

TPDES Permit No. WQ0003511000

APPLICATION FROM DOS REPUBLICAS	§	BEFORE THE TEXAS
COAL PARTNERSHIP FOR A MAJOR	§	
AMENDMENT AND RENEWAL OF TEXAS	§	COMMISSION ON
POLLUTANT DISCHARGE ELIMINATION	§	
SYSTEM (TPDES) PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ0003511000	§	

EXECUTIVE DIRECTOR’S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment on Dos Republicas Coal Partnership’s application for a major amendment and renewal of TPDES Permit No. WQ0003511000 and the ED’s preliminary decision. As required by title 30, section 55.156 of the Texas Administrative Code, before a permit is issued, the ED prepares a response to all timely, relevant, and material, or significant comments. The Office of the Chief Clerk timely received comments from Lynette Avitia, George Baxter, Jerry Brower, Rodolfo Cardona, Hector Chavez, City of Eagle Pass, Jessica De Hoyos, Patricia De Hoyos, Gabriel De La Cerda, Eagle Pass Independent School District (ISD), Environmental Defense Fund (EDF), Juan Esqueda, Humberto Esquivel, Jr., Elvira Galvan, Fernanda Gonzalez, Diana Hardt, Mike Hernandez, Walter Herring, Anson Howard, Ernesto Ibarra, International Boundary and Water Commission (U.S. Section), Jose Jimenez, Randy Laurence, Maverick County, Maverick County Environmental and Public Health Association (MCEPHA), Maverick County Hospital District, Maverick County Republican Party, Norma A. McKnight, Liliana Medina, Roberto Medina, Angelica M. Montalvo, Representative Poncho Nevárez, Pacuache Clan of Texas, Terri Patlan-Contreras, Alyssa Perales, Gloria A. Rodriguez, Rudy Rodriguez, Luis A. Ruiz, Ricardo Ruiz, Priscilla Salazar, Sergio Sanchez Jr., Judge David R. Saucedo, Save the Elm Creek Park, Sierra Club, Texas Mining and Reclamation Association, Sophia Torres, Issac Turrubiate, Senator Carlos I. Uresti, and Juan Valadez. This response addresses all such timely public comments received, whether or not withdrawn. For more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ’s web site at www.tceq.texas.gov.

I. BACKGROUND

A. Facility Description

Dos Republicas has applied to the TCEQ for a renewal and major amendment of TPDES Permit No. WQ0003511000 to add active mining acreage; add Outfalls 014M-020M to discharge stormwater and mine seepage from active mining areas; add Outfalls 001R, 003R, 004R, 006R-008R, and 014R-020R to discharge stormwater from post-

mining areas; remove Outfalls 002, 005, and 009-013; allow for water in all ponds to be used for dust suppression; add Outfall 021 to discharge stormwater runoff from fueling areas, the fuel storage area, vehicle and equipment maintenance areas, truck washing stations, and coal handling and storage areas; and add Outfall 022M to discharge mine pit water from active mining areas and stormwater from inside the rail loop. The existing permit authorizes the discharge of mine seepage from active mining areas and stormwater at an intermittent and variable flow rate through Outfalls 001-013. Dos Republicas will be operating Eagle Pass Mine, a bituminous coal mine.

Effluent limits in the proposed permit, based on a thirty-day average except as noted, are as follows:

Outfall	Total Suspended Solids	Total Iron	Total Manganese	Total Selenium	Settleable Solids	Oil and Grease
001M, 003M, 004M, & 006M-008M	35 mg/L ¹	3 mg/L	2 mg/L	0.036 mg/L (daily max)	N/A	N/A
014M-020M	35 mg/L	3 mg/L	2 mg/L	N/A	N/A	N/A
001R, 003R, 004R, 006R-008R, & 014R-020R	N/A	N/A	N/A	N/A	5 mg/L (daily max)	N/A
021	50 mg/L (daily max)	N/A	N/A	N/A	N/A	15 mg/L

For all outfalls, the pH must be in the range of 6.0 to 9.0.

The facility site is located on the northeast side of State Highway 1588, three miles northeast of the intersection of State Highway 1588 and U.S. Highway 277, and approximately five miles northeast of the City of Eagle Pass in Maverick County, Texas 77852. The treated effluent will be discharged via Outfalls 001M/R, 004M/R, 007M/R, 008M/R, 017M/R, 018M/R, 021, and 022M to unnamed tributaries, then to Elm Creek, then to Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin; via Outfalls 003M/R, 006M/R, 014M/R, and 019M/R to unnamed ditches, then to Elm Creek, then to Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin; via Outfalls 015M/R to an unnamed ditch, then to an unnamed tributary, then to Hediondo Creek, then to Elm Creek, then to Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin; and via Outfalls 016M/R and 020M/R to Elm Creek, then to Rio Grande Below Amistad Reservoir in Segment No. 2304 of the Rio Grande Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributaries and ditches that will receive discharges from Outfalls 001M/R, 003M/R, 004M/R, 006M/R, 008M/R, 014M/R, 015M/R, 017M/R, 018M/R, 019M/R, and 022M; limited aquatic life use for Hediondo

¹ mg/L = milligrams per liter.

Creek and the unnamed tributaries that will receive discharges from Outfalls 007M/R and 015M/R;² and high aquatic life use for Elm Creek. The designated uses for Segment No. 2304 are high aquatic life use, public water supply, and primary contact recreation.

B. Procedural Background

The TCEQ received the application on September 5, 2013, and declared it administratively complete on January 13, 2014. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English on May 22, 2014, in *The News Gram* and in Spanish on May 23, 2014, in *La Pulguita*. ED staff completed the technical review of the application on December 4, 2014, and prepared a draft permit. The combined Notice of Public Meeting and Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published in English on December 16, 2014, in *The News Gram* and in Spanish on December 19, 2014, in *La Pulguita*. The Notice of Location Change for Public Meeting for TPDES Permit was published in English on January 15, 2015, in *The News Gram* and in Spanish on January 16, 2015, in *La Pulguita*. A public meeting was held on January 22, 2015. The public comment period ended on February 4, 2015. This application was administratively complete on or after September 1, 1999. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

C. Access to Rules, Statutes, and Records

- Secretary of State web site for all Texas administrative rules: www.sos.state.tx.us.
- TCEQ rules in title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac (select “View the current *Texas Administrative Code*” on the right, then “Title 30 Environmental Quality”).
- Texas statutes: www.statutes.legis.state.tx.us.
- TCEQ web site: www.tceq.texas.gov (for downloadable rules in Adobe portable document format, select “Rules,” then “Download TCEQ Rules”).
- Federal rules in title 40 of the Code of Federal Regulations: www2.epa.gov/laws-regulations/regulations#find.
- Federal environmental laws: www2.epa.gov/laws-regulations.

TCEQ records for this application are available for viewing and copying at the TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, First Floor (Office of the Chief Clerk), until the TCEQ takes final action on the application. The application, proposed permit, and Fact Sheet and ED’s Preliminary Decision are also available for viewing and copying at the Maverick County Courthouse, 500 Quarry Street, Suite 2, Eagle Pass, Texas.

If you would like to file a complaint about the facility concerning its compliance with provisions of its permit or TCEQ rules, you may call the TCEQ Environmental

² Please note that for the discharge route for Outfalls 015M/R, the unnamed ditch has minimal aquatic life use, and the unnamed tributary has limited aquatic life use.

Complaints Hot Line at 1-888-777-3186 or the TCEQ Region 16 Office directly at 1-956-791-6611. Citizen complaints may also be filed by sending an e-mail to cmplaint@tceq.texas.gov or online at the TCEQ web site (select “Reporting,” then “Make an Environmental Complaint”). If the facility is found to be out of compliance, it may be subject to enforcement action.

II. COMMENTS AND RESPONSES

Comment 1

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the ED’s preliminary decision and draft permit were not available at the Maverick County Courthouse on January 8, 2015. These commenters did not receive a copy of the draft permit with the ED’s preliminary decision, and the commenters’ counsel did not receive a copy of the draft permit until January 14, 2015. The U.S. Environmental Protection Agency (EPA) also was not provided with a copy of the draft permit. Because of these issues, the commenters argued that the comment period should have been extended.

Response 1

Under title 30, section 39.405(g)(2) of the Texas Administrative Code, a copy of the ED’s preliminary decision must be made available at a public place in the county where the facility is located beginning on the first day of publication of the NAPD. In this case, that meant the ED’s preliminary decision should have been at the Maverick County Courthouse beginning on December 16, 2014. The NAPD also required that a copy of the draft permit be made available at the public place. After the absence of these documents at the courthouse came to the ED’s attention on January 20, 2015, Dos Republicas placed a copy of the ED’s preliminary decision and draft permit at the courthouse on January 21, 2015. The comment period was originally set to expire on January 22, 2015. The case had already been directly referred to the State Office of Administrative Hearings on January 15, 2015, but the ED extended the comment period to February 4, 2015, to provide people with more opportunity to view the documents at the courthouse before providing comments.

Regarding the other comments about copies of the draft permit, there was no requirement that the commenters be provided with a copy of the draft permit directly. If they were referring to the copy of the ED’s preliminary decision they received with the mailed NAPD, then that was all the Chief Clerk was required to provide to them under title 30, section 39.419(a) of the Texas Administrative Code. As intimated in section I.C. above, the draft permit is available for viewing and copying at the Office of the Chief Clerk and has been available there since December 4, 2014. Furthermore, EPA did receive a copy of the draft permit. ED staff sent EPA the draft permit and ED’s preliminary decision on December 5, 2014, and EPA sent a response on January 30, 2015.

Comment 2

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the application states that the retention ponds will not be lined and will discharge effluent, whereas Dos Republicas' application with the Railroad Commission of Texas stated that retention ponds will be lined and will not discharge effluent. The commenters argued that the public has the right to know which application is accurate and whether groundwater will be adequately protected. George Baxter also noted the liner information differences in the two applications. He believed the TCEQ should review both applications and resolve any contradictions before granting a permit.

