

SMOKE and MIRRORS

A Bulletin for Citizens Opposing Cement Plant Pollution

Downwinders At Risk 707 Wylie Cedar Hill Texas 75104 972.293-8300 www.cementkiln.com/downwinders January 2000

State Smog Clean-Up Plan: Dirty Dancing with Cement Plants

Citizens Battle TNRCC to Keep Recommended 50% Cut in Cement Plant Pollution; Local Hearings This Month

Only seven months after granting TXI's new Permit, the state admits pollution from Midlothian cement plants does worsen air quality in Dallas-Ft. Worth after all - it just doesn't want to do anything about it.

Despite the fact that they produce **half of all industrial air pollution in DFW**, and that new state and federal monitoring shows they significantly impact North Texas air quality, the state is refusing to follow through on recommended cuts in smog pollution from the three local cement plants - TXI, North Texas and Holnam.

Rejecting a recommendation from DFW leaders to cut cement plant smog pollution by 50%, the Texas Natural Resource Conservation Commission is instead proposing rules resulting in only an 18% reduction from 1997 levels. **This retreat comes after at least two meetings between representatives from Texas cement companies and a TNRCC Commissioner who worked as a lobbyist for a cement company before being appointed by Governor Bush.**

Responding to the continued failure of DFW to meet federal clean air standards, local business and govern-

ment leaders met from May to November to draft a clean-up plan for smog pollution that could be submitted to the state and EPA. A successful plan is needed to avoid federal sanctions - including the loss of highway money for North Texas. Recommendations in the local clean-up plan called for cuts in pollution from motorists, businesses and industries with the goal of significantly reducing smog by 2007 - the federal deadline for action. TNRCC must submit its plan to EPA in April.

The local recommendations are being followed to the letter by the TNRCC plan - with one exception. A proposed 50% cut in smog pollution from the three local cement plants was ignored in favor of a lesser reduction that had already been decided upon by the industry itself.

The TNRCC will be holding public hearings on its clean-up plan this month in Dallas, Ft. Worth, Lewisville and Irving. **This is your only chance to comment on the state's favoritism toward the cement industry. And only your strong opposition to this favoritism can convince the EPA to reverse the TNRCC and cut more cement plant pollution.**

Hearings On Ozone Pollution Clean-Up Plan

Wednesday, January 26th, 7 PM

Irving Public Library 801 W. Irving Blvd.

Thursday, January 27th, 10 AM

Dallas Central Library, 1500 Young Street

Thursday, January 27th, 7 PM

Lewisville City Hall, 1197 W. Main

Friday, January 28th, 10 AM

Ft. Worth City Hall, 1000 Throckmorton

If you can't come to one of the hearings - send your comments to:

TNRCC: P.O. Box MC105 Austin, Tx. /Fax 512.239.3311

Governor Bush: P. O. Box 12068, Austin Tx. 78711/Fax 512.463.1849

DAR Open Records Act Request Shines Light on TNRCC Back Room Smog Deals with Cement Plants

Knowing that TXI and the other cement companies were working behind the scenes to make sure the new TNRCC smog clean-up plan for DFW would not require deep cuts from their plants, Downwinders submitted an Open Records Act request to the state agency in early November.

What we found confirmed that the TNRCC had already made a deal with industry for shallow reductions even before the local North Texas Clean Air Committee had voted in late October for a recommendation to cut cement plant pollution by 50%.

Documents revealed at least two September meetings between TNRCC Commissioner Ralph Marquez and the cement industry. Minutes of the first meeting show that the TNRCC had decided on the size and scope of smog cuts for cement plants almost two full months before the local Clean Air Committee vote. These cuts amount to only an 18% decrease from 1997 smog emissions. By contrast, the TNRCC is requiring local utility power plants to cut pollution by 88%.

TNRCC officials have stated they can find no minutes of the second meeting - very unusual considering the presence of the Commissioner and at least four TNRCC staff members.

Only one document, entitled "Issues and Concerns," and dated the same day as the second meeting was found through the records search. It listed a number of "assurances" that the cement industry wanted included in the state's smog plan, including promises that the "cement industry will be highly involved" with developing the plan, that no further cuts would be required from the plants, even if

air quality worsened and that the plan emphasize only seasonal controls instead of permanent ones. So far, industry has gotten everything it wanted.

