

**TCEQ DOCKET NO. 2022-0978-IWD**

<b>APPLICATION OF DOS</b>	<b>§</b>	<b>BEFORE THE</b>
<b>REPÚBLICAS COAL PARTNERSHIP</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
<b>TO RENEW TEXAS POLLUTANT</b>	<b>§</b>	<b>ON ENVIRONMENTAL QUALITY</b>
<b>DISCHARGE ELIMINATION SYSTEM</b>	<b>§</b>	
<b>PERMIT NO. WQ0003511000</b>	<b>§</b>	

**DOS REPÚBLICAS COAL PARTNERSHIP’S RESPONSE TO  
MCEPHA’S REQUEST FOR CONTESTED CASE HEARING AND  
REQUEST FOR RECONSIDERATION**

Dos Repúblicas Coal Partnership (“DRCP”) files this Response to Maverick County Environmental and Public Health Association’s (“MCEPHA”) Request for Contested Case Hearing and Request for Reconsideration of the Executive Director’s Decision (“MCEPHA’s Requests”), which was received by the Texas Commission on Environmental Quality (“TCEQ”) on June 14, 2022.

**I.  
INTRODUCTION**

On February 24, 2020, DRCP timely submitted an application to renew its Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0003511000 (the “Application”). MCEPHA submitted comments on the Application,<sup>1</sup> and on May 10, 2022, the TCEQ Executive Director (“ED”) issued a Response to Public Comment (“RTC”).

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<sup>1</sup> Comments were also submitted by Gabriel De La Cerda, Dulce Esqueda, Mike Hernandez, Walter Herring, and Maverick County.

DRCP's Application does not seek to revise the existing TPDES Permit, but would simply renew the permit that TCEQ has previously approved. No hearing on the renewal application is necessary or required under the TCEQ's rules.<sup>2</sup>

MCEPHA has nonetheless filed a Request for Contested Case Hearing and Request for Reconsideration of the Executive Director's Decision. MCEPHA's filing largely reiterates the arguments from its Comments, which have already been addressed by the ED, and raises an additional point that is factually incorrect and lacks merit. Its hearing request and request for reconsideration should be denied, and the Application should be processed administratively.

## **II. NO HEARING ON THE RENEWAL APPLICATION IS WARRANTED**

The Application is a renewal application. It does not propose any significant changes to the existing permit that might justify a hearing, but rather, "DRCP will have to continue meeting the same requirements it is meeting now even if the draft permit is issued, as the application is for a renewal."<sup>3</sup> TCEQ has previously determined that the applied-for terms and conditions of the permit are appropriate and satisfy all applicable regulations.

The TCEQ's rules support the Commission's acting on the Application without holding a hearing, providing that there is "***no right to a contested case hearing***" in applications to renew or amend a TPDES permit in cases such as this one.<sup>4</sup> More specifically, the rules state that there is no right to a contested case hearing for an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

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<sup>2</sup> See 30 Tex. Admin. Code §§ 55.201(h)(i)(5); 50.113(d)(4).

<sup>3</sup> RTC, p. 4.

<sup>4</sup> 30 Tex. Admin. Code § 55.201(h)(i)(5).

- (A) the applicant is not applying to:
  - (i) increase significantly the quantity of waste authorized to be discharged; or
  - (ii) change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.<sup>5</sup>

Another section of TCEQ's rules similarly states that "[w]ithout holding a contested case hearing, the commission may act on... an application for a wastewater discharge permit renewal or amendment under Texas Water Code, §26.028(d), unless the commission determines that an applicant's compliance history as determined under Chapter 60 of this title (relating to Compliance History) raises issues regarding the applicant's ability to comply with a material term of its permit."<sup>6</sup>

Each of these points is satisfied in this case. DRCP is not seeking to change its permit terms, and all procedural requirements have been satisfied. In addition, the ED notes in the RTC that DRCP's compliance history is classified as "Satisfactory," and the Eagle Pass Mine is given a "High" rating.<sup>7</sup> There is clearly no right to a contested case hearing on the Application.

MCEPHA, however, claims it would be in the public interest to hold a hearing on the Application. It first argues that DRCP's applications at both the TCEQ and the Railroad Commission ("RRC") have been consistently opposed. This point does not support its argument,

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<sup>5</sup> *Id.*

<sup>6</sup> 30 Tex. Admin. Code § 50.113(d)(4).

<sup>7</sup> RTC, p. 6.

however, but demonstrates the fact that DRCP’s applications have undergone close scrutiny, including during contested case proceedings at both agencies, and have been determined to satisfy the applicable regulations. In addition, MCEPHA argues that DRCP has a demonstrated history of noncompliance with TCEQ regulations. As noted by above, however, DRCP’s compliance history is not problematic.<sup>8</sup>

No hearing on the Application is warranted, and MCEPHA’s Requests should be denied.

