. Whether the cleanup costs are accurately estimated.
17. Whether the facility complies with TCEQ rules on dust abatement.

18. Whether there are proper precautions taken to ensure post closure cleanup and restoration of the area, including setting an appropriate bond amount.
19. Whether TCEQ action on this permit application is premature in light of the ongoing contested case hearing at the Texas Railroad Commission.
20. Whether the proposed discharge would impact water quality, aquatic life and contact recreation on Canal 20, Elm Creek and Rio Grande River.
21. Whether the retention ponds are adequately sized.
22. Whether the proposed discharge would contaminate drinking water sources.
23. Whether the proposed discharge would impact surrounding property values.
24. Whether the proposed discharge would impact neighbors foliage and shrubbery.
25. Whether adequate study has been undertaken on the potential impacts from the proposed permit.
26. Whether the TCEQ's fact sheet was adequately prepared.
27. Whether the facility is a "new source".
28. Whether TCEQ staff properly designated Elm Creek as not a perennial stream within 3 miles of a discharge point.
29. Whether TCEQ staff properly calculated the water quality-based effluent limits and accurately concluded that the discharge would comply with Texas water quality standards.
30. Whether Dos Republicas' compliance history should take into account the operating history of other facilities it owns or operates outside of Texas.
31. Whether the potential expansion of the RRC permit to cover more acres than previously permitted would impact TCEQ's draft permit.
32. Whether the proposed facility would impact seismic faults in the area.
33. Whether the facility is located in a floodplain.

D. Issues raised in Comment Period

All of the hearing requests raise issues that were also raised during the comment period.

E. Disputed Issues

There is no agreement between the hearing requestor and Dos Republicas or Executive Director on the issues raised in the hearing requests.

F. Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. All of the issues raised in timely hearing requests by affected parties are issues of fact, with the exception of issue no. 19, which OPIC interprets as a question of law or policy. *See* 30 TAC §55.211(b)(3)(A) and (B).

G. Relevant and Material Issues

Hearing requests may raise issues relevant and material to the Commission's decision under 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order to refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit.⁶ Relevant and material issues are those governed by the substantive law under which this permit is to be issued.⁷

TCEQ is responsible for the protection of water quality under Chapter 26 of the TWC and 30 TAC Chapters 305, 307 and 309, as well as under specific rules related to wastewater systems found at 30 TAC Chapters 30 and 217. The Texas Surface Water Quality Standards in 30 TAC Chapter 307 require the proposed permit "maintain the quality of water in the state consistent with public

⁶ *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-251(1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated "[a]s to materiality, the substantive law will identify which facts are material. ... it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs.")

⁷ *Id.*

health and enjoyment.” 30 TAC § 307.1. The Texas legislature has also found that it is the policy of Texas for “discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be constructed in such a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard...” Texas Water Code 26.401(c)(1).

Furthermore, the proposed permit must comply with 30 TAC § 305.122(c), 307.1 and 309.10, which prohibit injury to private property and invasion of property rights and require minimization of exposure to nuisance conditions.

Therefore all of the issues listed in Section II.C, above, are relevant and material with the exception of No. 23. Issues related to air quality, surface mining, the proceeding before the RRC, and property values could not be addressed in a proceeding on this application and, therefore, are not relevant and material.

H. Issues Recommended for Referral

Several issues in this section have been combined due to similarity. Should the Commission refer this matter to the State Office of Administrative Hearings for a contested case hearing OPIC recommends the Commission refer the following disputed issues of fact:

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

7. Whether Dos Republicas complied with TCEQ rules governing mailed and published notice of the application.
8. Whether the proposed permit includes clear and enforceable terms, including character of the discharge, flow limitations, and monitoring and reporting.
9. Whether the draft permit includes best available technology.
10. Whether the draft permit would allow violation of water quality standards.
11. Whether the draft permit would degrade receiving waters.
12. Whether the draft permit would adversely impact the public, the health of surrounding communities, and the environment.
13. Whether the facility would cause health hazards and nuisance conditions.
14. Whether the facility can comply with TCEQ monitoring and sampling requirements.
15. Whether the applicant complied with TCEQ rules regarding local rules and permits.
16. Whether the cleanup costs are accurately estimated.
17. Whether the facility complies with TCEQ rules on dust abatement.
18. Whether there are proper precautions taken to ensure post closure cleanup and restoration of the area, including setting an appropriate bond amount.
19. Whether the proposed discharge would impact water quality, aquatic life and contact recreation on Canal 20, Elm Creek and Rio Grande River.
20. Whether the retention ponds are adequately sized.
21. Whether the proposed discharge would contaminate drinking water sources.
22. Whether adequate study has been undertaken on the potential impacts from the proposed permit.
23. Whether the TCEQ's fact sheet was adequately prepared.
24. Whether the facility is a "new source".