Commissioner Marquez is a former lobbyist for TXI - the state's largest cement company. Despite being employed in 1994 to torpedo reforms controlling the burning of hazardous waste in cement plants, he's been allowed to vote twice in granting new permits to the company, including the one giving TXI another ten years to burn waste.

TNRCC Smog Plan Raises New Environmental Justice Issues

According to the TNRCC's own computer modeling being used to formulate the DFW smog clean-up plan, southern Dallas and Tarrant Counties, along with northern Ellis County would benefit the most from the recommended 50% cut in smog pollution from the Midlothian cement plants a local clean air committee has proposed. TNRCC officials have said that ozone levels could drop as much as 9 to 12 parts per billion for residents in this southern part of the metroplex, resulting in "significant health benefits." No other recommendation from the local clean air committee produces public health benefits as large for these areas. (For a graphic representation of the impact the cement plants had on a "modeled" day in 1996, please see the TNRCC generated image on page 5)

At the same time, real time monitoring of ozone, or smog levels in the DFW area consistently shows that the cement plants are the single greatest influence on air quality in areas south of I-30. Through the TNRCC web site, anyone with internet access (www.tnrcc.state.us/cgi-bin/monops/ozone_animation) can see the results of this monitoring on a daily basis over the last two to three years. (An example of this monitoring for April 27th of this year is found on page 4).

Although the link between southern metroplex health and the cement plants is clear, the 50% cut in cement pollution is the

only recommendation from the local clean air committee not being implemented by the TNRCC in its smog plan. Other large "stationary sources" that are far less polluting and more widely distributed in their adverse impacts than the Midlothian cement plants, such as utility power plants, are being required to reduce their pollution by upwards of 80 or 90%.

By not implementing the 50% cuts in cement plant pollution recommended while endorsing every other provision of the local plan, the TNRCC raises issues of environmental justice for southern metroplex residents. Environmental justice refers to the inequity of environmental hazards imposed by industry and government on specific geographical areas defined by race, income or both. Lead pollution in West Dallas is used frequently as a local example of this phenomena.

With its decision to ignore the 50% cement plant cuts, the TNRCC seems to be sanctioning a new version of environmental inequity for DFW. It is penalizing residents in predominately "minority" southern Dallas and Tarrant counties and leaves them with a dirtier air shed compared to the rest of the region. If, as the TNRCC says, the true aim of its smog clean-up plan is to improve public health, why isn't the greatest threat to air quality in these areas being dealt with as harshly as other less significant sources?

The answer may only come in court. Already there has been some discussion among local environmental activists and African-American leaders about the possibility of a lawsuit challenging the TNRCC's actions regarding the Midlothian cement plants.

Duncanville Resolution Calls for Deeper Cement Plant Cuts in Smog Plan

At least one southern Dallas County city is already expressing its desire to see the TNRCC make deeper cuts in Midlothian cement plant emissions. On December 7th, Duncanville's city council unanimously passed a resolution urging that the smog plan include cement plant cuts comparable to those being demanded of other large industrial sources - up to 88%. Other southern metroplex municipalities are also expected to pass similar resolutions in the next few months.

Midlothian Pollution By the Numbers

1

Rank of TXI's Midlothian cement plant among DFW air polluters

3

Number of top 4 DFW air polluters in Midlothian - all cement plants

48

Percent of DFW industrial air pollution coming from Midlothian plants

35,185

Tons of smog-forming pollution released by Midlothian cement plants in 1997

36,017

Tons of smog-forming pollution released by industries in Collin, Dallas, Denton, Henderson, Hunt, Johnson, Kaufman, Rockwall and Tarrant counties in 1997

600,000

Number of cars it would take running daily to equal the amount of smog released by Midlothian cement plants

11

Percent of ozone pollution caused by industry in Collin, Dallas, Denton and Tarrant Counties

50

Percent of ozone pollution caused by industry in Ellis County

How DFW Cement Plants Can Cut Smog Pollution by 50%

1. Replace obsolete cement plants with modern ones

There are two kinds of cement plants in Midlothian - brand new and completely obsolete. The old ones are described in the industry as "wet process" because they use a tremendous amount of water to make cement product, which must be evaporated, making them inefficient and very polluting. The new ones are "dry process" plants because they don't use water and consequently are more efficient and clean. There have been no new wet process cement plants built in the U.S. in over two decades.

