Westward Environmental, Inc.

"Solutions for the Preservation of Industry and Environment "

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The Future of Mining Near Rivers in Texas??
Editorial By Rick Mathews

With the impending implementation of SB 1354 (for those who do not know, the infamous Alice Walton Bill), many quarries and sand & gravel facilities near the Brazos River in North Texas will face increased regulatory scrutiny as well as additional storm water control requirements, bonding and reclamation requirements and other mandatory setbacks.

This so called "pilot program" is becoming the poster child for many NIMBY (Not In My Back Yard) movements accross the state. The San Jacinto River is already seeing actions in that area and there are whispers of approval by the LCRA (Lower Colorado River Authority) and the City of Austin.

As a producer already in place, you may be saying to yourself that you are grandfathered. Be forewarned, "Nothing" is ever really grandfathered. In the case of the affected North Texas Quarries, they had to "prove" (provide documentation) they were *a quarry or associated processing plant that since on or before January 1, 1994, has been in regular operation in the John Graves Scenic River way without cessation of operation for more than 30 consecutive days and under the same ownership.*

Additional restrictions of this bill are:

The commission shall require a responsible party to obtain an individual permit for any discharges from a quarry located in a water quality protection area that is located:

(1) within a 100-year floodplain of any water body; or
(2) within one mile of any water body.

The commission shall require a responsible party to obtain a general permit under Section 26.040 for any quarry that is located in a water quality protection area and located a distance of more than one mile from any water body.

The commission shall prohibit the construction or operation of any new quarry, or the expansion of an existing quarry, located within 1,500 feet of a water body located in a water quality protection area for which a person files an application for a permit or permit amendment after September 1, 2005.

The list goes on. Can you, as an operator, afford to get an individual discharge permit or cease operation in an area because you don't have 12 years of records?

I could ramble on about Gestapo tactics, the selling off of Texas, etc, but my message here is simple. Texas will be having a new legislative session in 2007. Contact your association and discuss your concerns. Write your legislators. Inundate them with mail, faxes, email, etc. Protect you business interest and livelihood. Don't think that someone else will handle it so you won't have to. The only person looking out for you is you.

Wake Up Texas. Be Pro-active.

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The "MINER Act" by Bob Huddleston

The Mine Improvement and New Emergency Response Act of 2006, also known as the MINER Act, was signed by President George W. Bush on June 15, 2006. U.S. Secretary of Labor, Elaine L. Chao, issued the following statement:

"The Mine Improvement and New Emergency Response Act is the most significant mine safety legislation in nearly 30 years. It builds upon efforts by the Mine Safety and Health Administration (MSHA) to improve mine safety nationwide, and calls for the modernization of safety practices and development of enhanced communication technology. We need to do everything we can to continue to improve safety in our nation's mines so miners can return home safely to their families at the end of their shifts."

The MINER Act provisions include:

- Each underground coal mine must develop and continuously update a written emergency response plan;
- Each underground coal mine must make available two experienced rescue teams capable of a one-hour response time;
- Requires wireless two-way communications and electronic tracking systems within three years;
- Gives MSHA the authority to request an injunction to shut down a mine in cases where the mine operator has refused to pay a final MSHA penalty;
- Raises the criminal penalty cap to $250,000 for first offenses and $500,000 for second offenses, as well as establishing a maximum civil penalty of $220,000 for flagrant violations;

Continued on page 3...

The Winds Of Change - Part I
By David Knollhoff

This article is a follow up of the previous article from Newsletter #10 titled *A New Model*.

With the official implementation of the new regulatory air dispersion model (AERMOD - which is replacing ISC3) on December 9, 2006, the winds of change are occurring. It is clear to us here at Westward Environmental, Inc. that the AERMOD modeling system brings with it significant changes (i.e., increased model run-time, new and improved algorithms, and new TCEQ modeling procedures) that are currently being addressed.

Over the last couple of months, we have been testing the AERMOD modeling system and comparing preliminary AERMOD results to the results from a comparable ISC3 modeling demonstration for a generic hot mix asphalt plant in Texas.