25. Whether TCEQ staff properly designated Elm Creek as not a perennial stream within 3 miles of a discharge point.
26. Whether TCEQ staff properly calculated the water quality-based effluent limits and accurately concluded that the discharge would comply with Texas water quality standards.
27. Whether Dos Republicas' compliance history should take into account the operating history of other facilities it owns or operates outside of Texas.
28. Whether the potential expansion of the RRC permit to cover more acres than previously permitted would impact TCEQ's draft permit.
29. Whether the proposed facility would impact seismic faults in the area.
30. Whether the facility is located in a floodplain.

IV. MAXIMUM EXPECTED DURATION OF HEARING

Commission Rule 30 TEX. ADMIN. CODE § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TEX. ADMIN. CODE § 55.209(d)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be one year from the first date of the preliminary hearing until the proposal for decision is issued.

V. CONCLUSION

There is a right to a hearing on this matter. OPIC finds the following requesters affected; Kickapoo Traditional Tribe of Texas, the City of Eagle Pass, Maverick County Environmental and Public Health Association, Maverick County, Texas, Mr. George Baxter, Albert and Tina Ellis, Humberto and Ana Maria Gomez, Alonzo and Eva E. Gonzalez, Mr. Mike P. Hernandez, Walter and

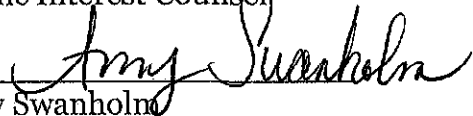
Ladye Herring, Mr. Ernesto Ibarra, Jim and Rosa O'Donnell, and Betty & E.K. Taylor. The matter should be referred to SOAH for a contested case hearing.

However, it would be difficult and impractical to hold a contested case hearing on the TCEQ permitting matter until the surface mining permit matter is resolved. Currently it is the subject of a contested case hearing at the Texas Railroad Commission (RRC), scheduled for October 17, 2011. Should the RRC not approve the surface mining application, Dos Republicas would have no need for a water quality discharge permit from the TCEQ. Further, the TCEQ draft permit may require changes, based on the outcome of the RRC contested case hearing. Holding a hearing in the interim, on an application and draft permit that may change or be rendered unnecessary would be a waste of TCEQ and SOAH resources.

Therefore, OPIC also recommends the Commissioners continue hearing this matter until after the RRC makes a final determination on the surface mining permit application. In the alternative, in the Commission Order granting a hearing and the subsequent referral of this matter to SOAH, OPIC recommends including instructions to incorporate an abatement into the procedural schedule until there is a final decision from the RRC.

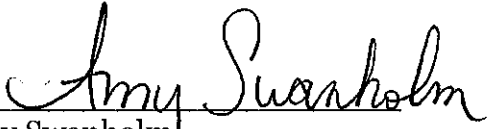
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2011 the original and seven true and correct copies of the Office of the Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.



Amy Swanholm

Attachment A

**Excerpt from
TCEQ Draft Permit**

OTHER REQUIREMENTS

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

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

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

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

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

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

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

2. Active Mining Area:

- A. The term "active mining area" is defined as the areas, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.
- B. All discharges from all retention ponds shall comply with the limitations for hazardous metals as regulated under the TCEQ, Permanent Rule, Title 30 Texas Administrative Code (TAC) Chapter 319, Subchapter B, 319.21 - 319.29, "Hazardous Metals".
- C. All retention ponds shall be constructed prior to disturbing the natural soils in preparation of any mining activity. Upon initiation of any mining related activity in the watershed of any particular pond, the permittee shall notify the TCEQ, Industrial Permits Team, Wastewater Permitting Section (MC-148) and the Regional Office. A record of the design dimensions, construction information, the pond drainage area and a map, sketch or drawing showing the location of each pond shall be maintained at the site and shall be readily available for inspection by authorized representatives of the permitting authority.