There are more obsolete wet process plants upwind of the DFW area than any other metropolitan area in the nation - seven in all. TXI is still using four of them, while also building a new dry process plant beside them, North Texas Cement is using three and Holnam is operating only new dry process plants.

"The (TNRCC) plan asks too little of cement plants in Ellis County, which are the largest fixed source of ozone-forming chemicals in Dallas-Ft. worth. A steering committee of local politicians and businessmen had asked the agency to reduce the plants' emissions by as much as 50 percent. But the plan calls for cuts of only 40 percent. Environmental watchdogs say the true figure could be as low as 18 percent. If local electric utilities must reduce their emissions by 88 percent, and commuters and builders be greatly inconvenienced, why should cement makers have to do so relatively little?"

- Dallas Morning News Editorial, December 17th 1999

If TXI and North Texas were to replace their old wet process plants with modern dry process ones, smog emissions would be reduced by upwards of 60% or more. These plants would also be more efficient for the companies operating them. This is the best long-term option for DFW air quality.

TNRCC Commissioner Ralph Marquez is on record as advocating the tearing down and replacement of older electric utility plants that cannot meet the 88% reductions in pollution being demanded by the state's clean-up plan. So far, he has not applied that same standard to obsolete cement plants.

2. Retrofit Plants with Pollution Control Equipment Already Used by Other Cement Plants

By Combining "low NOX (nitrogen oxide) burners" with the re-positioning of where fuel is fired in a cement plant - called "mid-kiln firing" - the EPA and one of TXI's own consultants conclude that smog pollution could be cut by 40 to 70%. Both of these are technologies already in use in various cement plants throughout the U.S. - they're just not being used in combination with one another because, until recently, there was no pressure on cement plants to reduce their pollution.

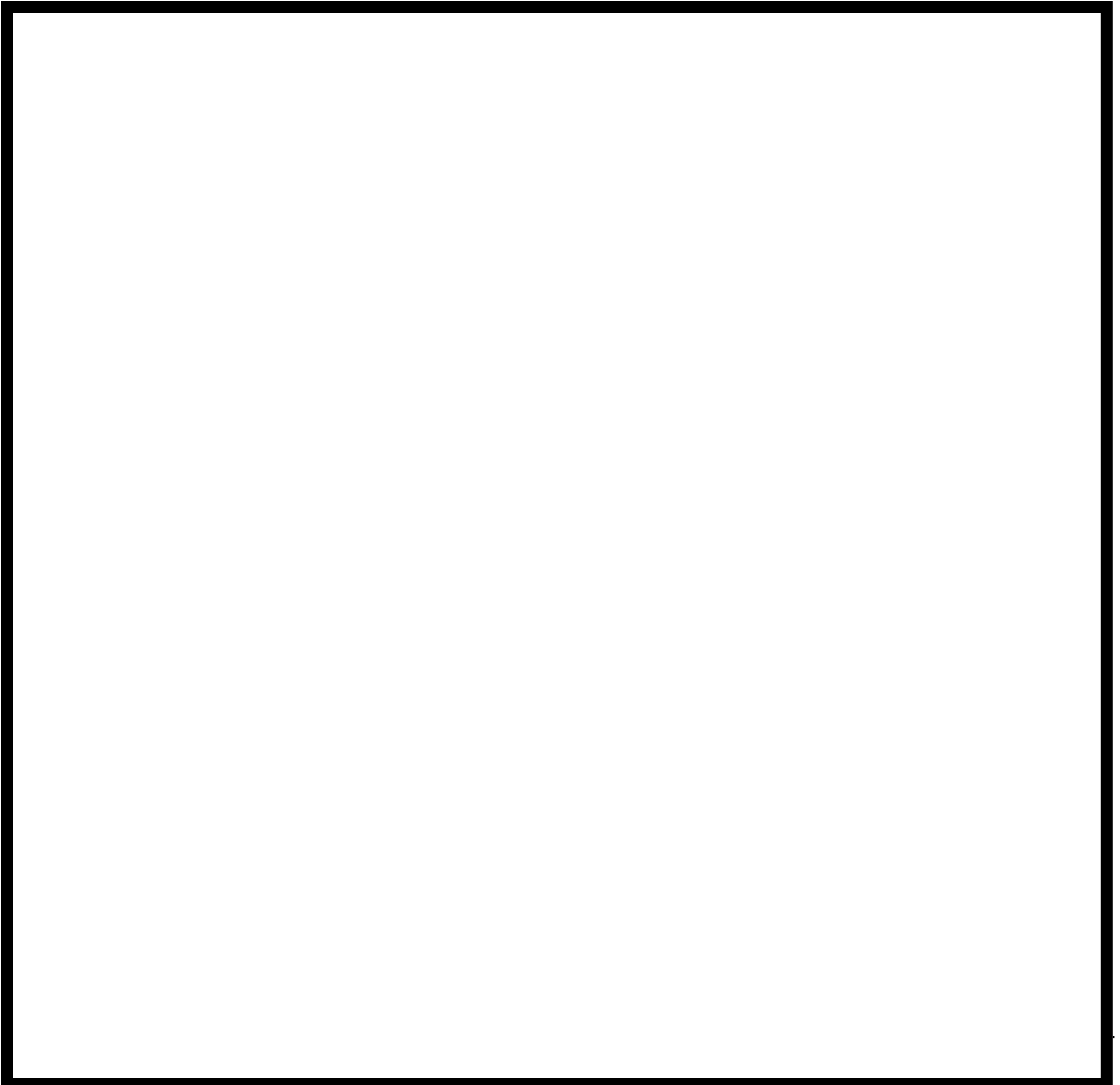
3. Retrofit with Pollution Control Technology Used by Power Plant Industry