**III.  
MCEPHA HAS NOT RAISED ANY ISSUES THAT ARE RELEVANT OR  
MATERIAL TO THE TCEQ’S DECISION ON THE APPLICATION.**

In MCEPHA’s Requests, MCEPHA largely restates the arguments made in its Comments on the Application. MCEPHA does not raise any issues that are relevant or material to the TCEQ’s decision on the Application, and its concerns have been adequately addressed by the ED in its RTC, as shown in the table below (with the exception of the property ownership issue addressed in Section IV, which was first raised by MCEPHA after the RTC was issued).

<b>MCEPHA Argument</b>	<b>ED Response</b>
The TPDES Permit is in litigation, and TCEQ should not renew the permit until after a final judgment is rendered. <sup>9</sup>	The present Application is not currently before any Texas court. DRCP’s 2013 application does remain in litigation, but the lower court’s judgment was automatically suspended when TCEQ appealed its decision, leaving DRCP’s existing permit valid and enforceable and subject to TCEQ’s rules on permit renewals. <sup>10</sup>
The Draft Permit is inconsistent with the permit approved by the RRC, since the RRC permit is now a reclamation-only permit. <sup>11</sup>	In accordance with TCEQ practices, both the active- and post-mining phases of the outfalls will properly remain in the draft permit until DRCP completes reclamation activities. <sup>12</sup>

<sup>8</sup> RTC, p. 6.

<sup>9</sup> MCEPHA’s Requests, p. 3.

<sup>10</sup> RTC, pp. 3-4.

<sup>11</sup> MCEPHA’s Requests, p. 4.

<sup>12</sup> RTC, p. 5.

<p>SP-3 and SP-3 South are not located where the existing permit and application say they are located and therefore have been in violation of the permit.<sup>13</sup></p>	<p>DRCP’s existing permit allows DRCP to relocate ponds or change one pond to a series of ponds as long as the outfall remains the same. The location of the relevant outfall remains unchanged, and the reconfiguration of the ponds complies with the permit.<sup>14</sup></p>
<p>SP-2 (Outfall 003) does not conform to the requirements of the TPDES Permit, because the outfall is at a higher elevation than the inlet, which could lead to unauthorized discharges.<sup>15</sup></p>	<p>Any discharge from the pond that is not through the outfall would violate the permit conditions and require DRCP to report the violation within 24 hours.<sup>16</sup></p>
<p>DRCP has failed to abide by TCEQ and RRC regulations, and the TPDES Permit should therefore not be renewed.<sup>17</sup></p>	<p>All violations that have previously been issued to DRCP have been resolved, and the applicant’s compliance history is “Satisfactory” and does not prevent TCEQ from renewing the permit.<sup>18</sup></p>
<p>The antidegradation review for the issuance of the 2016 TPDES Permit was inadequate.<sup>19</sup></p>	<p>Staff completed an antidegradation review for DRCP’s existing permit that was consistent with TCEQ procedures and supported by the information Staff reviewed before making their conclusions.<sup>20</sup></p>

MCEPHA’s concerns have been adequately addressed, and none are relevant or material to TCEQ’s consideration of the Application. For these reasons, reconsideration of the ED’s decision is unwarranted, and the points raised by MCEPHA do not necessitate a hearing. MCEPHA’s Requests should be denied.

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<sup>13</sup> MCEPHA’s Requests, pp. 4-5.

<sup>14</sup> RTC, p. 5.

<sup>15</sup> MCEPHA’s Requests, p. 5.

<sup>16</sup> RTC, pp. 5-6.

<sup>17</sup> MCEPHA’s Requests, p. 6.

<sup>18</sup> RTC, p. 6.

<sup>19</sup> MCEPHA’s Requests, p. 6.

<sup>20</sup> RTC, pp. 6-7.

**IV.  
MCEPHA’S CLAIMS CONCERNING OWNERSHIP AND/OR CONTROL  
OF PONDS AND OUTFALLS IS FACTUALLY INCORRECT.**

MCEPHA notes that in July 2021, DRCP sold a portion of its property to Farming Hydrasource, LLC. MCEPHA then incorrectly concludes that DRCP is no longer responsible for maintenance of RPs-1, 2, and 3 as a result of the sale and argues that TCEQ cannot issue a TPDES permit to DRCP that includes those RPs and their outfalls.

Contrary to MCEPHA’s assertions, Farming Hydrasource, LLC has leased the portion of its property encompassing and including RPs-1, 2, and 3 and associated outfalls to DRCP, with the lease expressly providing that DRCP may use the property, including the RPs and outfalls, to comply with the terms and requirements of DRCP’s TPDES Permit. This lease has properly been submitted to the TCEQ. MCEPHA’s claim that DRCP is no longer responsible for these structures is incorrect and its argument that these RPs and outfalls are not properly included in the permit is without merit.

**V.  
CONCLUSION**

No hearing on DRCP's renewal application is warranted, as the Application is simply a renewal of DRCP's existing permit, and MCEPHA did not raise any arguments that are relevant or material to the TCEQ's decision on the Application. MCEPHA's Requests should be denied, and the renewal application should be processed administratively.

Respectfully submitted,

JACKSON WALKER L.L.P.



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**CERTIFICATE OF SERVICE**

I certify that the foregoing document was provided to all parties of record as indicated on the following Mailing List on December 16, 2022.



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Ali Abazari

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