Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 15, 2008

TO: SEE SERVICE LIST

RE: Opportunity to Comment on the State Office of Administrative Hearings Proposal for Decision and Order regarding **Advantage Asphalt Products, Ltd., TCEQ Docket No. 2006-1434-AIR-E; SOAH Docket No. 582-07-2484**.

Please be informed that the following notice will be published in the *Texas Register* for a 30-day comment period:

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on May 1, 2008, in the matter of the **Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Advantage Asphalt Products, Ltd.; SOAH Docket No. 582-07-2484; TCEQ Docket No. 2006-1434-AIR-E**. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Advantage Asphalt Products, Ltd. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

This notice will be published in the *Texas Register* on **May 23, 2008**. Written public comments should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. Should you have any questions, please call Paul Munguía or me at (512) 239-3300.

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/jf

MAILING LIST
ADVANTAGE ASPHALT PRODUCTS, LTD.
SOAH DOCKET NO. 582-07-2484
TCEQ DOCKET NO. 2006-1434-AIR-E

Brian Smith, Attorney
Amarillo Building
301 S. Polk, Ste. 675
Amarillo, Texas 79101
Tel: (806) 373-3993
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Representing Advantage Asphalt Products, Ltd.

Brian Smith, Attorney
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Amarillo, Texas 79105-9134

Scotty Knutson
Advantage Asphalt Products, Ltd.
P.O. Box 51772
Amarillo, Texas 79159-1772

Jack Benton, Environmental Consultant
Benton & Associates
4630 50th St. Ste. 614
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Alfred A. Oloko, Staff Attorney
Texas Commission on Environmental Quality
Legal Division, MC-175
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
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Representing the Executive Director of the TCEQ

Alfred A. Oloko, Staff Attorney
Texas Commission on Environmental Quality
Legal Division, MC R-12
5425 Polk Ave. Ste. H
Houston, Texas 77023-1452

Blas Coy, Jr.
Texas Commission on Environmental Quality
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Representing the Office of Public Interest Counsel of the TCEQ

Penny Wilkov, Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street, Ste. 502
Austin, Texas 78701
Tel: (512) 475-4993
Fax: (512) 475-4994

Docket Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 NOV 25 PM 4:15
CHIEF CLERKS OFFICE

November 24, 2008

Brian R. Smith
Attorney at Law
P. O. Box 9134
Amarillo, Texas 79105-9134

Re: Advantage Asphalt Products, Ltd.; SOAH Docket No. 582-07-2484;
TCEQ Docket No. 2006-1434-AIR-E

Dear. Mr. Smith:

Attached are the comments on the Proposal for Decision and Order regarding the enforcement action against Advantage Asphalt Products, Ltd. and my response letter.

Sincerely,

Alfred A. Oloko
Attorney
Litigation Division

Enclosures

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 NOV 25 PM 4: 15

CHIEF CLERKS OFFICE

September 9, 2008

Ms. Peggy Maethenia
P. O. Box 224
Fischer, Texas 78623

Re: Comment on the Proposal for Decision and Order regarding the Enforcement Action against Advantage Asphalt Products, Ltd,; SOAH Docket No. 582-07-2484, TCEQ Docket No. 2006-1434-AIR-E

Dear Ms. Maethenia:

I write in response to your letter of June 18, 2008, addressed to Ms. LaDonna Castañuela, Chief Clerk, Texas Commission on Environmental Quality (TCEQ), on the above subject matter. I thank you for your continued interest in the work that we do at the TCEQ and for your commitment to helping to protect the environment. I will like to respond to some of the issues you raised in your letter. This response is delayed because I only got a copy of the letter on September 2, 2008. As stated earlier, your letter was addressed to TCEQ Chief Clerk.