For decades, electric utility plants have been reducing their smog pollution by using "Selective Catalytic Reduction" (SCR) and "Selective Non-Catalytic Reduction" (SNCR) technologies. This is how the TNRCC is expecting DFW power plants to

cut emissions by 88%. According to the EPA, these technologies can be successfully applied to the cement industry with a little adaptation for the amount of dust produced in making cement. Reductions of 80 or 90% could be expected from wet and dry process cement plants using this equipment.

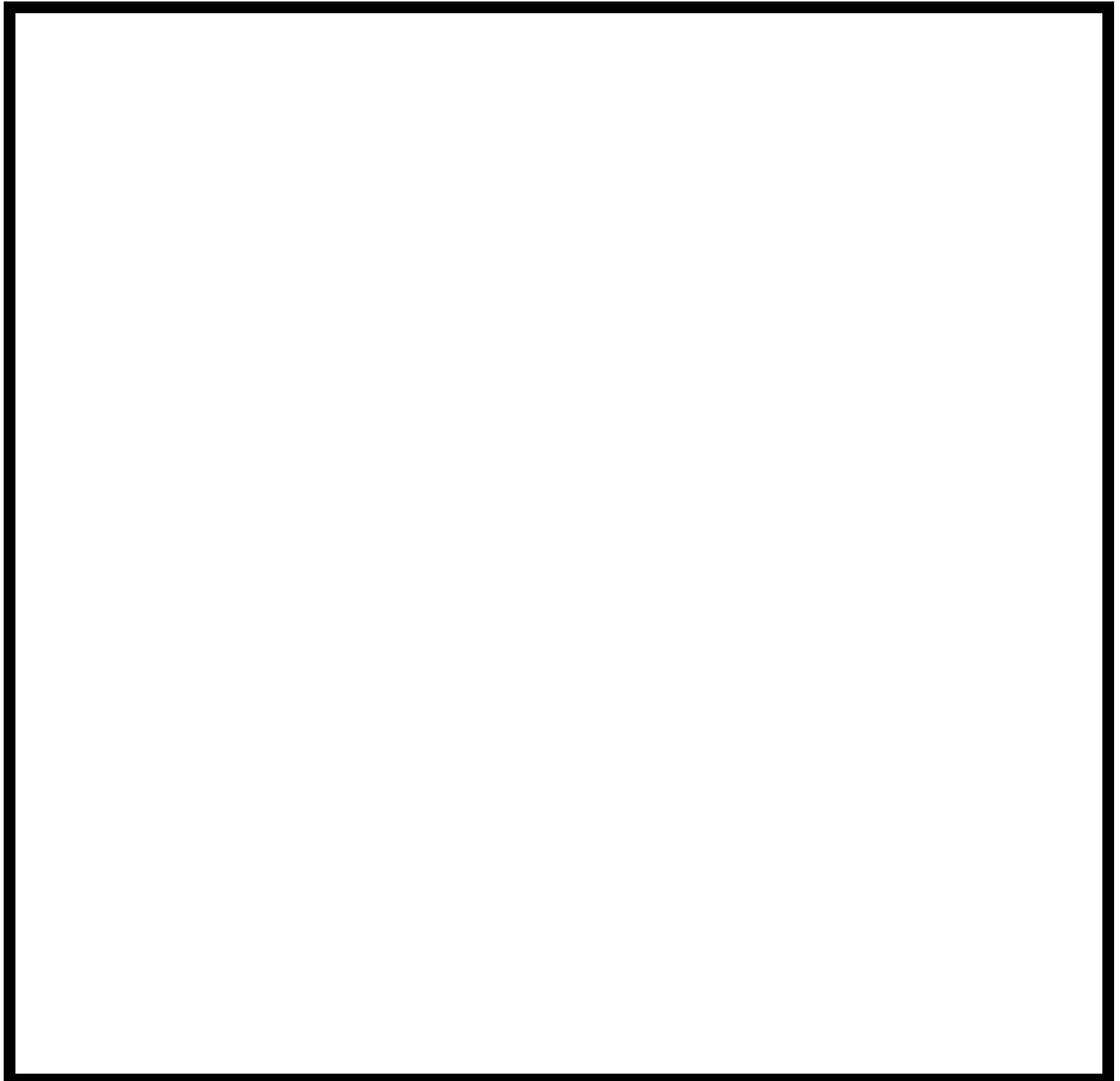
New Evidence of Harm from

Both of these images are generated by the TNRCC. The one directly below is a captured frame of animation from the state agency's web site. It reflects real time monitoring of the build-up of ozone pollution in DFW during the morning of April 27th, 1999. The yellow plume of smog at the top of the frame is from automobile traffic in the northern part of the metroplex. The ozone plume at the bottom of the frame is entirely from the cement plants in Midlothian. This pattern is typical. Anyone can go to the TNRCC web site (www.tnrcc.state.us/cgi-bin/monops/ozone_animation) and download these kinds of "plume maps" for any day over the past two years and see the same pattern. During the day, both of these plumes spread out over the entire region and affect air quality for hundreds of square miles.



Midlothian Cement Plants

The image below is a TNRCC computer modeled recreation of how the Midlothian cement plants affected air quality in DFW on July 4th, 1996. It actually shows which areas of the metroplex would have benefited most that day from the recommended 50% cut in cement plant emissions. The darker the blue color, the cleaner the air would be. As you can see, on this particular day, the cement plants plumes cut a path directly through Dallas County skies - the origin of the plume is directly over Midlothian and it blows northeast through Dallas County. You can find this image, along with another showing cement plant plume conditions on July 3rd 1996 at the North Texas Council of Governments website under "DFW Region: Strategies and Summaries from Technical Meetings" at www.dfwinfo.com/envir/air/airquality/dfwsip1.