Response 2

The ED cannot speak for Dos Republicas or the Railroad Commission or to what might be in Dos Republicas' Railroad Commission application. For surface coal mining, the Texas Legislature gave jurisdiction over the mining itself to the Railroad Commission and over wastewater discharges from the mine to the TCEQ. Therefore, the scope of the ED's review of the mine in this case is limited to the wastewater discharge permit application. Dos Republicas has held a discharge permit for the Eagle Pass Mine since November 29, 1994. Therefore, it has been the TCEQ's understanding for over twenty years that the retention ponds will discharge effluent when necessary. The original permit also did not require pond liners, and the draft permit continues to not require pond liners.

It would be up to the Railroad Commission to determine if the facility as constructed complies with that agency's permit. The Railroad Commission's compliance and enforcement personnel should be able to provide more information regarding its enforcement policies and requirements. Contact information is available on the Railroad Commission's web site at www.rrc.state.tx.us. As for the discharge permit, Dos Republicas will be required to comply with all the permit's provisions and will be subject to TCEQ enforcement action if it fails to do so.

Dos Republicas' wastewater discharge permit application was evaluated for the purpose of protecting aquatic life, human health, existing uses, and the environment based on requirements found in the Texas Surface Water Quality Standards, which are located in title 30, chapter 307 of the Texas Administrative Code. Compliance with the standards will provide surface water protection. The TCEQ Water Quality Division has determined that if surface water is protected, the groundwater quality in the vicinity will not be negatively impacted by the discharge. The proposed permit also contains Other Requirement No. 4, which requires retention ponds to be constructed prior to disturbing the natural soils in preparation of any mining activity. This ensures that the treatment system for mining process wastewaters is in place before mining activities begin. This permit provision also requires Dos Republicas to maintain a current map and supporting documentation that shows all constructed ponds and lists the design

dimensions, construction information, and pond drainage area for each pond at the site and make those records readily available for inspection by authorized representatives of the TCEQ.

Comment 3

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the draft permit does not take into account contaminants that will be in the water used for dust suppression, such as contaminants from the coal stockpile or boron from the mine pit water, that will enter receiving waters that are also receiving discharges from the retention ponds. The concentrations of these contaminants need to be taken into account in the TCEQ's antidegradation review.

Response 3

The TCEQ's antidegradation policy and procedures apply to actions that would increase pollution in water in the state. Under Tier 1 protection, increases in pollutant loadings are not allowed if they would impair the receiving water's water quality uses. Under Tier 2 protection, where water quality exceeds fishable/swimmable standards, water quality must be maintained and cannot be degraded more than a de minimis amount. Elm Creek, which is part of the discharge route for all outfalls, is considered to have high-quality water and receives Tier 2 protection under the antidegradation policy. The proposed permit was designed to be protective of current water quality conditions. TCEQ staff determined that no water quality parameters of concern will be present in the effluents in amounts that will degrade water quality in Elm Creek.

The use of water from retention ponds within the active mining areas and post-mining areas for dust suppression is authorized through Other Requirement No. 6 of the proposed permit. This authorization does not allow discharges to occur from dust suppression activities, including dust suppression water running back into the ponds. Therefore, the dust suppression activities will meet the Tier 1 and 2 antidegradation policies.

Comment 4

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the application does not have any site-specific soil and groundwater information or information regarding any liners that will be used. It also does not propose any leak detection system or groundwater monitoring wells sufficient to ensure the protection of ground and surface water. The International Boundary and Water Commission recommended that the TCEQ ensure that the ponds will be adequately lined to prevent seepage that may have a negative impact on Segment No. 2304.

Response 4

The proposed permit was developed to protect the surface water quality of the receiving waters. The TCEQ Water Quality Division has determined that if surface water quality is protected, the groundwater quality in the vicinity will not be impacted by the discharges from the mining activities. Dos Republicas will only be mining coal at the Eagle Pass Mine; it will not be processing coal. The mining process does not add chemicals or other pollutants that do not occur in the area naturally. Therefore, the mining seepage will be of a similar quality to naturally occurring seepage that occurs in the area from precipitation events and does not require pond liners to protect groundwater.

For additional information regarding pond liners and groundwater protection, please see Response 2.

Comment 5

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that Worksheet 1.0(c) in the application states that stormwater runoff may commingle with mine seepage, but Worksheet 7.0(1) does not acknowledge that stormwater runoff will commingle with any listed non-stormwater discharges. Dos Republicas has not provided an analysis of what pollutants might be in the runoff. It has submitted an incomplete application and must complete Worksheet 7.0 in its entirety. The Pacuache Clan of Texas expressed concern regarding the quality of runoff due to infiltration, such as erosion from spoil piles.

Response 5

Question No. 1 in Worksheet 7.0 of the application asked, “Do discharges from any of the proposed or existing outfalls consist of stormwater runoff only or stormwater runoff and any of the listed non-stormwater discharges? (See Instructions, Page 79).” The question further instructs that if the answer is no, the applicant may stop there because the worksheet is not applicable to its discharges. Dos Republicas answered “No” to that question because mine seepage is not one of the non-stormwater discharges listed on page 79 of the application instructions. Therefore, it was not required to complete the rest of the worksheet.

At the time Dos Republicas filed its application, the Eagle Pass Mine had not begun the mining operations that will produce the wastewaters that Dos Republicas will be authorized to discharge under the proposed permit. Other Requirement No. 10 of the proposed permit requires Dos Republicas to sample its effluent in accordance with Tables 1, 2, and 3 of Attachment A within 60 days of initial discharge and submit the analytical data to the TCEQ within 90 days of initial discharge. The effluent must be analyzed for the parameters found in Table 1 of Attachment A for all external outfalls that are not stormwater-only outfalls. Analysis is required for those pollutants listed in

Table 2 of Attachment A that are used at the facility and could in any way contribute to the contamination of the discharged effluent. For all pollutants listed in Table 3 of Attachment A, Dos Republicas is required to indicate whether each pollutant is believed to be present or absent in the discharge and sample for those believed present. These testing requirements are more stringent than those found in Worksheet No. 7 of the application, which is for stormwater-only outfalls. Based on a technical review of the submitted analytical results, a permit amendment may be initiated by ED staff to include additional effluent limitations, monitoring requirements, or both.

Comment 6

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the application and draft permit do not address flooding concerns and flooding's impact on receiving waters, including Laterals 20 and 21. The area has received significant rainfall in the last two years. Judge David R. Saucedo commented that there are two subdivisions not far downstream from the mine, Elm Creek and South Elm Creek, and that Elm Creek residents experienced severe home damage during the 100-year floods that occurred in June 2013 (over 15 inches in the mine area) and June 2014 (12 inches at Elm Creek's headwaters). He believed these two floods should alter the permit requirements, which in the past have been based on lesser floods. Save the Elm Creek Park also mentioned the 2013 and 2014 floods and the extensive damage they caused and expressed concern regarding pollutants such as selenium, sulfur, and calcium entering Elm Creek during a flood at the mine. This concern extended to how such contamination would impact Elm Creek Park. Issac Turrubiate also expressed concern regarding the potential for contamination due to flooding based on the 2013 flood and that the regulations do not provide sufficient protection from such floods. Randy Laurence expressed concern that Dos Republicas had used the six-inch rain criterion for designing its ponds despite knowing about the 13-inch rain event.

Response 6

The TCEQ regulates the discharge of wastewater from Dos Republicas' facility. It does not have jurisdiction over pond locations, volumes, or surface areas. The Railroad Commission is charged with the responsibility to permit and regulate the activities and operations at the facility. Whether the retention ponds are located within the 100-year floodplain at the Eagle Pass Mine is under the jurisdiction of the Federal Emergency Management Agency. Based on information submitted by Dos Republicas, the ED understands that the Federal Emergency Management Agency has given its governing authority for the approval or denial of the location of retention ponds within the 100-year floodplain to the Maverick County Judge.

Eagle Pass Mine plans to only discharge effluent from the retention ponds when it is necessary to do so to maintain proper pond levels. The facility has the ability to move effluent between the various ponds on site to control pond water levels and reduce the volume of effluent it discharges. This system can also be employed to prevent flooding if a precipitation event may cause flooding. The proposed permit includes

effluent limits and other requirements that Dos Republicas must meet even during rainfall events and periods of flooding at the designated outfalls. Dos Republicas is not authorized to discharge effluent from other locations at the facility that are not authorized as designated outfalls.

To the ED's knowledge, as represented in the permit application, Dos Republicas will not be using Lateral 20 or 21 as part of any discharge route.

Comment 7

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the application states that some of the retention ponds will be located within the 100-year floodplain and that the potential for wastewater exiting the ponds before settling occurs poses a risk to receiving waters, including Elm Creek, Laterals 20 and 21, Hediondo Creek, and the Rio Grande. George Baxter also noted the ponds' locations in the floodplain and commented that Dos Republicas intends to mine in huge mining blocks located in the same floodplain. He stated that the effects that floodwaters submerging both the ponds and mining blocks could have on water quality needs to be addressed. The Maverick County Republican Party also expressed concern regarding the retention ponds' location in the floodplain, especially in light of extreme flooding that occurred in the floodplain three times in the past five years. Such flooding would overwhelm the ponds and discharge toxic effluent into the public drinking water supply intakes in the Rio Grande just below Elm Creek.

Response 7

For the ED's discussion regarding the ponds' locations, please see Response 6.