In this article, I address only one of the three significant changes listed above. The effect of the AERMOD model run-time on our client base is the first significant change in a series of changes that lie ahead.

When simply comparing the amount of time for the computer to give us an answer using the AERMOD modeling system and the ISC3 modeling system, the computer takes ten times longer to complete one AERMOD model run. For example, if it takes the computer one hour to complete one run using the ISC3 modeling system, it will take the same computer approximately ten hours to complete one run using the AERMOD modeling system run.

It takes the computer a longer time to complete one model run using the AERMOD modeling system, because the AERMOD modeling system uses additional meteorological data inputs (i.e., albedo, surface roughness length and Bowen ratio) and uses additional parameters (i.e., friction velocity, Monin-Obukhov length, convective velocity scale, etc.) unlike its predecessor to calculate predicted concentrations of constituents emitted by a hot mix asphalt plant.

Here at Westward we are committed to finding solutions to the challenges that exist within the air permitting process. One solution we are considering is purchasing an additional computer to solely conduct AERMOD modeling demonstrations while our other computers can be used for their original purposes to complete air permit applications and other support activities.

Certainly, there are other AERMOD modeling topics to rehearse and test before they can be clearly and effectively communicated to our clients. Please stay tuned in as this newsletter article on AERMOD will be followed by an upcoming article related to the AERMOD modeling system and how it is affecting an air dispersion modeling demonstration. Please send comments or questions to:
dknollhoff@westwardenv.com.

Proposed Industrial Storm Water Permit
By Julie Morelli

Do you have a Multi Sector General Permit (MSGP) and a Storm Water Pollution Prevention Plan (SWP3) for industrial storm water discharges (TXR050000)? If so, then you probably know that your permit will expire on August 20, 2006. The TCEQ may have sent you a letter to tell you of the new permit on the horizon. This article describes some of the major changes in the proposed permit and how these changes will affect your operations.

What is the good news? Your facility may not be required to obtain a permit IF you can demonstrate through sound engineering that you have not, and will not, discharge storm water from your property. This is an especially practical tool for facilities located in the arid areas of west Texas and for facilities that pre-planned operations to impound and recycle all storm waters and process waters.

TCEQ will also allow authorized permittees to describe Pollution Prevention Team (PPT) members as a company position, rather than an individual. This will help minimize the number of SWP3 amendments that occur as a result of employees changing roles within a company or leaving.

If the only thing you store outside is a finished product, intended for outdoor use, that is not conveyable by storm water, and that is stored on “clean pallets”, you may be eligible for a No Exposure Certification (NEC).

What is the not so good news? Benchmark monitoring will be required twice per year for all five years of the permit term. The 2001 version of the MSGP only required quarterly sampling during two years of the permit. Also, benchmark monitoring requirements must be addressed at every outfall, regardless of defining them as “substantially similar”. This means that the cost of benchmark sampling may increase significantly because: 1) there are more required sampling events; 2) you may have multiple outfalls that you previously considered representative of one processing area, and therefore “substantially similar”, and now you will have to collect and analyze samples for each of those outfalls.

In fact, the “substantially similar” outfalls reduction in sampling locations will only apply to quarterly visual monitoring and annual hazardous metals monitoring. That means, if your facility is subject to numeric effluent monitoring based on a federal categorical classification, each outfall must be sampled, regardless of how similar the discharges from other outfalls may be.

There will also be major changes in the way storm water impoundments will be managed. The revised permit indicates that the TCEQ wants to classify storm water impoundments as solid waste management units (SWMUs). These units are subject to the State of Texas waste rules, including notification of installation, design requirements, closure, and potentially, post-closure care requirements established in the Texas Administrative Code.

And of course, the TCEQ will be going up on their price. Each facility with a MSGP will be required to pay an “annual water quality fee” of $200.00 (only a 100% increase over the previous permit).