In This
Issue

Help Us Win a 50% Cut in Smog Pollution from Midlothian Plants

HELP! We need volunteers who care about clean air to assist us in continuing to carry on the good fight.

We're looking for folks who can help us pick up items for our re-sale shop "The Garage Sale Store," staff the store, attend public meetings, donate money or in-kind services, help write the newsletter or give a hand in any way.

If you've wanted to help, but kept putting it off, now is the time to join in the effort.

We're meeting every 1st and 3rd Mondays of the month at 7 PM at our office/store at 707 Wylie in Cedar Hill.

If we aren't here, there's no one else watching what the cement plants and the TNRCC are up to - we're the only group keeping an eye out for your lungs.

Please help us help the environment and public health. Call the office at 972.293.8300 or come to a meeting. We promise we won't waste your time.

A Very Special Thanks

Every month for the past several years Polly Tyrer-Ferraro has sent a check for \$25 to Downwinders. We've never seen her at a monthly meeting, and we probably never will. But her contribution is always something we can rely on and helps pay for newsletters like this one. If you can't make it to the events, but still want to help, please consider following Polly's example and give some small but regular amount of money so we can keep doing the job that needs to be done. Our monthly budget is approximately \$1500 a month and we don't know any organization that does more with less. Contributions to worthy state or national groups may be spent far from where you live, but you'll always know that your donation to Downwinders is going to the most important environmental and public health battle in your own backyard. A very special thanks to Polly and here's to more like her.