- D. Discharges from the retention ponds shall be monitored in accordance with this permit from the time the natural soils are disturbed until reclamation of the disturbed soils is complete and until the performance bond (Phase Two) issued by the appropriate authority has been released. At least 10 days prior to any such action, the TCEQ, Industrial Permits Team, Wastewater Permitting Section (MC-148) and the Regional Office shall be notified in writing of the permittee's intent to close any retention pond or to discontinue monitoring.
- E. For discharges from "active mining area" ponds that do not contain mine pit water (or water that has contacted acid forming or toxic forming spoil) the following effluent limitations shall apply, and shall replace the effluent limitations listed on page 2 of this permit.

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

EFFLUENT LIMITATIONS DURING PRECIPITATIONS:

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

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

Permitted

Outfall & Facility

Pond ID Pond ID Discharge Route

011	TBD*	From the spillway on the north side of the pond to a series of ditches, thence to Elm Creek;
012	TBD*	From the spillway on the south side of the pond to a ditch, thence to Elm Creek;
013	TBD*	From the spillway on the south side of the pond to a ditch, thence to Elm Creek.

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

4. The permittee shall maintain a map at the mine site which shows the location of all ponds and discharge routes. The map and pond list shall be available to authorized TCEQ personnel. The permittee may revise the pond location map. Upon revision, the permittee shall submit revised maps to the TCEQ Wastewater Permitting Section (MC-148), and to the Region 16 Office.
5. Post Mining Areas:
 - A. The term "Post mining area" is defined as a reclamation area; or the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.
 - B. The term "Reclamation area" is defined as the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.
 - C. The term "Bond release" is defined as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed. Phase Two completion is that point in the reclamation process where the property has been recontoured and replanted but prior to final bond release.
 - D. Discharges from post mining areas are not authorized under this permit. The permittee shall obtain a permit amendment prior to initiation of any discharge from post mining areas.
6. This permit does not authorize the discharge of storm water from construction activities. The permittee shall obtain all necessary permits, including coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit No. TXR150000, or most recent construction storm water general permit as applicable, prior to initiating any storm water discharge from construction at the site.
7. The permittee shall provide to the TCEQ Wastewater Permitting Section (MC-148) copies of all surface and groundwater quality monitoring results that it is required to send to the Railroad Commission of Texas (RCT) pursuant to its RCT mining and reclamation permit.
8. This permit does not authorize the disposal of domestic sewage. Domestic sewage shall be routed to a septic tank/drainfield system.
9. The permittee shall notify the TCEQ Region 16 office as each discharge point is developed.
10. The permittee shall notify the Executive Director of the TCEQ at least 90 days prior to conducting any activity of closure of any pit, pond, lagoon, or surface impoundment regulated by this permit.

11. Discharges from the retention ponds shall be monitored in accordance with the requirements of this permit from the time the overburden removal begins until reclamation of the disturbed soils is complete and the performance bond issued by the appropriate authority has been released. At least 10 days prior to such action, the permittee shall notify TCEQ Region 16 office and the TCEQ Wastewater Permitting Section (MC-148) in writing of it's intent to close any retention pond or discontinue monitoring.
12. The Attached Effluent Data Table 1 shall be completed with the analytical results for each Outfall 001 through 013, when discharge occurs, and sent to the TCEQ, Wastewater Permitting Section (MC-148), within 90 days following the completion of the fourth discharge sampling event for any of the applicable outfalls. Sample collection and test methods shall be in accordance with the instructions for *Completing the Industrial Wastewater Permit Application Worksheet 2.0 - Pollutant Analyses Requirements*. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.
13. Reporting requirements pursuant to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in the permit are suspended from the effective date of the permit until facility start-up or discharge, whichever comes first, from the facility areas and applicable outfalls described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC R 16) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to facility area start-up or applicable outfall anticipated discharges, whichever occurs first and prior to completion of each additional phase on Notification of Completion Form 20007.
14. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 2304 of the Rio Grande Basin and any subsequent updating of the water quality model for Segment No. 2304 in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC Sections 305.62, as a result of such review.

