

Pilot Regulation of Quarries on the Brazos River

When legislators completed the 79th Session, a portion of the Brazos River breathed a little easier. SB 1354, authored by Senator Craig Estes (R, Wichita Falls), provides protection of water quality in watersheds threatened by quarry activities in the stretch of Brazos below Possum Kingdom in Palo Pinto Co. to the Parker-Hood Co. line. The bill names this stretch the “John Graves Scenic Riverway,” after the man who authored the 1960 classic, *Goodbye to a River*, a book that documents Graves’ canoe trip and pays tribute to a rugged frontier life along the Brazos River.

The bill develops a pilot permitting program from 2005 to 2025 that only applies to the watershed of 115 miles of the Brazos. It authorizes the Texas Council on Environmental Quality (TCEQ) to require an individual discharge permit from existing quarries located within the 100-year floodplain or one mile of a navigable stream or lake in the watershed. Quarries in this watershed farther than one mile from the protected water bodies must obtain a general permit for discharging. The legislation also prohibits construction of any new quarry, or expansion of an existing quarry, within 1500 feet of the water. There is a provision for permitting quarries between 200 and 1500 feet if they meet certain performance criteria. According to Mike Stewart, President of Texas Aggregate and Concrete Association, the requirements are so stringent that it is unlikely any quarry operations could meet them. SB 1354 also addresses the responsibility of offending quarries in the event of unauthorized discharges. It requires all permit applicants to submit a plan of action for restoring the water body to its background condition, and additionally, requires evidence of sufficiently funded bonding or proof of financial resources to accomplish the restoration of the water quality. This is not the same as a plan to restore the disturbed land after the mine is closed; however, a plan for that kind of mining reclamation is a requirement for those applicants wishing to obtain a permit in the area between 200 to 1500 feet from the river. The bill identifies penalties, fines, and procedures to force closure and also tasks TCEQ, Texas Parks and Wildlife, and the Brazos River Authority to cooperate on monitoring of water quality and conducting visual inspections, including aerial flyovers. The bill is available:

<http://www.capitol.state.tx.us/cgi-bin/db2www/tlo/billhist/actions.d2w/report?LEG=79&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=01354>

The years of 2003 to 2005 saw a major increase of interest by citizens and their elected officials in the impacts of quarries and mining. At the urging of his Burnet County constituents, Senator Troy Fraser (R, Horseshoe Bay) proposed unsuccessful legislation in 2003 aimed primarily at air quality issues from rock quarries and crushers. The effort to find political support for greater protection of rivers from mining sediment runoff got a boost from a well-placed landowner on the Brazos. Alice Walton, daughter of Sam Walton of Wal-Mart fame, bought a ranch on the Brazos in the 1990’s. She became alarmed when the water quality in the river took a dramatic turn for the worse. Walton and some neighboring landowners formed the Brazos River Conservation Coalition and sought help from the TCEQ. In frustration, Walton contacted Government Rick Perry, and things began to happen fast.

While the Advisory Committee agreed on many recommendations for new legislation, the differences resulted in the submission of two reports to the governor in January, 2005: the Interim Report and the Dissenting Report. The Interim report supported a new quarry permitting process that would require submitting site plans, transportation plans, reclamation plans, blasting plans and documentation, and an approved air quality permit. The site plan would include, among other things, hydrologist recommendations to prevent negative effects on ground and surface water. A reclamation plan must show a timetable, grading, and revegetation. The applicant would post bonds to assure the reclamation would occur within three years of mining cessation. Another recommendation called for high daily penalties for unauthorized discharging without a stormwater permit.

One of the major sticking points for the dissenters involved the transportation plan and its provision to obtain a recommendation from TxDOT on the adequacy of roads leading in and out of quarries. The dissenters also wanted to see further study by the legislature before recommending reclamation requirements and penalties. Both reports can be downloaded from the following site: <http://www.senate.state.tx.us/75r/senate/members/dist24/acrcq.htm>.

In 2003, Perry responded by appointing an Advisory Committee on Rock Crushers and Quarries and urging TCEQ to step up enforcement. The nine-member committee, chaired by Troy Fraser, included senators and state representatives, a Burnet County commissioner, and two representatives of the aggregate industry. The committee's work focused on issues that are currently not considered in the state permitting process:

- The impact of local truck traffic on state and county roads in the vicinity of quarries and rock crushers
- The impact to air quality beyond the immediate vicinity of quarries
- The impact to ground and surface water
- The impact of blasting on ground and surface water
- Land reclamation, after mining operations have ceased.



The Brazos River at the Allied Mine site in July 2004.

To help areas beyond the Brazos, Senator Fraser authored SB 785, Limitations on Certain Rock Crushers (over sole source aquifers), which included some but not all of the provisions of the Advisory Committee report. The bill was killed late in the session. Other than the Brazos River legislation, quarries statewide currently are required to obtain from TCEQ an air quality permit for managing air emissions, a construction general permit for that type of industry, and an industrial stormwater permit showing how stormwater will be managed if it is discharged from the site. Some quarries do not seek a stormwater permit when operators believe they will not discharge but instead plan to retain all water on site.

The other action related to quarries' effects on rivers that resulted from Alice Walton's call to Governor Perry involved the response from Kathleen Hartnett White, chair of the Texas Council

on Environmental Quality. TCEQ created the Clear Streams Initiative. During 30 days in May and June, 2004, TCEQ surveyed more than 300 quarry operations in the state to determine compliance with water quality regulations and permits. Even though TCEQ found large numbers of operations to not be in compliance, the overall conclusion was the "vast majority of the operators inspected had little or no impact on Texas waterways." TCEQ sought cooperation from Texas Parks and Wildlife and the state river authorities to conduct inspections, an arrangement that has been formalized in the Brazos legislation. With the help of the Attorney General's Office, one illegal quarry on the Brazos was forced to close and another voluntarily shut down. The Clear Streams Initiative Report on Investigation/Enforcement Phase is available online at the TCEQ's website.

Kathryn Nichols is a Community Planner with the National Park Service's Rivers, Trails, and Conservation Assistance Program.