Send your contribution to Downwinders, 707 Wylie, Cedar Hill, Texas 75104 (As always it's tax deductible)

Help Stop Pollution in Your Own Backyard!

Downwinders At Risk
707 Wylie
Cedar Hill, Texas 75104

**Speak Out for Cuts in Cement
Plant Air Pollution This Month
At Local Public Hearings**

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Sierra Club Files Suit Over EPA Cement Plant Rules - Local DAR Member Signs On

Continuing a saga that has been unfolding since 1993, the national Sierra Club filed suit in federal court against the EPA in late November for not adhering to its own set of guidelines in writing rules for cement and aggregate plants burning hazardous waste. The so-called "Maximum Available Control Technology" (MACT) regulations, much touted in their development by the Agency, are actually anything but, still allowing large emissions of mercury, dioxins and other toxins from waste-burning kilns.

Locally, Sierra Club member and Downwinder matriarch Sue Pope signed-on to the suit as an "affected party" because of her proximity to TXI's Midlothian cement plant - which now holds the largest hazardous waste permit on the planet.

It was way back in the first Clinton Administration that EPA Administrator Carol Browner announced plans to tighten rules governing all forms of commercial waste incineration. After years of being watered down by special interest lobbying the result has been disappointing to citizens who expected more from Browner and her boss.

In fact, a similar lawsuit filed by the Sierra Club over MACT rules for medical waste incinerators successfully challenged EPA's regulations for that category. A federal court expressed "serious doubts" about the reasonableness of EPA's approach and ruled that "EPA's method looks hopelessly irrational." The court sent the rules back to the agency to be rewritten. Sierra Club lawyers predict the same thing will happen for the cement and aggregate plant MACT rules.

Although the number of such plants continues to shrink, the best estimate is that approximately 20 such manufacturing facilities still continue to burn hazardous waste as they make their product. TXI is the

only cement plant still burning hazardous waste in Texas.

The MACT rules have their origin in 1990 congressional amendments to the Clean Air Act requiring the EPA to set rules to control the amount of pollution emitted by incinerators. Congress directed that the regulations require, at a minimum, the degree of emission control achieved by the best performing facilities. In the case of existing incinerators - including cement and aggregate plants - standards were not to fall below "the average emissions limitation achieved by the best 12 percent of waste-burners.

However, in writing the rules for both medical incinerators and cement and aggregate plants, the EPA used the worst-performing facilities to set the regulatory floor, not the best. This is why Sierra Club attorneys are confident that the cement and aggregate rules will meet the same fate in court as their medical incinerator counterparts.

For more information on the lawsuit, contact Jim Pew of the Earthjustice Legal Defense Fund at 202.667.4500.

While TXI Threatens to Sue DAR Over Our Website

Apparently unaware that Downwinders had been on-line since 1996, we got a strange little letter from one of the legions of TXI lawyers in November threatening to sue us over our web site. Claiming that we were making it hard for the company to do

business and violating its copyrighted logo, the letter was clearly intended to intimidate us without having to go through the messiness of proving TXI's claims in court. Of course, it had just the opposite effect.

After consultation with experienced free speech specialists, we've officially responded to TXI's threat by asking for further clarification of the company's assertions. According to these experts, TXI's claims of harm are quite curious and could set dangerous precedents for web free speech. They have offered to provide free legal and media assistance should TXI go forward with filing a lawsuit.

Unofficially, several Downwinders are anxious to finally be on the receiving end of a TXI "SLAPP suit" - an act of legalistic intimidation meant to squelch public participation in a controversial issue. Once sued, the defendants can then countersue the company for damages. In the past there have been several environmental activists across the nation who have successfully countersued their bullying corporate opponents for large amounts of money.

For years, TXI has sent letters to specific Downwinders members intimating a lawsuit if they continued to bad mouth the company's nasty habit of releasing huge amounts of toxins into the environment - alas, always without any concrete action.

Since our letter went out over a month ago, we've not heard any response from TXI's lawyers, so it's likely this small act of legal terrorism will also not be followed up. Too bad. We were really looking forward to making some good case law and funding the group with TXI money.