ATTACHMENT

TABLE 1

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

Attachment B

Excerpt from 2006 TCEQ Permit

OTHER REQUIREMENTS

1. Violations of daily maximum limitations for the following pollutants shall be reported orally to TCEQ Region 16, within 24 hours from the time the permittee becomes aware of the violation followed by a written report within five days:

<u>POLLUTANTS</u>	<u>MAL mg/L</u>
Total Selenium	0.010

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

When an analysis of an effluent sample for any of the parameters listed above indicates no detectable levels above the MAL and the test method detection level is as sensitive as the specified MAL, a value of zero (0) shall be used for that measurement when determining calculations and reporting requirements for the self-reporting form. This applies to determinations of daily maximum concentration, calculations of loading and daily averages, and other reportable results. When a reported value is zero (0) based on this MAL provision, the permittee shall submit the following statement with the self-reporting form either as a separate attachment to the form or as a statement in the comments section of the form.

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

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

2. Active Mining Area:

- A. The term "active mining area" is defined as the areas, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.
- B. All discharges from all retention ponds shall comply with the limitations for hazardous metals as regulated under the TCEQ, Permanent Rule, Title 30 Texas Administrative Code (TAC) Chapter 319, Subchapter B, 319.21 - 319.29, "Hazardous Metals".
- C. All retention ponds shall be constructed prior to disturbing the natural soils in preparation of any mining activity. Upon initiation of any mining related activity in the watershed of any particular pond, the permittee shall notify the TCEQ, Industrial Permits Team, Wastewater Permitting Section (MC-148) and the Regional Office. A record of the design dimensions, construction information, the pond drainage area and a map, sketch or drawing showing the location of each pond shall be maintained at the site and shall be readily available for inspection by authorized representatives of the permitting authority.
- D. Discharges from the retention ponds shall be monitored in accordance with this permit from the time the natural soils are disturbed until reclamation of the disturbed soils is complete and until the performance bond (Phase Two) issued by the appropriate authority has been released. At least 10

days prior to any such action, the TCEQ, Industrial Permits Team, Wastewater Permitting Section (MC-148) and the Regional Office shall be notified in writing of the permittee's intent to close any retention pond or to discontinue monitoring.

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

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

EFFLUENT LIMITATIONS DURING PRECIPITATIONS:

<u>Pollutant or Pollutant Property</u>	<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.

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

<u>Outfall</u>	<u>Pond</u>	<u>Discharge Route</u>
001	001	From the spillway on the south side of the pond to a ditch, thence to Elm Creek;
002	002	From the spillway on the southwest side of the pond to a ditch, thence to Elm Creek;
003	003	From the spillway on the southwest side of the pond to a ditch, thence to the diversion, thence to Elm Creek;
004	004	From the spillway on the east side of the pond to a culvert, thence to a ditch, thence to Elm Creek;
005	005	From the spillway on the east side of the pond to a ditch, thence to a culvert, thence to Elm Creek;
006	006	From the spillway on the southeast side of the pond to a ditch, thence to the diversion, thence to Elm Creek;
007	007	From the spillway on the east side of the pond to a ditch, thence to Elm Creek;
008	008	From the spillway on the east side of the pond to a ditch, thence to the diversion, thence to Elm Creek;
009	009	From the spillway on the west side of the pond to a ditch, thence to Elm Creek;
010	010	From the spillway on the west side of the pond to a ditch, thence to Elm Creek;
011	011	From the north side of the pond to a series of ditches, thence to Elm Creek;
012	012	From the spillway on the south side of the pond to a ditch, thence to Elm Creek;
013	013	From the spillway on the south side of the pond to a ditch, thence to Elm Creek.

4. The permittee shall maintain a map at the mine site which shows the location of all ponds and discharge routes. The map and pond list shall be available to authorized TCEQ personnel. The permittee may revise

the pond location map. Upon revision, the permittee shall submit revised maps to the TCEQ Wastewater Permitting Section (MC-148), and to the Region 16 Office.