Comment 8

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the TCEQ's antidegradation review was inadequate because the application did not contain data in Tables 1, 2, 3, and 5 in Worksheet 2.0. This includes a lack of information regarding boron, which Technical Report 1.c states is naturally occurring in groundwater near the mine, and any information from groundwater samples from fifteen on-site monitoring wells other than for iron and manganese. The application does not state what treatment will be used to remove boron, and it is uncertain that the groundwater samples are representative of future wastewater. Even though the facility has not discharged and, therefore, does not have samples from the site, the application instructions state that "results from similar facilities, treatability studies, design information, or literature sources may be submitted when real effluent analytical data is not available." Therefore, Dos Republicas has not demonstrated that its discharges will not degrade the receiving waters, including Elm Creek, Hediondo Creek, Laterals 20 and 21, and the Rio Grande, and the application is incomplete. Sierra Club also commented

that the application does not contain the information and data necessary for the TCEQ to perform an antidegradation review to ensure that Elm Creek's and the Rio Grande's uses are maintained.

Response 8

The TCEQ's antidegradation policy and procedures apply to actions that would increase pollution in water in the state. Under Tier 1 protection, increases in pollutant loading are not allowed if they would impair the receiving water's water quality uses. Under Tier 2 protection, where water quality exceeds fishable/swimmable standards, water quality must be maintained and cannot be degraded more than a de minimis amount. Elm Creek and the Rio Grande have high-quality water and receive Tier 2 protection under the antidegradation policy. Hediondo Creek has limited aquatic life use and receives Tier 1 protection under the antidegradation policy. The proposed permit is designed to be protective of the water bodies' current water quality conditions. Based on information submitted in the application, the Eagle Pass Mine will not discharge into Lateral 20 or 21.

ED staff used similar permits, national effluent limit guidelines for coal mining developed by EPA, EPA guidance documents, and information provided by Dos Republicas to develop appropriate effluent limits and monitoring requirements for a permit of this nature. It was determined by the ED that the information provided in the permit application was sufficient to draft a permit that would be protective of water quality and the designated uses of Segment No. 2304, Rio Grande Below Amistad Reservoir. The designated uses for Segment No. 2304 are high aquatic life use, primary contact recreation, and public water supply. Please see Response 9 for further discussion of the development of effluent limits in the proposed permit for the protection of water quality.

In question 2.a of Technical Report 1.0 in the application, Dos Republicas explained that the treatment process at the facility will be the settling of sediments through the use of flocculants and gravity in retention ponds. This will be the treatment process for the impoundment RP-3, which will discharge through Outfall 002M and contain the mine pit water that may be high in boron. A limit for boron has not been included in the draft permit based on EPA's *Quality Criteria for Water* (1986), which states in the section about boron, "Naturally occurring concentrations of boron should have no effects on aquatic life." Human health screening is not applicable because of the distance between the discharge point and perennial waters that support fisheries. EPA's *Quality Criteria for Water* recommends that levels of boron in water used for irrigation should not exceed 0.75 mg/L for long-term use on sensitive plants.³ For this reason, boron has been included in the parameters to be tested for in Table 1 of Attachment A of the proposed permit, as required by Other Requirement No. 10. Once the analytical result is submitted, ED staff will determine if monitoring requirements for boron are necessary in the permit when the effluent is being used for dust suppression.

³ EPA, QUALITY CRITERIA FOR WATER, Boron (1986).

Please see Response 5 for further discussion of the testing requirements found in Other Requirement No. 10.

Comment 9

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the application and draft permit (through its effluent limits and monitoring and reporting requirements) do not adequately address the individual and cumulative adverse effects of discharged pollutants, such as selenium, boron, manganese, iron, and mercury, on the public and environment. The receiving waters' existing water qualities have not been sufficiently described to know whether the discharge will violate state water quality standards. The Pacuache Clan of Texas asked whether the draft permit will allow Dos Republicas to violate state water quality standards.

Response 9

Dos Republicas' permit application was evaluated for the purpose of protecting aquatic life, human health, and the environment. The review included an analysis of the existing uses of the receiving waters under title 30, section 307.5(c) of the Texas Administrative Code, which aided in establishing the appropriate effluent limits, and a waste load analysis for Segment No. 2304, which determined the receiving waters' water qualities. The water quality standards applied to the proposed permit were determined by the individual water quality characteristics of each receiving stream and the impacts the effluent may have on the receiving stream based on the receiving stream's volume and flow rate and the type of wastewater being discharged by the facility. This information was used to develop effluent limits that will be protective of water quality so the receiving stream's designated uses will not be impaired and the health and safety of individuals and wildlife that may come into contact with the water are protected.

The ED's technical review of the permit application began with a review by the Water Quality Assessment (WQA) Section. The WQA Section determined the designated uses of the water body segment that would receive the proposed discharges, the critical conditions for the water body (i.e., low flow) when the water body is most susceptible to adverse effects, and the limits needed to ensure the dissolved oxygen criteria will be met. Upon completing the review, the WQA Section provided recommendations used to develop the proposed permit.

The proposed permit was also developed using information about the facility provided in the permit application and the existing permit. The effluent limits were set by comparing technology-based effluent limits with the water quality-based effluent limits. To determine which effluent limits were appropriate, the permit writer first reviewed the information about the facility and the proposed discharges and developed technology-based effluent limits based on federal effluent guidelines. The discharge of stormwater and mine seepage from active mining areas through Outfalls 001M, 003M, 004M, 006M-008M, 014M-020M, and 022M from this facility is subject to federal effluent limit guidelines at 40 CFR part 434, subpart C (Acid or Ferruginous Mine

Drainage). The discharge of stormwater from post-mining areas through Outfalls 001R, 003R, 004R, 006R-008R, and 014R-020R from this facility is subject to federal effluent limit guidelines found in 40 CFR part 434, subpart E (Post-Mining Areas).

Next, using the application and recommendations from the WQA Section, the permit writer developed water quality-based effluent limits using numeric aquatic life criteria established in Table 1 of the Texas Surface Water Quality Standards for those specific toxic substances that have adequate toxicity information available and that have the potential for exerting adverse impacts on water in the state.

Finally, the permit writer compared the technology-based effluent limits with the water quality-based effluent limits and used the more stringent effluent limit in the proposed permit. The effluents from the mining operation will be screened for compliance with the Texas Surface Water Quality Standards once the facility discharges effluent to protect aquatic life in the receiving streams and the designated uses of the intermittent streams.

The permit application states that the discharges from the retention ponds will be intermittent in nature and stormwater-driven. Historically, for mining permits with this type of discharge and without any available discharge flow data because the applicant is not discharging yet, the most conservative discharge scenario is used to calculate water quality-based effluent limits. No dilution is assumed at the point of discharge to the receiving water, so water quality-based effluent limits are calculated based on the receiving water being comprised of 100% effluent. This means the proposed permit was drafted assuming the only flow in the stream was effluent from the mine. Based on this assumption, the short-term and long-term health of fish and humans should be protected.

Because the facility had not begun discharging when the application was submitted and reviewed, no effluent analysis was available for screening for compliance with the Texas Surface Water Quality Standards. When discharge commences, sample data provided in accordance with Other Requirement No. 10 in the proposed permit will be compared against the calculated water quality-based effluent limits 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 limits that can be calculated based on effluent flow data that is not normally available when an applicant has yet to discharge. Based on a technical review of the submitted analytical results, a permit amendment may be initiated by TCEQ staff to include additional effluent limits and monitoring requirements.

The proposed permit contains effluent limits and provisions designed to protect the designated uses of the receiving streams and ultimately the Rio Grande. As stated in Appendix A of the Texas Surface Water Quality Standards, the designated uses for the Rio Grande Below Amistad Reservoir, Segment No. 2304 of the Rio Grande Basin, are contact recreation, public water supply, and high aquatic life use, and the dissolved oxygen criterion is 5.0 mg/L minimum dissolved oxygen. The proposed permit is designed to be protective of these applicable water quality uses and criterion.

Comment 10

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that Dos Republicas has not provided the name of the plant/hauler that the facility will use for its on-site septic tank waste.

Response 10

Other Requirement No. 9 of the proposed permit requires Dos Republicas to dispose of domestic wastewater either by a septic tank/drainfield system or other authorized method. ED staff determined during the technical review that a specific name of a licensed hauler/plant was not required to draft the permit to be protective of water quality.

Comment 11

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the fact that the City of Eagle Pass's drinking water intake structure is about two miles from where Elm Creek enters the Rio Grande emphasizes the importance of thorough Tier 1 and 2 antidegradation and reasonable potential analysis reviews. Dos Republicas needs to provide adequate information, such as the chemical constituents of its wastewater, so the TCEQ can determine if the wastewater will impact the treatment of the City's water supplies. The Maverick County Hospital District expressed concern regarding the effluent's impacts on Eagle Pass's water treatment plant. Luis A. Ruiz stated that the TCEQ needs to make sure that the Rio Grande will not be polluted so the city's water supply will not be contaminated. Fernanda Gonzalez expressed concern that the effluent will contaminate the city's water supply.

Response 11

The TCEQ's antidegradation policy and procedures apply to actions that would increase pollution in water in the state. Under Tier 1 protection, increases in pollutant loadings are not allowed if they would cause an impairment to water quality uses. Under Tier 2 protection, where water quality exceeds fishable/swimmable standards, water quality must be maintained and cannot be degraded more than a de minimis amount. The unclassified receiving waters have minimal aquatic life use for unnamed tributaries and unnamed ditches that will receive discharges from Outfalls 001M/R, 003M/R, 004M/R, 006M/R, 008M/R, 014M/R, 015M/R, 017M/R, 018M/R, 019M/R, 021, and 022M; limited aquatic life use for Hediondo Creek and unnamed tributaries that will receive discharges from Outfalls 007M/R and 015M/R; and high aquatic life use for Elm Creek, which will receive discharges from Outfalls 016M/R and 020M/R. The designated uses for Segment No. 2304 are high aquatic life use, primary contact recreation, and public water supply. The proposed permit was drafted in accordance with the Texas Surface Water Quality Standards and should be protective of the receiving waters' water

quality and existing uses. Therefore, the proposed permit meets the requirements of the Tier 1 and 2 antidegradation policies.

