

Maverick County Environmental and Public Health Association

P. O. Box 951
Eagle Pass, TX 78853
January 9, 2023

Laurie Gharis, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
ATTN: Agenda Docket Clerk, Mail Code 105
P.O. Box 13087
Austin, TX 78711-3087

**RE: Docket No. 2022-0978-IWD
Dos Republicas Coal Partnership (Applicant)
Permit No. WQ 0003511000**

Dear Ms. Gharis:

Attached is the Maverick County Environmental and Public Health Association's Reply to Responses filed in regard to the Request for Reconsideration and Request for Hearing in the above-entitled matter.

Sincerely,



George Baxter
President, Maverick County Environmental &
Public Health Association

Docket No. 2022-0978-IWD

**Application by Dos Republicas
Coal Partnership to renew Texas
Pollutant Discharge Elimination
System
Permit No. WQ 0003511000**

**Before The
Texas Commission on
Environmental Quality**

**Reply by Maverick County Environmental and Public Health Association;
Gabriel De La Cerda; Dulce Esqueda; Mike Hernandez; and Walter Herring
to Responses filed in regard to Request for Hearing and Request for
Reconsideration**

The Maverick County Environmental and Public Health Association (MCEPHA); Gabriel De La Cerda; Dulce Esqueda; Mike Hernandez; and Walter Herring (collectively “Requesters”) file this Reply to the Responses of the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission), the Office of Public Interest Counsel (OPIC) of TCEQ and Dos Republicas Coal Partnership (DRCP) in regard to the Request for Hearing and the Request for Reconsideration of the Executive Director’s decision in the above-entitled matter.

Summary

1. Requesters **withdraw** their Request for a Contested Case Hearing. The current health and family situations of several of the Requesters preclude travel to Austin and participation in lengthy hearings.
2. Requesters **maintain** their Request for Reconsideration of the Executive Director’s decision for the reasons outlined below.

Discussion

On July 15, 2021, Requesters filed comments (“Comments”) in regard to the proposed renewal of DRCP’s TPDES Permit No. WQ 0003511000 (“Permit”). On June 7, 2022, Requesters filed a Request for Hearing and a Request for Reconsideration of the Executive Director’s decision (“Request”) following the ED’s Response to Public Comment (RTC). Requesters (all of whom are “affected persons”), stand by these two sets of comments and believe them to still be valid. The most important of these are outlined below:

1. DRCP's Application for Permit Renewal contains many Sedimentation Ponds (SP) and Outfalls that are not part of the mine reclamation plan.

DRCP ceased coal mining activities at the Eagle Pass Mine in June 2020 and the Texas Railroad Commission (RRC) approved DRCP's application for a Reclamation Only Permit on 6-8-2021. The only Sedimentation Ponds included in that Reclamation Permit are those that currently exist: SP-1 (Outfall 004), SP-2 (Outfall 003), SP-3 (Outfall 008M), SP-3 South (Outfall 008R), SP-4 (Outfall 015), Retention Pond-1 (RP-1), RP-2 (Outfall 021) and RP-3 (Outfall 022).

However, DRCP has insisted on including additional SP's in their Permit Renewal Application which have never been built, will never be built and do not currently exist. These include SP-5 (Outfall 007), SP-6 (Outfall 001), SP-7 (Outfall 006), SP-8 (Outfall 016), SP-9 (Outfall 017), SP-10 (Outfall 018), SP-11 (Outfall 019) and SP-12 (Outfall 020). None of these ponds are located in areas which have been disturbed or mined or would, if constructed, receive runoff or drainage from disturbed or mined areas; thus, they are not part of any future reclamation plan.

DRCP does not even attempt to provide a rationale for including these non-existent ponds in their Permit Renewal Application. DRCP's only mention of this issue in their Response is to paraphrase a small part of the Executive Director's Response to Public Comment: "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."

This is only an attempt by DRCP to deflect from and obfuscate this issue. The Requesters completely agree that the existing ponds and outfalls (those listed in the first paragraph above) need to remain in the Permit until reclamation is complete. Our disagreement is with the inclusion of the non-existent ponds and outfalls (those listed in the second paragraph), that have no role whatsoever in reclamation, remaining in the Permit Renewal Application. Since DRCP is unable to provide any reason in their Response for the inclusion of SP's 5, 6, 7, 8, 9, 10, 11 and 12 (Outfalls 001, 006, 007, 016, 017, 018, 019, 020) in their Permit Renewal Application, they should be removed before any renewal is approved.