5. Post Mining Areas:

- A. The term "Post mining area" is defined as a reclamation area; or the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release.
 - B. The term "Reclamation area" is defined as the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.
 - C. The term "Bond release" is defined as the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed. Phase Two completion is that point in the reclamation process where the property has been recontoured and replanted but prior to final bond release.
 - D. Discharges from post mining areas are not authorized under this permit. The permittee shall obtain a permit amendment prior to initiation of any discharge from post mining areas.
6. This permit does not authorize the discharge of storm water from construction activities. The permittee shall obtain all necessary permits, including coverage under the National Pollutant Discharge Elimination System (NPDES) Phase I Construction General Permit or most recent construction storm water general permit as applicable, prior to initiating any storm water discharge from construction at the site.
7. The permittee shall provide to the TCEQ Wastewater Permitting Section (MC-148) copies of all surface and groundwater quality monitoring results that it is required to send to the Railroad Commission of Texas (RCT) pursuant to its RCT mining and reclamation permit.
8. This permit does not authorize the disposal of domestic sewage. Domestic sewage shall be routed to a septic tank/drainfield system.
9. The permittee shall notify the TCEQ Region 16 office as each discharge point is developed.
10. The permittee shall notify the Executive Director of the TCEQ at least 90 days prior to conducting any activity of closure of any pit, pond, lagoon, or surface impoundment regulated by this permit.
11. Discharges from the retention ponds shall be monitored in accordance with the requirements of this permit from the time the overburden removal begins until reclamation of the disturbed soils is complete and the performance bond issued by the appropriate authority has been released. At least 10 days prior to such action, the permittee shall notify TCEQ Region 16 office and the TCEQ Wastewater Permitting Section (MC-148) in writing of its intent to close any retention pond or discontinue monitoring.
12. Within 45 days of initial discharge from each outfall, the permittee shall collect a minimum of one sample from each outfall (Outfalls 001 through 013) for the pollutants listed below in Table 1. The discharge must be sampled and analyzed for the specified pollutants once by grab sample or once by a flow weighted composite sample if equipment is available for compositing by flow. Sample results shall be reported to the TCEQ Wastewater Permitting Section (MC-148) and the TCEQ Enforcement Division (MC-224). Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.

Table 1

Outfall _____

<u>POLLUTANT</u>	<u>EFFLUENT CONCENTRATION (mg/L)</u>		<u>NUMBER OF SAMPLES</u>
	<u>AVG</u>	<u>MAX</u>	
BOD (5-day)	_____	_____	_____
Carbonaceous Biochemical Oxygen Demand (5-day)	_____	_____	_____
Chemical Oxygen Demand	_____	_____	_____
Total Organic Carbon	_____	_____	_____
Ammonia Nitrogen	_____	_____	_____
Total Suspended Solids	_____	_____	_____
Nitrate Nitrogen	_____	_____	_____
Total Organic Nitrogen	_____	_____	_____
Total Phosphorus	_____	_____	_____
Oil and Grease	_____	_____	_____
Total Residual Chlorine	_____	_____	_____
Total Dissolved Solids	_____	_____	_____
Sulfate	_____	_____	_____
Chloride	_____	_____	_____
Fluoride	_____	_____	_____
Fecal Coliform	_____	_____	_____
Summer Temperature (°F)	_____	_____	_____
Winter Temperature (°F)	_____	_____	_____
pH (Standard Units; min/max)	_____	_____	_____
<u>CONCENTRATION (µg/L)</u>			<u>MAL (µg/L)</u>
Total Aluminum *	_____	_____	30
Total Antimony *	_____	_____	30
Total Arsenic *	_____	_____	10
Total Barium *	_____	_____	10
Total Beryllium *	_____	_____	5
Total Cadmium *	_____	_____	1
Total Chromium *	_____	_____	10
Trivalent Chromium	_____	_____	N/A
Hexavalent Chromium *	_____	_____	10
Total Copper *	_____	_____	10
Cyanide *	_____	_____	20
Total Lead *	_____	_____	5
Total Mercury *	_____	_____	0.2
Total Nickel *	_____	_____	10
Total Selenium *	_____	_____	10
Total Silver *	_____	_____	2
Total Zinc *	_____	_____	5

* Test Methods utilized should be sensitive enough to detect these constituents at the Minimum Analytical Level (MAL) specified above in micrograms/liter (µg/L).

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TCEQ DOCKET NO. 2011-1565-IWD

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