Effluent analyses could not be submitted when Dos Republicas filed its permit application because the facility had not begun to discharge. Other Requirement No. 10 was included in the proposed permit to require Dos Republicas to submit effluent analysis data to the TCEQ once discharges occur. (Please see Response No. 5 for further discussion of Other Requirement No. 10.) Once the mine begins to discharge and Dos Republicas submits the effluent data, ED staff can complete their reasonable potential analysis by comparing the effluent data with the calculated water quality-based effluent limits in Appendix B of the fact sheet. If staff determine there is a reasonable potential for any of the effluents to violate the water quality standards, they will reopen the permit and add appropriate monitoring requirements and effluent limits.

Comment 12

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the application maps do not clearly show how Dos Republicas intends to convey its wastewater from Outfalls 15 and 19 to their discharge routes and what unnamed ditches are parts of the discharge routes. The maps also appear to show existing laterals and impoundments/tanks as parts of the discharge routes.

Response 12

The discharge routes that are delineated in the proposed permit are based on information submitted by Dos Republicas in its permit application. The construction of any ditches needed to comply with the permit is Dos Republicas' responsibility. To the ED's knowledge, as represented in the permit application, Dos Republicas will not be using Lateral 20 or 21 or any other Maverick County Water District lateral as part of any discharge route.

Comment 13

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that Dos Republicas has not demonstrated its legal authority to use portions of the discharge routes that extend across other landowners' properties, including Lateral 20 or 21.

Response 13

To the ED's knowledge, as represented in its application, Dos Republicas will not be using Lateral 20 or 21 as part of any discharge route. For the water bodies that are parts of the discharge routes that may flow across another landowner's property, TPDES permits establish terms and conditions that are intended to provide water quality

pollution controls as directed by federal and state statutes and the Texas Administrative Code. Specifically, the proposed permit states the following on page 1:

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.⁴

According to section 5.012 of the Texas Water Code, the TCEQ is the agency primarily responsible for “implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment.” Section 26.121 of the Texas Water Code prohibits the discharge of waste or pollution into or adjacent to water in the state without authorization from the TCEQ. To implement this requirement, section 26.027 of the Texas Water Code gives the TCEQ the authority to issue TPDES permits for the discharge of waste or pollution into or adjacent to water in the state. “Water in the state” is defined broadly in section 26.001(5) of the Texas Water Code and includes both navigable and nonnavigable watercourses. Historically, Texas courts have held that water in a watercourse is the property of the State held in trust for the public.⁵ Accordingly, the TCEQ is authorized to permit the discharge of treated effluent into water in the state.

The Texas Court of Appeals considered whether the flow of treated effluent from a city’s wastewater treatment facility caused a taking of or damage to downstream landowners’ property in *Domel v. City of Georgetown*.⁶ In that case, downstream landowners Ethel and Norman Domel sued the City of Georgetown, alleging that the value of their property was diminished by the City’s discharge of treated effluent into an intermittent stream that crossed their land.⁷ The questions before the court were whether the stream on the Domels’ property was a watercourse owned by the State and whether the City of Georgetown’s discharge of treated effluent into that stream on their property pursuant to a state-issued permit was a constitutional taking absent flooding or violations of the City’s permit.⁸ The court held that “[the State] does not need title to use the bed and banks of a watercourse for their defined purpose of transporting water,” and “the State has the right to use the channel of the watercourse to meet its constitutionally mandated duty to conserve and develop the State’s water resources.”⁹ The court also considered the language that is on the first page of every TPDES permit (quoted above in this response) and determined that the City did not need additional authority to use

⁴ *Accord* 30 TEX. ADMIN. CODE § 305.122(c) and (d) (West 2015) (discussing authorizations and rights not granted by the permit).

⁵ *Goldsmith & Powell v. State*, 159 S.W.2d 534, 535 (Tex. Civ. App.—Dallas 1942).

⁶ *Domel v. City of Georgetown*, 6 S.W.3d 349 (Tex. App.—Austin 1999).

⁷ *Id.* at 350.

⁸ *Id.*

⁹ *Id.* at 358.

the watercourse for discharging treated effluent.¹⁰

Because the State is authorized to use the bed and banks of a watercourse to transport water and the TCEQ has authority to authorize a discharge of treated effluent to water in the state through a TPDES permit, the applicant for a TPDES permit does not need permission from downstream landowners to use the watercourse running through their properties. Therefore, Dos Republicas does not need to obtain an easement across the properties owned by others before discharging treated effluent into the watercourses that pass across their properties.

Comment 14

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the proposed permit's selenium limits should apply to all outfalls. Sierra Club commented that all outfalls need selenium limits.

Response 14

The existing permit's water quality-based effluent limit for total selenium of a daily maximum of 0.036 mg/L is continued in the proposed permit for Outfalls 001M, 003M, 004M, and 006M-008M. A total selenium limit was initially included in the permit for these outfalls based on best professional judgment and title 30, section 319.22 of the Texas Administrative Code, which provides the allowable concentrations of hazardous metals for discharges to inland waters. For the permit issued on November 16, 2006, the calculated water quality-based effluent limit found in Appendix B of the Fact Sheet and Executive Director's Preliminary Decision was more stringent than the limit in section 319.22 and thus was included in the permit for those outfalls. The effluent limit was carried over from the existing permit based on the federal anti-backsliding regulations found in 40 C.F.R. § 122.44(l).

Effluent limits for total selenium will be included for any of the new outfalls authorized by this permit amendment if it is determined they are required for the protection of the receiving waters' water quality. That will be determined once ED staff review the analytical data from the facility that Dos Republicas is required to submit under Other Requirement No. 10 of the proposed permit. Please see Response 5 for a further explanation of Other Requirement No. 10.

Comment 15

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that the proposed permit should require biomonitoring to address the discharges' potential impacts on aquatic life, human health, and the environment. Maverick County

¹⁰ *Id.* at 361.

commented that the mine's intermittent discharges will potentially have acute impacts on aquatic wildlife due to the cumulative effect of the effluent's contaminants and that requiring biomonitoring in compliance with title 30, section 307.6 of the Texas Administrative Code would provide a safeguard to detect and address such impacts.

Response 15

The addition of biomonitoring requirements to discharge permits is based on the TCEQ guidance document *Procedures to Implement the Texas Surface Water Quality Standards* (January 2003). Whole effluent toxicity (WET) testing, also known as biomonitoring, is required in any permit where the potential exists for the effluent to cause toxicity in the receiving water.¹¹ For industrial facilities, the TCEQ requires WET testing if the facility is an EPA-classified major industrial discharger with continuous-flow outfalls or an industrial discharger with continuous-flow outfalls with the potential to cause toxicity. The Eagle Pass Mine is an EPA-classified major industrial discharger, but all of the outfalls are stormwater-driven, and discharges will occur on an intermittent and flow-variable basis. Therefore, it was determined that biomonitoring requirements were not required.

Comment 16

The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that coal pile runoff can contain many of the pollutants present in coal-fired power plant combustion wastewater. They expressed concern that the effluent limits for this wastewater were not based on best professional judgment, were not calculated in a manner consistent with the Clean Water Act or its implementing regulations, and are based on an inaccurate characterization of the receiving waters and an inconsistent/inaccurate Texas Toxicity Modeling Program analysis. Sierra Club also noted the similarity between coal pile runoff and coal-fired power plant combustion wastewater and stated that the permit needs water quality- and technology-based effluent limits necessary to protect the receiving waters' designated uses.

Response 16

The Texas Toxicity Modeling Program analysis was used to calculate the water quality-based effluent limits for the protection of aquatic life and human health, which were calculated in a manner that is consistent with other mining permits. The permit application states that the discharges from the retention ponds will be intermittent in nature and stormwater-driven. Historically, for mining permits with this type of discharge and without any available discharge flow data because the applicant has not started discharging, the most conservative discharge scenario is used to calculate water quality-based effluent limits. No dilution is assumed at the point of discharge to the receiving water, so water quality-based effluent limits are calculated based on the

¹¹ 30 TEX. ADMIN. CODE § 307.6(e)(2)(A) (West 2015); 40 C.F.R. § 122.44(d)(1)(v) (2014).

receiving water being comprised of 100% effluent.

The Clean Water Act required EPA to develop effluent guidelines that could be applied to specific industry categories. The discharge of stormwater and mine seepage from active mining areas via Outfalls 001M, 003M, 004M, 006M-008M, 014M-020M, and 022M from this facility is subject to the national effluent limit guidelines found in 40 C.F.R. part 434, subpart C (Acid or Ferruginous Mine Drainage). The discharge of stormwater from post-mining areas via Outfalls 001R, 003R, 004R, 006R-008R, and 014R-020R from this facility is subject to the national effluent limit guidelines found in 40 C.F.R. part 434, subpart E (Post-Mining Areas). The wastewaters that are authorized for discharge through all these outfalls are not subject to the technology-based effluent limits for coal-pile runoff found in 40 C.F.R. part 423 (Steam Electric Power Generating Point Source Category). However, technology-based effluent limits for total suspended solids were included for Outfall 021 from the national effluent limit guidelines for coal-pile runoff at power-generating stations found in 40 C.F.R. § 423.15(k) based on best professional judgment due to the similar nature of the wastewaters to those that are subject to that effluent limit guideline.

Please see Response 9 for a further explanation of how technology-based and water quality-based effluent limits were developed for this permit.

Comment 17

Roberto Medina expressed concern that effluent will pollute his downstream property, making it impossible to safely live and grow plants on his property. Sergio Sanchez Jr. expressed the same two concerns regarding all land that could be polluted by the mine. Diana Hardt stated the mine will impact pecan growers in Eagle Pass, Quemado, Hopedale, and El Indio. Norma A. McKnight commented that the area is a farming community and that if the water is so polluted that there is not enough clean water for people to drink, then there will not be enough clean water to grow crops and raise livestock.