2. SP-2 (Outfall 003) does not conform to the requirements of the TPDES Permit.

The Requesters' 2021 Comments pointed out that the way SP-2 is currently constructed, it can never discharge through its approved outfall (003). This is because a collection ditch (inlet channel) has been configured to be at a lower elevation than the pond spillway. So, when SP-2 fills up, it discharges through the collection ditch backwards onto the ground 2500 feet from the approved outfall. This discharge then flows out onto the Woodson Access Road, potentially blocking the route to Mike Hernandez' property on the east side of the Union Pacific Railroad. The wall of a diversion aqueduct that was in place at the time and prevented discharge waters from reaching Woodson Road has since been removed. An aerial photo was provided showing that this actually happened in October 2015 after a 10 inch rainfall in 24 hours on 10-9-2015 (Photo attached as Attachment A).

The RTC states that “DRCP will only be authorized to discharge effluent from Pond SP-2 through Outfall 003” and that “any discharge from the pond other than through the outfall in compliance with those effluent requirements would violate Permit Condition No. 2g and require DRCP to report the violation to TCEQ within 24 hours” or “as promptly as possible”.

Despite having reported the 2015 violation in their July 2021 Comments with photographic evidence, Requesters are unaware of any corrective action taken. Requesters are also unaware if DRCP reported their unauthorized discharge in 2015 within 24 hours or as promptly as possible. If DRCP failed to do this, it is an example of their unwillingness to follow TCEQ regulations.

The main point, however, is that because of the way SP-2 is constructed, it remains systemically unable to discharge “naturally” through outfall 003. Any time a rainfall event greater than that which the pond is designed to retain (6 inches in 24 hours – a rate that was exceeded at the DRCP mine in June 2013, June 2014 and October 2015) occurs, the pond will discharge through its collection ditch as happened in 2015. Although SP-2 can be and has been discharged by pump through its spillway (Outfall 003) in the past, a heavy rain event (such as in 2015) will quickly overwhelm pond capacity and lead to the unauthorized discharge outlined above.

The ED’s Response states that “TCEQ actually did conduct a complaint investigation at the mine on October 13-15, 2015 and did not identify any TPDES violations.” However, the complaints made to TCEQ in October 2015 by Eagle Pass residents concerned the massive fish kill in Elm Creek and adjacent ponds below the Eagle Pass Mine, not the discharge from SP-2. So, the unauthorized discharge from SP-2 was not part of the investigation.

DRCP’s only Response to this concern is to state that “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” (which they apparently did not do in 2015).

So, instead of saying that they will fix the problem so as to preclude another unauthorized discharge, DRCP’s response is to say, essentially, “yes, if it happens, it’ll be a violation.” Perhaps DRCP thinks that: a) maybe there won’t be another heavy rain event before reclamation is complete or, b) we didn’t get caught last time – maybe we’ll get away with it again or, c) if we do get caught, the fine will probably be less than what it would cost to fix the problem.

Instead of merely waiting for an unauthorized discharge (and violation of Permit Conditions) to happen, TCEQ should not renew the Permit until DRCP resolves this situation. Requesters are not asking TCEQ to regulate coal mine channel design, only to require that DRCP corrects a situation that has already resulted in a violation of Permit Conditions and will almost certainly do so again in the future.

3. Ownership of RP-1, RP-2 and RP-3.

In their 2022 Request, Requesters pointed out that DRCP had sold the part of the mine property containing RP-1, RP-2 (outfall 021) and RP-3 (Outfall 22) in October 2021 to Farming Hydrasource, LLC. The Request also included excerpts from DRCP's First Quarter Pond Discharge Report, dated 4-28-2022 which included a statement by DRCP employee Mr. Rey Munoz that, in regard to RP-2, "Activity from Farming Hydrasource has begun with dewatering and sediment removal. DRCP or Berk Staff does not have control over the current activities with this structure."

DRCP's Response states that Requesters' "claims concerning the ownership and/or control of these ponds and outfalls is factually incorrect" and that Farming Hydrasource has now leased the property encompassing the three RPs and their outfalls back to DRCP to comply with the requirements of the TPDES Permit.