But the good news is that the letter's arrival - coming in the middle of the DFW smog plan fight - means we must be doing something right. Stay tuned.

Garage Sale Store On the Move Again

Looking for great bargains on all kinds of housewares, furniture and clothing? Check out the Downwinders' "Garage Sale Store." After a successful run on Main Street in Duncanville, the store has temporarily moved back into our office headquarters at 707 Wylie in Cedar Hill - next door to Bray Elementary School. Friday and Saturday hours of operations are still in flux for this new location, so just call our office phone at 972.293.8300 for more information. We really need a good hauling trailer for all the treasures we bring back from estate sales and transportation of merchandise to our large outdoor garage sales in the spring and summer. If you have one we could borrow or buy or know where we can get one please call the office. Thanks.

DAR Board Member's Son Becomes National Poster Child of Anti-Bush Environmental Ads

For many Downwinders, the black and white photograph is a familiar one. A young boy, dark circles under his eyes, stands breathing through an inhaler mask in the foreground while TXI's four tall smokestacks loom ominously behind him. Taken by board member Becky Bornhorst and featuring then five year-old William Tinker, the asthmatic son of board member Dierdre Tinker, this 1997 picture has been used by DAR time and again to advertize the TXI permit hearings, public meetings and other group events. It's as close to an icon as Downwinders has ever had.

These days however, that photograph and the story of little "Billy Tinker" is also being seen by thousands of residents of New Hampshire, Iowa and other presidential primary states. It is the signature image of a Sierra Club television advertising campaign focusing on Governor George Bush's terrible environmental record in Texas. The ads talk about worsening air quality in the state's largest cities, increasing amounts of toxic pollution from its industries and the consequences to public health of the Governor's decisions while in office - including the one to let TXI keep burning hazardous waste at its Midlothian cement plant.

It's all part of the increased scrutiny the Governor's record is getting since he decided to run for the presidency in March of last year. Articles about the Governor's environmental policies, and featuring the TXI fight, have appeared in the Washington Post, New York Times and other national publications. Downwinders now regularly fields calls from reporters from

across the country doing research on the person many feel will be sworn in next year as president.

Sierra Club spokespeople have said that if Bush does fulfill predictions and becomes the Republican nominee, these ads and others like them will be seen across the country.

Copies of the ad, as well as all articles discussing our on-going battle with TXI and the cement industry are available through the Downwinders office.

And Free Speech Rights Prompts DAR Lawsuit Against Governor, Bush, DPS

A funny thing happened on the way to the TNRCC's March 10th, 1999 vote to allow TXI to keep burning hazardous waste for another ten years. Governor Bush and the DPS decided to trample the constitution and decades of tradition by disallowing peaceful protest on the sidewalk outside the Governor's mansion in downtown Austin.

Approximately 20 to 30 citizens arrived at the Mansion armed only with banners, placards and petitions to protest the vote by the Bush-appointed Commission.

On-duty Department of Public Service officers on the scene chatted with the protesters. After 45 minutes, protesters began to roll-up the petitions, which had sur-

rounded the mansion. Then a second wave of DPS officers arrived.. Protesters were told they had to assemble in the "designated protest area" across the street that nobody had ever heard of.

Board member Dierdre Tinker, dressed in her famous "smokestack" costume didn't move fast enough for one of the new DPS sergeants on the scene. Her rate of progress in getting out of the costume was sufficiently slow to warrant an arrest, handcuffs and her placement in a DPS squad car.

Only the threat of media attention, Dierdre's accompanying son being left motherless and the confused state of DPS stories about what was and was not the law kept her and the smokestack from being delivered to the hoosegow. She was released after a tense 15 minutes.

You would think the Governor and DPS would have learned from this fiasco, but they didn't. Just a few weeks later Rick Abraham of the group Texans United and other clean air advocates were arrested under similar circumstances in front of the Mansion as they were protesting the Governor's stand on grandfathered polluters.

As a result, Rick got the ACLU involved in not only defending him, but on taking aggressive action in seeing that a right that has been taken advantage of for as long as anyone can remember stays intact. As the first victims of these new restrictions, he asked Downwinders to join a lawsuit to keep the DPS and the Governor from ever pulling a stunt like this again. We happily complied. As of this date, we are in the process of heading to court sometime in February or March. Stay tuned.