Response 17

The proposed permit was drafted in accordance with the Texas Surface Water Quality Standards for the protection of water quality for human health, aquatic life, and existing uses. The designated uses for the Rio Grande Below Amistad Reservoir include public water supply, and the TCEQ guidance document *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010) assumes that all waters have basic uses like navigation, agricultural water supply, and industrial water supply. Furthermore, the water quality-based effluent limits found in Appendix B of the Fact Sheet and Executive Director's Preliminary Decision were calculated to protect water quality from toxic materials based on section 307.6(b) of the TCEQ's rules, which includes the requirement that water in the state "be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination

of the three.”¹²

Comment 18

Sierra Club commented that the draft permit does not contain needed technology-based effluent limits for toxic metals and other pollutants in the mine wastewater.

Response 18

The proposed permit contains the required technology-based effluent limits. The discharge of stormwater and mine seepage from active mining areas through Outfalls 001M, 003M, 004M, 006M-008M, 014M-020M, and 022M at this facility is subject to federal effluent limit guidelines at 40 C.F.R. part 434, subpart C (Acid or Ferruginous Mine Drainage). The discharge of stormwater from post-mining areas via Outfalls 001R, 003R, 004R, 006R-008R, and 014R-020R at this facility is subject to federal effluent limit guidelines found in 40 C.F.R. part 434, subpart E (Post-Mining Areas). The technology-based effluent limits required by those two subparts have been included in the permit for the appropriate wastewaters.¹³ Please see Responses 9 and 16 for discussions of the development of technology-based effluent limits.

Comment 19

Sierra Club commented that the TCEQ must consider the effluent’s impact on downstream endangered species, such as the Rio Grande silvery minnow (*Hybognathus amarus*), and evaluate the impacts of toxic, bioaccumulative pollutants on the Rio Grande. Mike Hernandez and Ernesto Ibarra commented that the proposed permit would adversely affect the endangered ocelot (*Leopardus pardalis*) and jaguarundi (*Puma yaguarondi*). They provided sworn statements given before the Railroad Commission regarding six sightings of ocelot adults and kittens in the vicinity of Elm Creek and Dos Republicas’ facility site and on the facility site. They expressed concern that the cats would be exposed to selenium, boron, manganese, boron, and mercury in Dos Republicas’ discharges to Elm Creek. The draft permit does not contain chronic or acute biomonitoring, effluent limits, and monitoring requirements necessary to protect the cats. The Pacuache Clan of Texas stated the mining project would destroy endangered species habitat, such as habitat for the ocelot and jaguarundi.

Response 19

The TCEQ reviews permit applications to determine whether discharges could potentially have any adverse effect on an aquatic or aquatic-dependent federally endangered or threatened species, including proposed species. For this review, the

¹² 30 TEX. ADMIN. CODE § 307.6(b)(4).

¹³ The technology-based effluent limits in the proposed permit for the active mining areas are the total suspended solids, total iron, total manganese, and pH limits. Those for the post-mining areas are the settleable solids and pH limits.

TCEQ considers the memorandum of agreement between the TCEQ and EPA concerning the TPDES program, the U.S. Fish and Wildlife Service's biological opinion associated with the TCEQ assuming the TPDES program dated September 14, 1998, and the update to the biological opinion dated October 21, 1998. During this review for this application, the TCEQ did not identify any aquatic or aquatic-dependent species that would be affected by the proposed permit.

Regarding the specific species mentioned by the commenters, the ocelot and jaguarundi are not aquatic or aquatic-dependent species, and the Rio Grande silvery minnow's critical habitat is upstream of the discharge route (from El Paso to Amistad Dam).

Comment 20

George Baxter commented that the cumulative effects of the Eagle Pass Mine and an existing open-pit coal mine a few hundred feet from the Rio Grande in Mexico that is upriver from the City of Eagle Pass's water intake, known as Tajo Norte or Tajo Siglo XXI, on Eagle Pass's drinking water supply must be taken into account in the draft permit. Mr. Baxter suggested sampling the river upstream and downstream from Tajo Norte and examining aerial photos for likely discharge routes. He also suggested that the TCEQ install a water monitor next to Eagle Pass's water intake that can measure all pollutants.

Response 20

It is not part of the TCEQ's practice to install water monitoring stations in relation to issuing a discharge permit. The proposed permit has been developed based on the Texas Surface Water Quality Standards to be protective of water quality for human health, aquatic life, and the designated uses of the receiving waters, including public water supply for the Rio Grande Below Amistad Reservoir. The TCEQ takes into account the health of the receiving waters when developing appropriate permit requirements. For this application, this included any effects that the Tajo Norte facilities have had on the Rio Grande. Please see Response 9 for a discussion of how effluent limits were developed for this permit.

A facility's discharge routes are delineated by the permit applicant. The TCEQ verifies these routes using various means, such as U.S. Geological Survey maps and aerial photographs provided by the applicant, so the appropriate water quality uses and criteria can be assigned to the water bodies along the routes. The TCEQ does not require the applicant to provide information concerning the discharge routes of its other facilities.

Comment 21

George Baxter commented that Dos Republicas' failure to provide a copy of the ED's preliminary decision and draft permit at the Maverick County Courthouse when it

was originally supposed to call into question its ability and willingness to comply with the draft permit and protect Elm Creek's and the Rio Grande's water quality. Gabriel De La Cerda expressed concern regarding how Dos Republicas will run the mine based on its mine in Mexico and the low-grade coal they will be mining. Elvira Galvan expressed concern regarding Dos Republicas' ability to protect the people's health and the environment based on Dos Republicas' other operations and disasters that have occurred at other mines. Issac Turrubiate also expressed concern regarding how Dos Republicas will operate the mine based on how it operates its mine in Mexico.

Response 21

Dos Republicas must comply with all provisions of TPDES Permit No. WQ0003511000, whether it be the existing permit or the proposed permit if it is ultimately issued. The compliance histories of both Dos Republicas and the Eagle Pass Mine were taken into account when drafting the proposed permit. Both Dos Republicas and the Eagle Pass Mine have a high compliance history rating. Under the TCEQ's compliance classification system, that means both entities have an above-satisfactory compliance record.¹⁴ If they are ever found to be in violation of the permit, they will be subject to appropriate enforcement action from the TCEQ.

Comment 22

George Baxter commented that the Railroad Commission application states that Dos Republicas will use chemicals for dust suppression, whereas Dos Republicas told the TCEQ it would not use chemicals for this purpose. He stated that any chemicals Dos Republicas will use for dust suppression need to be identified along with the effects they will have on Elm Creek. The City of Eagle Pass, EDF, MCEPHA, Anson Howard, Mike Hernandez, Ernesto Ibarra, Walter Herring, Gabriel De La Cerda, and Juan Esqueda commented that Dos Republicas has previously represented that it may use chemicals for dust suppression. They stated that the draft permit does not take these chemicals' impact on receiving waters into account and that their concentration must be considered in the TCEQ's antidegradation review. The City of Eagle Pass asked whether Dos Republicas would have to obtain approval from the TCEQ before using chemicals for dust suppression.

Response 22

Dos Republicas did not indicate in its application that chemicals will be used in dust suppression activities other than the flocculants that will be added to the retention ponds as wastewater treatment. The wastewaters that will be used for dust suppression are the same as those that will be authorized for discharge. Discharging to water in the state is not authorized by this permit from any location on the facility property other than through the outfalls listed in the permit. Any discharges that may occur due to dust suppression activities are not authorized by this permit, and Dos Republicas would be

¹⁴ 30 TEX. ADMIN. CODE § 60.2(a)(1).

subject to appropriate enforcement action from the TCEQ if those types of discharges occurred.

Comment 23

The City of Eagle Pass and Maverick County Hospital District provided a petition from 2011 with the names of approximately 1,650 people and approximately 6,533 copies of a form letter addressed to the Railroad Commission from 2011 and 2012 to demonstrate the amount of public opposition to the mine. The City of Eagle Pass asked what amount of weight would be given to this opposition. Jessica De Hoyos commented that if the TCEQ had listened to this opposition, the mine would have been stopped. Patricia De Hoyos expressed her opposition to the mine.

Response 23

The ED acknowledges the amount of public opposition to the mine expressed in the petition and letters and by others. Consideration of general opposition to, or support of, an activity is not part of the TCEQ's review of a wastewater discharge permit application. Please see Response 9 for a discussion of what went into the permit review process and how ED staff developed the effluent limits and other permit requirements.

Comment 24

The International Boundary and Water Commission commented that Segment No. 2304 is on the 2012 Clean Water Act 303(d) list for a bacterial impairment and recommended that the TCEQ consider the effluent's potential impacts on this impairment when setting a bacteria effluent limit for the facility.

Response 24

The Eagle Pass Mine will be discharging mine seepage from active mining areas; mine pit water from active mining areas; stormwater from active mining areas, post-mining areas, and inside the rail loop; and stormwater runoff from fueling areas, fuel storage areas, vehicle and equipment maintenance areas, truck washing stations, and coal handling and storage areas, none of which contain known sources of bacteria. Therefore, the discharges from this facility should not contribute further to Segment No. 2304's bacteria impairment.

Comment 25

Jose Jimenez and Sergio Sanchez Jr. expressed concern regarding the ability to continue fishing in Elm Creek after Dos Republicas begins operating. The Maverick County Hospital District expressed concern regarding the degradation of the designated uses for Elm Creek, the Rio Grande, Hediondo Creek, and Seco Creek and how that degradation would impact humans, livestock, aquatic life, wildlife, agriculture, and recreation. Alyssa Perales expressed concern for the fish living in Elm Creek. The fact

that people fish there shows the fish are still prevalent. Fernanda Gonzalez expressed concern regarding the effluent's impact on wildlife in Elm Creek and people's ability to fish in the creek, as the effluent will make the fish poisonous. Lynette Avitia expressed concern that people will be eating fish from contaminated water.