All facilities that require coverage under the MSGP must submit a new Notice of Intent (NOI) within 90 days of the permit’s re-issuance, even if your facility previously had authorization. If your company wishes to begin a new industrial activity that may be regulated by the MSGP, apply for your permit as soon as practicable to ensure that you have a permit come August! If the permit expires, no new authorizations will be issued until the proposed permit is adopted.

Remember, existing SWP3s must be revised to reflect changes to the rule as soon as practical following issuance of the proposed permit to avoid non-compliance findings by TCEQ investigators. New facilities must have written and implemented a compliant SWP3 *before* submitting their NOI and beginning operations. Contact us soon to schedule a review of your operation’s needs and to discuss pricing options before the rush!

Westward Environmental, Inc. submitted comments to TCEQ regarding these and many other proposed modifications to the MSGP. We are eagerly anticipating clarification of intent on several issues. In the meantime, we are happy to assist you in any way we can to help you achieve compliance with the TCEQ Storm Water Program, as well as any other environmental issues or concerns you have. Call us at 830-249-8284.

The MINER Act continued from Page 1….

- Mandates a minimum penalty of $2,000 for unwarrantable failure citations and orders issued under section 104(d)(1) and a minimum penalty of $4,000 for unwarrantable failure orders issued under section 104(d)(2).
- Creates a scholarship program to mitigate an anticipated shortage of trained and experienced miners and MSHA enforcement personnel; and,
- Establishes the Brookwood-Sago Mine Safety Grants program to provide training grants to better identify, avoid and prevent unsafe working conditions in and around mines.

Immediately Reportable Accidents and Injuries are:

1. A death of an individual at a mine;
2. An injury to an individual at a mine which has a reasonable potential to cause death;
3. An entrapment of an individual for more than thirty minutes;
4. An unplanned inundation of a mine by a liquid or gas;
5. An unplanned ignition or explosion of gas or dust;
6. An unplanned mine fire not extinguished within 30 minutes of discovery;
7. An unplanned ignition or explosion of a blasting agent or an explosive;
8. An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or, an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
9. A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;
10. An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile, or culm bank;
11. Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and,
12. An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

The immediate notification rule 30 CFR 50.10 directs you ***first to try to contact the MSHA district at all times***. Using the direct district number during non-business hours **will prompt a pre-recorded message** that will give you the numbers for the MSHA district personnel. The rule goes on to say that **if you cannot contact the district, *you must use the 24/7 MSHA headquarters toll-free number*: 800-746-1553.**

Mandatory New Civil Penalties

(Information was provided by Ellen Smith, Publisher, Legal Publications Services.)

I had asked Ed Clair, of the Solicitor's Office, to answer a question I had regarding the new civil penalties, and if the new civil penalty provisions for Significant and Substantial (S&S) and unwarrantable failure would be mandatory, or would Administrative Law Judges (ALJs) still have the power to lower penalties based on the six civil penalty criteria listed in the 1977 Mine Act. Mr. Clair said, *"We read the minimum penalty provision as being mandatory and binding on both the Secretary and the Commission because when there is a specific provision and a general provision, the general one cannot override the specific one. In this situation, the six statutory criteria will still be used to assess penalties, but they cannot be used to assess a penalty less than the statutory minimum which applies to certain types of violations."*

So, the following violations will have mandatory penalties:

✦ A mine operator who does not report an accident to MSHA (which has a reasonable potential to cause death) within 15 minutes shall be assessed a civil penalty of not less than $5,000 and up to $60,000.

✦ The minimum penalty for any S&S citation or order will be $2,000.

The minimum penalty for an unwarrantable failure will be $4,000.

Ed Clair of the Solicitor's Office pointed out in an interview on June 10, 2006, that there is an error in the update on minimum penalties that should be corrected immediately. Section 8 of the MINER bill will require a minimum penalty of $2,000 for unwarrantable failure citations and orders issued under section 104(d)(1) and a minimum penalty of $4,000 for unwarrantable failure orders issued under section 104(d)(2). There is no minimum penalty for S&S violations that are not also the result of an unwarrantable failure to comply.