The ED's Response is more factual: "A review of the parties' Asset Purchase Agreement [by ED staff] revealed that DRCP did not retain ownership and operational control over the ponds and outfalls under the sale's terms." The Response goes on to say that DRCP has since entered into a lease with Farming Hydrasource that provides DRCP with operational control over the ponds and outfalls until the TPDES Permit is cancelled.

Requesters are gratified that DRCP has now resumed operational control of the three RPs, apparently at the behest of TQEQ, after the sale was brought to TCEQ's attention by Requesters.

It should also be noted that the property sold by DRCP to Farming Hydrasource also includes the location of non-existent Sedimentation Pond SP-7 (Outfall 006). If this SP and Outfall are to be included in the TPDES Permit, they will have to be added to the lease between DRCP and Farming Hydrasource, allowing DRCP operational control over them.

4. DRCP's past performance and willful failure to abide by TCEQ regulations under existing permits indicate serious problems with any renewal.

As outlined in Requesters' 2021 Comments, starting in July 2018 and continuing for many months thereafter, DRCP contaminated the sole source of domestic water (canal Lateral 20) for residents living near the mine with large quantities of fugitive dust escaping from the mine. This was confirmed by three separate investigations by TCEQ inspectors.

Rather than fix the problem and help these residents (including three Requesters), DRCP's only response was to falsely deny that they were the source of the problem. The RTC, ED's Response and DRCP's Response note that the Lateral 20 contamination issue was settled with an agreed order [and fine] and that DRCP has a "satisfactory" rating.

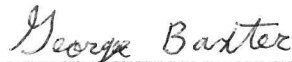
It is difficult to understand how DRCP could have a satisfactory rating given their sub-standard performance and lack of adherence to TCEQ rules (Lateral 20 contamination, unauthorized discharge from SP-2 and failure to report that discharge). TCEQ should carefully consider whether an organization that has shown such cavalier disregard for TCEQ regulations can be trusted to faithfully execute a renewed TPDES Permit.

Conclusion

Requesters' Request for Reconsideration of the Executive Director's decision focuses on the following two areas and we respectfully ask the Commission to grant these requests prior to issuing any renewal of the DRCP TPDES Permit:

1. Removal of non-existent Sedimentation Ponds and Outfalls that are not part of the mine reclamation plan from the TPDES Permit Renewal.
2. Require DRCP to correct the SP-2 unauthorized discharge problem before the TPDES Permit renewal is issued.

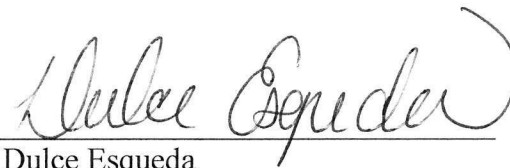
Respectfully submitted,



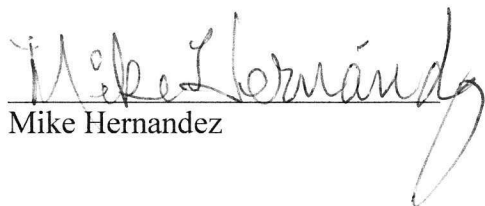
George Baxter
President, MCEPHA



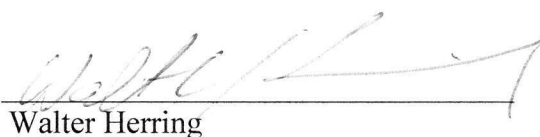
Gabriel De La Cerda



Dulce Esqueda



Mike Hernandez



Walter Herring

MAILING LIST
DOS REPUBLICAS COAL PARTNERSHIP
DOCKET NO. 2022-0978-IWD; PERMIT NO. WQ0003511000

FOR THE APPLICANT:

Andres Gonzalez-Saravia Coss
President

Dos Republicas Coal Partnership
607 County Road 305
Eagle Pass, Texas 78852

Christina Hayes, Associate Consultant
BSI EHS Services and Solutions
7000 North MoPac Expressway
Suite 200
Austin, Texas 78731

Nellie Frisbee, Environmental Manager
Camino Real Fuels, LLC
5150 North Loop 1604 West
San Antonio, Texas 78249

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
kathy.humphreys@tceq.texas.gov

Thomas Starr, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711
thomas.starr@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL
via electronic mail

Garrett T. Arthur, Public Interest Counsel
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
garrett.arthur@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION
via electronic mail

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK
Docket Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087, Austin, Texas 78711
www.tceq.texas.gov/goto/efilings



Attachment A