Response 25

The TCEQ's antidegradation policy and procedures apply to actions that would increase pollution in water in the state. Under Tier 1 protection, increases in pollutant loadings are not allowed if they would cause an impairment to water quality uses. Under Tier 2 protection, where water quality exceeds fishable/swimmable standards, water quality must be maintained and cannot be degraded more than a de minimis amount. Elm Creek is considered to be high-quality water and receives Tier 2 protection under the antidegradation policy. The unclassified receiving waters have minimal aquatic life use for unnamed tributaries and unnamed ditches that receive discharges from Outfalls 001M/R, 003M/R, 004M/R, 006M/R, 008M/R, 014M/R, 015M/R, 017M/R, 018M/R, 019M/R, 021, and 022M; limited aquatic life use for Hediondo Creek and unnamed tributaries that receive discharges from Outfalls 007M/R and 015M/R; and high aquatic life use for Elm Creek, which receives discharges from Outfalls 016M/R and 020M/R. The designated uses for Segment No. 2304 are high aquatic life use, primary contact recreation, and public water supply. The proposed permit was drafted to protect current water quality conditions and the receiving waters' designated uses.

The water quality-based effluent limits found in Appendix B of the Fact Sheet and Executive Director's Preliminary Decision were calculated to be protective of water quality from toxic materials based on section 307.6(b) of the TCEQ's rules, which includes the requirement that water in the state "be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three."¹⁵

Please see Response 9 for a discussion of what went into the permit review process and how ED staff developed the effluent limits in the proposed permit.

Comment 26

Jose Jimenez, Priscilla Salazar, and Juan Valadez expressed concern regarding the mine's potential impacts on human health. Senator Carlos I. Uresti and Representative Poncho Nevárez expressed concern about the mine's impacts on human health due to air contamination from the mine and wastewater that will flow to the City of Eagle Pass's water intake. Eagle Pass ISD expressed concern regarding the health, safety, and well-being of about 400 students that attend an elementary school that is located close to Elm Creek downstream from the mine. The Maverick County Hospital District expressed concern regarding the potential for the mine or its effluent to cause diseases like cancer, heart disease, stroke, and chronic obstructive pulmonary disease in

¹⁵ *Id.* § 307.6(b)(4).

Maverick County, especially because it is a significantly medically underserved area. For example, the hospital district provides Fort Duncan Regional Medical Center with about \$1,000,000 per year to provide support for patients without insurance. Ricardo Ruiz expressed concern regarding human exposure to the toxic substances that come from coal mining, such as mercury, lead, and nickel. He asked why pollution that can cause issues like birth defects, cancer, and behavioral problems is allowed to continue. Liliana Medina expressed concern regarding the negative effects the mine will have on children at the school behind her house, which is one mile from the mine, and on her family. Diana Hardt stated that conditions such as asthma, chronic obstructive pulmonary disease, and eye and skin diseases will become a problem when the mine is operating, especially for youth and the elderly. She also stated the mine workers will become ill with conditions, such as black lung disease and silicosis. She also expressed concern that school children will be impacted academically, athletically, and socially by the mine. Luis A. Ruiz expressed concern for the safety of people who will visit Elm Creek Park. Sophia Torres commented that her neighbor, Rosa, traveled to Piedras Negras every few months and blamed Dos Republicas' mine there for the deaths of multiple people due to cancer; Rosa also died of cancer. The Pacuache Clan of Texas asked whether the mine will cause health hazards and expressed concern that the draft permit allows Dos Republicas to discharge carcinogenic chemicals. Hector Chavez expressed concern that the mine will produce gases and dust that can affect human health. Lynette Avitia expressed concern about air contaminants causing respiratory problems. Jerry Brower commented that he and his wife live within three miles of the mine and are at risk of exposure to airborne particulates known to cause cancers and other ailments.

Response 26

Regulations promulgated in the Texas Surface Water Quality Standards and administered in accordance with the *Procedures to Implement the Texas Surface Water Quality Standards* are designed to protect human health from effluent that is discharged to water in the state. The proposed permit was drafted in accordance with those standards and should be protective of human health. Please see Response 9 for a further explanation of the permit review process and how ED staff developed permit requirements to protect human health.

The proposed permit only regulates the discharge of wastewater effluent from the facility. Air quality concerns are outside the scope of the ED's review of the application. Dos Republicas does have two TCEQ Air New Source Registrations, Nos. 43345 and 99262. Please contact the TCEQ Office of Air for more information about the registrations. Contact information is located on the TCEQ's web site, www.tceq.texas.gov, or by phone at 512-239-2104.

Comment 27

Maverick County expressed concern regarding the TCEQ's antidegradation review. It asked what information staff used to determine if the present water quality conditions are the same in Elm Creek as they were on the baseline date for degradation determinations, November 28, 1975, as the area has become densely urbanized over the

past forty years. It also asked what standard staff used to determine that the degradation would be de minimis, such as purely subjective standards, and if they did use a subjective standard, which factors they considered. Maverick County asserted that the effluent's impact would be more than de minimis. It also asked how staff factored bioaccumulating metals that would be present in the effluent, such as selenium and boron, into their antidegradation analyses, as at least selenium will be present in Elm Creek in greater quantities after the mine discharges than it was before.

Response 27

Present water quality conditions found in the 2010 Texas Surface Water Quality Standards, not conditions from November 28, 1975, were used to develop requirements to ensure the proposed permit complied with the TCEQ's antidegradation policy and were assessed using the best available information. ED staff looked at U.S. Geological Survey maps, aerial photography, and previous assessments of Elm Creek to best determine its flow status. Elm Creek was determined to be a perennial stream. As stated in title 30, section 307.4(h)(3) of the Texas Administrative Code, unclassified perennial streams are presumed to have a high aquatic life use and corresponding dissolved oxygen criteria.

The TCEQ's antidegradation policy and procedures apply to actions that would increase pollution in water in the state. Under Tier 1 protection, increases in pollutant loadings are not allowed if they would cause an impairment to water quality uses. Under Tier 2 protection, where water quality exceeds fishable/swimmable standards, water quality must be maintained and cannot be degraded more than a de minimis amount. Elm Creek is considered to be high-quality water and receives Tier II protection under the antidegradation policy. The proposed permit is designed to protect current water quality conditions. Under its requirements, ED staff determined that no water quality parameters of concern would be present in the discharges in amounts that would degrade water quality in Elm Creek. This includes staff's determination during their technical review that additional limits for selenium and boron were not required to maintain Elm Creek's current water quality.

Comment 28

Maverick County commented that the TCEQ did not consider the receiving waters' proximities to Elm Creek (when Elm Creek itself is not the receiving water) when making aquatic life use decisions, thereby evaluating impacts as if there would be no or almost no life uses affected. It also disagreed with the TCEQ's life use evaluation for the discharge route for Outfalls 015M/R. The outfalls discharge into a Maverick County Water District lateral before diverting to an unnamed tributary of Elm Creek after 0.15 miles, and the county believed assigning a limited aquatic life use to this route was inaccurate.

Response 28

The TCEQ did consider all the receiving waters when making aquatic life use decisions. The aquatic life uses for the unclassified streams were determined using section 307.4(h)(3) and the best available information, such as U.S. Geological Survey maps, aerial photography, and previous assessments. For the unclassified waters that will receive discharges from the Eagle Pass Mine, unnamed tributaries and unnamed ditches that will receive discharges from Outfalls 001M/R, 003M/R, 004M/R, 006M/R, 008M/R, 014M/R, 015M/R, 017M/R, 018M/R, 019M/R, 021, and 022M have minimal aquatic life use; Hediondo Creek and unnamed tributaries that will receive discharges from Outfalls 007M/R and 015M/R have limited aquatic life use; and Elm Creek has high aquatic life use.

The discharge routes that are delineated in the proposed permit are based on information submitted by Dos Republicas in its application. Based on that information, the discharge route for Outfalls 015M/R is directly to an unnamed ditch, then to an unnamed tributary. The unnamed tributary was assessed as intermittent with perennial pools and capable of supporting limited aquatic life use due to the presence of impounded water upstream of Lateral 21. According to the application, none of the outfalls in the proposed permit discharge into Lateral 20 or 21 or any other Maverick County Water District lateral.

Comment 29

The Maverick County Republican Party expressed concern regarding Dos Republicas' ability to prevent its toxic effluent from tainting Maverick County residents' water supply. The Pacuache Clan of Texas expressed concern regarding the possible contamination of their drinking water. Lynette Avitia expressed concern that people will be drinking contaminated water.

Response 29

The proposed permit was developed according to the Texas Surface Water Quality Standards to protect water quality and to not degrade any of the designated uses for the Rio Grande Below Amistad Reservoir, which include public water supply. Please see Response 9 for an explanation of how the permit review process works and how ED staff developed the proposed permit's requirements to protect water quality and the receiving waters' designated uses.

The discharge routes that are delineated in the proposed permit are based on information submitted by Dos Republicas in the application. Based on that information, discharges from this facility will not enter any of the Maverick County Water District laterals and should have no effect on the drinking water contained in those laterals.

Comment 30

The Pacuache Clan of Texas stated that Indian archaeological sites associated with their clan, including religious sites, will be destroyed by the mine. This would negatively impact their religious practices and destroy artifacts like human remains and funerary and sacred objects. They stated they were not consulted as required by law. They also expressed concern that the mine would discharge highly toxic nitrates underground, which are highly corrosive and could destroy buried artifacts. They provided several attachments they had submitted to the U.S. Department of the Interior.

Response 30

The purpose of the proposed permit is to regulate the discharge of wastewater effluent to protect surface water quality. The state-level review and assessment of historical sites and artifacts in Texas falls under the jurisdiction of the Texas Historical Commission, not the TCEQ, and is outside the scope of this permit. The permit application was evaluated for the purpose of protecting aquatic life, human health, and the environment based on requirements found in the Texas Surface Water Quality Standards. Compliance with the Texas Surface Water Quality Standards provides surface water protection. The TCEQ Water Quality Division has determined that if surface water is protected, the groundwater quality in the vicinity will not be impacted by the discharge.