Remediation Issues in San Antonio—
Kelly Air Force Base
By Kristin Urbanczyk
Edited by Julie Morelli

Sunday morning, July 16, 2006, a news report was broadcast on local cable channel 5 that showed angry citizens from the neighborhoods around Kelly Air Force Base demanding more action be taken to clean the severely contaminated land and ground water around their homes. Concerned citizens have been arguing for decades that contamination caused by Air Force personnel dumping carcinogenic materials, including metals degreasers and solvents containing tetrachloroethylene (TCE), into open pits at and near the base, has caused increased levels of cancer in local residents, especially kidney cancer.

Kelly Air Force Base (KAFB) officially closed in 2001. The shallow aquifer beneath the former base and surrounding residential areas is known to be contaminated with elevated levels of TCE and other contaminants. The Air Force is utilizing ground water pump and treat systems and permeable reactive barriers (PRBs) to help reduce the concentration of contaminants as part of the federal clean up project (CERCLIS ID No. TX2571724333).

Between 1960 and 1973, local residents began complaining about their children becoming ill and developing bone defects that were not present until after dumping began to take place at KAFB. Other symptoms witnessed were birth defects such as missing ribs and hair loss in small children. One man had an aneurysm and is now legally blind; the doctors attributed this to exposure to radiation.

In 1999, residents appealed to then Governor George Bush to have the KAFB placed on the federal superfund national priorities list (NPL). By inclusion on the NPL, federal funds would be available for use in clean up of the site and clean-up actions would be given a priority within regulatory agencies, like the Texas Commission on Environmental Quality. Unfortunately, EPA refused the request.

In an attempt to have more attention directed at their cause, residents began placing purple crosses in the front yards of homes where at least one member of the residing family has been diagnosed or died from cancer. This is a campaign organized by the Southwest Workers Union. There is an area near the base known as the "toxic triangle" in which about half of the 350 homes have a purple cross in front of them.

Studies conducted by the Agency for Toxic Substances and Disease Registry (ATSDR) have documented increased incidents of cancers and certain birth defects in at least one zipcode near the former KAFB. ATSDR studies, as recently as 2001, concluded that current exposure levels were not considered high enough to be the direct cause, though historical exposure may account for problems in the past. Recent information may change this stance, however. The National Research Council (NRC), a branch of the National Academy of Sciences, indicates that protective concentration levels for TCE, a major concern at the former KAFB, should be lowered from 5 parts per billion (ppb) to 1 ppb to be protective of human health. TCE has been linked to increased levels of kidney and other cancers among individuals exposed via drinking water or inhalation.

Residents are concerned about the potential historical and on-going health affects associated with living near the contamination at KAFB. The Air Force officially remarks that clean-up will continue until contaminant levels are protective of human health.

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DATES TO REMEMBER

- **Industrial Multi-Sector General Permit (TXR050000) Expires August 20, 2006**
- **TCEQ Fiscal Year begins September 1st—Environmental Permit Fee Invoices are on their way!**

QUESTIONS TO ASK YOURSELF:

- When is your SWP3 Annual Compliance Evaluation Due?
- MSHA facilities, when is your Earth Resistance Test Due?
- Is your annual refresher training current?

Need help with your environmental program? Please contact Westward Environmental, Inc.!

A Balance of the Environment and Industry

www.westwardenv.com

Summary of Services

- Air, Water & Groundwater Permitting
- Stormwater Permits and Plans (SWP3)
- Waste Water Discharge Permitting
- Water Resource Management
- Visible Emissions Testing
- Phase I/II Environmental Site Assessments
- Spill Prevention Control and Countermeasures Plans (SPCC)
- Facility Specific Overall Compliance Programs & Audits
- Endangered Species and Wetland Programs/Surveys
- Geologic Surveys and Reserves Analysis
- Mine Plan Development
- Quarry Plans
- Mold Surveys
- Safety, Health, and Environmental Training Programs
- Employee Exposure Monitoring

April 2006
Westward Environmental, Inc.
Celebrating
10 YEAR ANNIVERSARY
Thank You for Your Business!

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