Dos Republicas will only be mining coal at the Eagle Pass Mine; it will not be processing coal. The mining process does not add chemicals or other constituents that do not occur in the area naturally. Therefore, the mining seepage will be of a similar quality to naturally occurring seepage that occurs in the area from precipitation events.

The ED acknowledges receipt of the attachments that were submitted to the federal government.

Comment 31

The City of Eagle Pass submitted an aerial video and photos of areas affected by flooding. Diana Hardt submitted student papers, a student-signed petition, and a transcript from a social media project, all regarding the mine.

Response 31

The ED acknowledges receipt of these items.

Comment 32

The City of Eagle Pass commented that if the TCEQ issues the draft permit, the state should be held responsible for any future contamination of Eagle Pass's watershed and the Rio Grande. Diana Hardt asked if the TCEQ and Dos Republicas are ready to

compensate future generations impacted by the mine.

Response 32

The proposed permit has been developed to protect water quality in Segment No. 2304 and Elm Creek. Compliance with the permit is Dos Republicas' responsibility. If violations of this permit occur that degrade the receiving waters' water quality, the TCEQ can assess penalties against Dos Republicas and require it to complete remediation actions for those violations. Furthermore, the permit does not limit an affected person's ability to seek legal remedies against Dos Republicas regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

Comment 33

The City of Eagle Pass expressed concern regarding the impact that metals in the effluent could have on those who use Elm and Hediondo Creeks for domestic and livestock use and on the Rio Grande, the city's only water supply for almost 50,000 people.

Response 33

The proposed permit has been drafted according to the Texas Surface Water Quality Standards to protect water quality and the designated uses of the receiving waters. The standards list the designated uses for the Rio Grande Below Amistad Reservoir, Segment No. 2304 of the Rio Grande Basin, as high aquatic life use, primary contact recreation, and public water supply.

Please see Response 9 for a discussion regarding how ED staff developed the effluent limits and other permit requirements.

Please see Response 17 for a discussion regarding the protection of water quality for livestock.

Comment 34

The City of Eagle Pass commented that issuing the draft permit would seem contrary to the U.S.-Mexico Border 2020 Environmental Program with regard to air, water, and overall environmental concerns and that the entire border community should be taken into account when considering this permit. Mike Hernandez commented that the draft permit will affect not only Maverick County but counties bordering the Rio Grande downstream as well.

Response 34

The proposed permit was drafted to protect water quality for aquatic life and human health in the Rio Grande Below Amistad Reservoir, Segment No. 2304 of the Rio Grande Basin. If the proposed permit is protective of Segment No. 2304, then it will also be protective of the portion of the Rio Grande that is downstream from that segment. Other environmental concerns that fall outside the scope of the proposed permit, such as air quality, cannot be addressed as part of the TCEQ's review of the application.

Comment 35

The City of Eagle Pass asked how many times per month the TCEQ monitors the raw water upstream from the city's water intake. It also asked, if the TCEQ detected an anomaly, how quickly the TCEQ must inform the public and any governmental entity associated with handling the water of the anomaly. It also asked what additional monitoring devices the TCEQ will install after mining commences.

Response 35

The TCEQ's ambient monitoring station that is located near the City of Eagle Pass's public water intake structure has been offline since October 2014 due to damage from flooding. It has not been decided at this point if the monitoring station will be repaired or removed. There is no public notification process for anomalies that are detected at ambient water stations. It is not part of the TCEQ's practice to install water monitoring stations in relation to issuing a discharge permit.

Comment 36

The City of Eagle Pass asked if the TCEQ determines whether flocculants used to treat sediment are environmentally safe and asked whether they contain human carcinogens. It also asked if the TCEQ would monitor or control which flocculants Dos Republicas would use prior to their use and if Dos Republicas would have to tell the TCEQ which flocculants it uses before or after using them.

Response 36

The TCEQ does not know the chemical makeup of the flocculants that Dos Republicas will use at the facility, nor is Dos Republicas required to report that information to the TCEQ. Furthermore, the TCEQ does not require permittees to submit material safety data sheets for flocculants. At the Eagle Pass Mine, flocculants will be used in the retention ponds to bind to sediments so they will settle out and not discharge. Under Other Requirement No. 10 of the proposed permit, Dos Republicas must submit effluent data to the TCEQ once the facility begins discharging. This includes sampling for any pollutant that is used at the mine and listed in Table 2 or 3 in Attachment A of the proposed permit. ED staff will review the data to determine if the effluent is meeting the state water quality standards. If it is not, staff may amend the

permit to include additional effluent limits, monitoring requirements, or a combination of both to protect water quality.

Comment 37

Juanita Martinez expressed concern regarding Dos Republicas' ability to police itself. She cited an example where someone dumped chemicals upstream from a ditch on her property that resulted in a fish kill. The TCEQ came and said nothing could be done about it. She was concerned that the same thing would happen with the chemicals in Dos Republicas' effluent and that people might grow edible plants in soil exposed to contaminated water or children might drink contaminated water before the contamination is discovered.

Response 37

The proposed permit was drafted in accordance with the Texas Surface Water Quality Standards to protect water quality for human health, aquatic life, and existing receiving water uses, which include public water supply. Once the facility begins discharging, Dos Republicas must submit monthly Discharge Monitoring Reports to the TCEQ. This is the same reporting procedure used for every entity holding a TPDES permit in the State of Texas. If a report reveals that the facility has violated an effluent limit in the permit, the TCEQ may take enforcement action against Dos Republicas.

Please see Responses 17 and 26 for the ED's discussions regarding agriculture and human health, respectively.

Comment 38

Randy Laurence expressed concern that Dos Republicas will not make sure the wastewater in its retention ponds meets the draft permit's effluent limits until the ponds actually discharge.

Response 38

The proposed permit's effluent limits apply at the point of discharge into water in the state. Dos Republicas must meet the effluent limits in the proposed permit at each outfall, not within the retention ponds themselves.

Comment 39

Randy Laurence commented that groundwater in the area is heavy in minerals and that the runoff's water quality would be greater if Dos Republicas isolated the runoff from mine seepage.

Response 39

Dos Republicas already has authority to discharge mine seepage in its existing permit. One of the amendments it requested will create new outfalls that will discharge similar wastewaters from other areas of the mine. The proposed permit was drafted so the effluents discharged from the facility will not impair the water quality of Segment No. 2304 and Elm Creek, including effluent from any outfall that discharges both stormwater and mine seepage.

Comment 40

The Texas Mining and Reclamation Association expressed its support for the draft permit, citing coal mining's economic benefits, the fact that it has no history of causing ground or surface water contamination in the state, and the efforts of the government to regulate the mine's environmental impacts. Angelica Montalvo expressed support for the mine, citing its economic impacts and operator North American Coal's positive record for reclamation and environmental protection. Rudy Rodriguez expressed support for the mine and the draft permit, citing how the mine will benefit the area economically.

Response 40

The ED acknowledges the commenter's support of the proposed permit and/or the mine.

Comment 41

Terri Patlan-Contreras commented that, based on the negative impacts of a caliche plant near her home that has a TCEQ permit, the fact that a permit may meet state and federal requirements does not mean it is stringent enough.

Response 41

The state and federal requirements that apply to the proposed permit were developed to be stringent enough to protect water quality for human health and aquatic life. The effluent limits and other provisions in the proposed permit were developed based on these state and federal requirements.

Please see Response 9 for more details about the permit review process and how ED staff developed the effluent limits and other provisions in this permit.

Comment 42

The Maverick County Hospital District expressed concern regarding the effluent's impact on biodiversity in Elm Creek, the Rio Grande, Hediondo Creek, and Seco Creek.

Response 42

The proposed permit was developed based on the Texas Surface Water Quality Standards to protect water quality for aquatic life and to maintain the high aquatic life use of Segment No. 2304 and Elm Creek. Please see Response 19 for a discussion regarding endangered species protection and Response 9 for a discussion regarding the ED's implementation of the TCEQ's antidegradation policy and other permit regulations.

Comment 43

The Maverick County Hospital District believed that the permit's issuance is an environmental justice issue, as 95.1% of the citizens are minorities, 30.5% live below the poverty rating, and 35.5% are uninsured.

Response 43

Based on state law and the agency's rules, the TCEQ does not specifically consider the issue of environmental justice when reviewing an application for a wastewater discharge permit. However, the TCEQ has made a strong commitment to addressing such issues by creating the Environmental Equity Program within the Office of the Chief Clerk. The goals of the Environmental Equity Program are to help citizens and neighborhood groups participate in regulatory processes; serve as the agency contact to address allegations of environmental injustice; serve as a link for communications between the community, industries, and the government; and thoroughly consider all citizens' concerns and handle them fairly. Additional information on the TCEQ's Environmental Equity Program can be found on the TCEQ's website at www.tceq.texas.gov/agency/hearings/envequ.html or by calling Jim Fernandez at 512-239-2566.

Comment 44

Ricardo Ruiz asked what will be done to the facility site once mining ends. Diana Hardt stated that reclamation is not an option, as evidence in Rosita and Nava, Mexico, has shown that trees and other plant life do not grow back.

Response 44

In the State of Texas, the Railroad Commission, not the TCEQ, has jurisdiction to regulate coal mine reclamation. Currently, the federal government, through the Surface Mining Control and Reclamation Act, mandates uniform standards for mine reclamation activities. Railroad Commission Permit No. 42A addresses the specific reclamation requirements that will apply to the Eagle Pass Mine once coal mining operations at the site cease.

Comment 45

Norma A. McKnight commented that the environmental engineer who was at the public meeting to comment on the application should have been an independent party, not someone who was representing the company.

Response 45

The parties present at the front of the room at the public meeting that occurred on January 22, 2015, were there to answer questions on behalf of the parties they represented, not to provide comment on the application. Lisa O. Murphy, P.E., has been working as a technical consultant for Dos Republicas for this application and was at the meeting to answer questions on the company's behalf.

Comment 46

Rodolfo Cardona expressed his appreciation for the TCEQ's oversight and the regulations that will apply to the mine.

Response 46

The TCEQ acknowledges Mr. Cardona's comments.

Comment 47

Luis A. Ruiz asked what measures the TCEQ is taking to ensure Elm Creek does not become polluted. The Pacuache Clan of Texas asked whether the proposed discharge and mine dust will contaminate or degrade the quality of Elm Creek and its tributaries. Mike Hernandez expressed concern that the Rio Grande will become contaminated. Sergio Sanchez Jr., Juan Valadez, and Hector Chavez expressed concern about the mine contaminating water in the area.

Response 47

For the discharge routes listed in the proposed permit, the unclassified receiving waters have minimal aquatic life use for unnamed tributaries and unnamed ditches that receive discharges from Outfalls 001M/R, 003M/R, 004M/R, 006M/R, 008M/R, 014M/R, 015M/R, 017M/R, 018M/R, 019M/R, 021, and 022M; limited aquatic life use for Hediondo Creek and unnamed tributaries that receive discharges from Outfalls 007M/R and 015M/R; and high aquatic life use for Elm Creek, which receives discharges from Outfalls 016M/R and 020M/R. The designated uses for Segment No. 2304 are high aquatic life use, primary contact recreation, and public water supply. The effluent limits and other requirements established in the proposed permit comply with the Texas Surface Water Quality Standards and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* and should be protective of human health, aquatic life, and the receiving waters' designated uses. For more information about how

ED staff developed the permit's requirements, please see Response 9.

Comment 48

The Pacuache Clan of Texas asked whether the mine will cause nuisance conditions. Humberto Esquivel, Jr., commented that the mine is causing noise pollution.

Response 48

Nuisance conditions that are not related to water quality, including noise pollution caused by facility operations, are outside the scope of this permit. However, the permit does not limit an affected person's ability to seek legal remedies against Dos Republicas regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

Comment 49

The Pacuache Clan of Texas questioned whether ED staff had accurately calculated the effluent limits in the draft permit.

Response 49

The effluent limits in the proposed permit are appropriate and protective of water quality for the wastewaters that will be discharged from this facility. For a further explanation of how ED staff developed the effluent limits for this permit, please see Response 9.

Comment 50

The Pacuache Clan of Texas expressed concern that the exposed coal in the mine will come into contact with water and air to form sulfuric acid, which will flow into waterways, killing plants and aquatic animals, and leave the subsoil infertile.

Response 50

The proposed permit was drafted in accordance with the Texas Surface Water Quality Standards to protect water quality for human health, aquatic life, and the receiving waters' designated uses. The designated uses for Segment No. 2304 are high aquatic life use, primary contact recreation, and public water supply.

The water quality-based effluent limits found in Appendix B of the Fact Sheet and Executive Director's Preliminary Decision were calculated to protect water quality from toxic materials based on section 307.6(b) of the TCEQ's rules, which includes the requirement that water in the state "be maintained to preclude adverse toxic effects on

aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.”¹⁶ For a discussion of the applicable technology-based effluent limits included in the proposed permit, please see Response 18.

Comment 51

The Pacuache Clan of Texas expressed concern that toxic trace elements can leach from waste and coal storage piles and contaminate surface water. Gloria A. Rodriguez expressed concern that toxic agents will contaminate surface water.

Response 51

The proposed permit was drafted based on the Texas Surface Water Quality Standards to protect human health and aquatic life and maintain the receiving waters’ designated uses. The designated uses for Segment No. 2304 are high aquatic life use, primary contact recreation, and public water supply. Please see Response 9 for a discussion of the permit review process and how ED staff developed the effluent limits in this permit.

Comment 52

The Pacuache Clan of Texas expressed concern that mine drainage water can contain high levels of dissolved solids that can deteriorate stream quality.

Response 52

Dos Republicas could not submit effluent data in the application because the mine has not started discharging effluent. Other Requirement No. 10 has been included in the proposed permit to require Dos Republicas to sample the effluents once the retention ponds begin discharging and have them tested for the parameters found in Attachment A. Table 1 of Attachment A includes total dissolved solids, sulfate, and chloride as parameters that must be included in the tests. Once the TCEQ receives the analytical results, ED staff will screen for total dissolved solids, sulfates, and chlorides at each outfall that was sampled. Based on the technical review and screening of the submitted analytical results, a permit amendment may be initiated by ED staff to add effluent limits, monitoring requirements, or both to the permit.

Comment 53

The Pacuache Clan of Texas expressed concern that waste and coal storage piles can yield sediment, which can contaminate surface water.

¹⁶ *Id.*

Response 53

The proposed permit was drafted based on the Texas Surface Water Quality Standards to protect human health and aquatic life and maintain the receiving waters' designated uses. The designated uses for Segment No. 2304 are high aquatic life use, primary contact recreation, and public water supply. Please see Response 9 for a discussion of the permit review process and how ED staff developed the effluent limits in this permit.

Comment 54

The Pacuache Clan of Texas expressed concern that a flood event could damage improperly constructed or located mine facilities, such as coal haul roads and settling basin dams, and result in large amounts of sediment and poor-quality water that impact waters many miles downstream.

Response 54

The TCEQ does not have jurisdiction over the design and configuration of the Eagle Pass Mine. Under section 134.012(a)(1) of the Texas Natural Resources Code, the Railroad Commission has exclusive jurisdiction over surface coal mining operations in the state. The Railroad Commission's rules can be found in title 16, part 1 of the Texas Administrative Code.

Comment 55

The Pacuache Clan of Texas expressed concern that the mine could drain shallow aquifers, change flow directions in aquifers, and contaminate aquifers due to infiltration or percolation on spoil piles. Humberto Esquivel, Jr., commented that diesel water dumped on Dos Republicas' property will pollute the water well on his adjacent property.

Response 55

The proposed permit's purpose is to protect the receiving waters' water quality along the discharge routes listed in the permit. Flows in aquifers or the potential impact that discharges may have on aquifer flow directions are outside the permit's scope.

Dos Republicas is authorized to discharge stormwater runoff from fueling areas, fuel storage areas, vehicle and equipment maintenance areas, and truck washing stations through Outfall 021. The effluent limits for oil and grease and total suspended solids were included in the proposed permit for Outfall 021 to protect water quality based on the effluent limits found in similar permits that discharge similar wastewaters.

Please see Response 2 for additional information regarding groundwater quality.

Comment 56

Humberto Esquivel, Jr., commented that movement from Dos Republicas' trucks and heavy machinery will dust his crops used as fodder, exposing his livestock to pollution, and his irrigation ditch, which will shorten his water pumps' lifespans. Gloria A. Rodriguez expressed concern regarding toxic agents that will be released into the air. Sergio Sanchez Jr. and Juan Valadez expressed concern that the mine will cause air pollution. Mike Hernandez expressed concern about air pollution, such as coal dust that will be expelled into the air if Dos Republicas uses blasting to extract the coal and due to the irresponsible transportation of coal, which would contaminate his stock pond on his property that is adjacent to the mine.

Response 56

Air quality concerns are outside the scope of the ED's review of Dos Republicas' wastewater discharge permit application. Dos Republicas does have two TCEQ Air New Source Registrations, Nos. 43345 and 99262. Please contact the TCEQ Office of Air for more information about the registrations. Contact information is located on the TCEQ's web site, www.tceq.texas.gov, or by phone at 512-239-2104.

Comment 57

Jerry Brower expressed concern regarding coal slurry leaks, such as the coal slurry spill that occurred at Patriot Coal's Kanawha Eagle Operation in West Virginia on February 11, 2014.

Response 57

The proposed permit authorizes the discharge of stormwater and mine seepage from active mining areas, which are subject to the federal effluent limit guidelines in 40 C.F.R. part 434, subpart C (Acid or Ferruginous Mine Drainage), and stormwater from post-mining areas, which is subject to the federal effluent limit guidelines in 40 C.F.R. part 434, subpart E (Post-Mining Areas). The permit does not authorize the discharge of wastewaters associated with coal processing that are subject to 40 C.F.R. part 434, subpart B (Coal Preparation Plants and Coal Preparation Plant Associated Areas), such as coal slurry wastes. If Dos Republicas discharged those types of wastewaters, it would be subject to a TCEQ enforcement action.

Comment 58

Humberto Esquivel, Jr., commented that when Dos Republicas' retention ponds flood, the wastewater will flow onto his property because it is at a lower elevation and into Hediondo Creek, which runs next to his property.

Response 58

Dos Republicas will discharge effluent from the retention ponds when it is necessary to do so to maintain proper pond levels. The facility has the ability to move effluent between the various ponds on site to control pond water levels and reduce the volume of effluent it discharges. This system can also be employed to prevent flooding if a precipitation event may have the potential to cause flooding. The proposed permit describes the specific outfalls from which the mine will be authorized to discharge effluent. Dos Republicas will not be authorized to discharge wastewater from locations that are not authorized in the permit.

Comment 59

Humberto Esquivel, Jr., commented that the number of deer on his property has increased since Dos Republicas began operating, and they are eating the oats he planted for his livestock.

Response 59

The TCEQ has no jurisdiction to address wildlife grazing patterns.

Comment 60

Mike Hernandez expressed concern that the mine's pollution will contaminate his property the next time Elm Creek floods his property, which has overflowed about 500 feet onto his property during recent floods.

Response 60

The TCEQ does not have jurisdiction to address receiving water flooding issues as part of the wastewater permitting process. The 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. Dos Republicas must meet the effluent limits and other requirements in the proposed permit even during rainfall events and periods of flooding. For additional flooding questions, please contact the local floodplain administration for this area. If you need help finding the local floodplain administration, please call the TCEQ Resource Protection Team at 512-239-4691.

III. CHANGES MADE TO THE PROPOSED PERMIT IN RESPONSE TO COMMENT

The ED did not make any changes to the proposed permit in response to public comment.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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