I will limit my response to your comments on the Proposal For Decision (PFD) issued by the Administrative Law Judge (ALJ) in this case although you had referred to other enforcement actions, either pending or concluded, that the TCEQ has brought against Advantage Asphalt Products, Ltd. With regards to the PFD, you take issue with the amount of penalty that the ALJ has proposed. The ALJ proposed a penalty of thirteen thousand eight hundred dollars ($13,800.00), the entire penalty amount sought by the Executive Director in his First Amended Report and Petition filed on July 27, 2007.

You are dissatisfied with the penalty amount of thirteen thousand eight hundred dollars ($13,800.00) that the ALJ has recommended to be imposed on Advantage Asphalt Products, Ltd. It is your opinion that this penalty will not be enough to deter future violations. The TCEQ shares your concerns and seeks not only to impose penalties but also require corrective actions to bring the regulated entity into compliance and protect the environment. The penalty amount in the case in point is justified and consistent with the September 1, 2002 TCEQ Penalty Policy. Penalties are not imposed arbitrarily. The TCEQ follows the matrices laid out in the Penalty Policy in order to ensure that the regulated community is treated fairly, equally, and consistently. It is important to point out that this penalty amount was enhanced by a twenty per cent (20%) increment for an

Agreed Order that had been issued against Advantage Asphalt Products, Ltd. in a previous enforcement action. This is consistent with TCEQ's Compliance History rules that require such enhancement.

Please permit me to state that the ALJ found for the Executive Director in all the violations alleged in the First Amended Report and Petition, proposed the entire penalty amount and all the corrective measures that the Executive Director recommended in this enforcement action.

With regards to your claims that Advantage Asphalt made fraudulent representations on their permit application, you may provide that information to the Office of Permitting, Remediation, and Registration of the TCEQ. It is that office that deals with permit applications. I am confident that they will adequately address your concerns.

I hope this letter addresses the issues you raised in your letter. In the event that you have any other questions, I can be reached at (713) 422-8918.

Yours truly,

Alfred A. Oloko

P.O. Box 224
Fischer, TX 78623
830-935-2898
June 18, 2008

RE: Comment on TCEQ Docket 2006-1434-AIR-E

LaDonna Castanuela,
Chief Clerk
Office of the Chief Clerk
MC-105
Texas Commission on Environmental Quality
PO Box 13087
Austin, Texas 78711-3087

2008 JUN 20 PM 3: 29
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Dear Ms. Castanuela:

This letter and enclosures offer additional information and insight on the Proposal for Decision and Order regarding the enforcement action against Advantage Asphalt Products, Ltd.; SOAH Docket No. 582-07-2484; TCEQ Docket No. 2006-1434-AIR-E.

History and extent of previous violations:

1. **Opened first rock crushing pit in 2003 in Potter County without TCEQ Permitting.**

Advantage Asphalt Products, Ltd. of Amarillo, Texas opened a rock crushing operation without prior authorization in 2003. Advantage Asphalt has a history and pattern of operating without TCEQ issued permits and of violating the terms of the permits in three counties. The 2003 example occurred in Potter County: SOAH Docket 582-04-8905; TCEQ Docket 2003-1310-AIR-E resulted because Advantage Asphalt Products operated a rock crushing plant without authorization, west of Amarillo, with investigations on Jan. 17 and 21, 2003. HB 2921 mandated a $10,000 a day fine for such violations. An agreed order was entered and approved by the Commissioners on June 29, 2005, some 27 months after the investigation of the violations. The owner of Advantage Asphalt Products ignored TCEQ demands for resolution until a possible default order was imminent. On March 3, 2005 the

company signed a settlement letter and made payment of $750. Documentation in TCEQ Central Files shows the company relied on the various time-lapses available through TCEQ procedures to delay settlement.

2. Opened Armstrong County gravel mining pit in 2003 and violated storm water requirements.

SOAH Docket No. 582-07-2484; TCEQ Docket 2007-0548-WQ-E -- Storm water violations were documented and investigated in May and June of 2006 for the Stockett Pit in Armstrong County. An ALJ remanded the SOAH case to TCEQ for additional proceedings. No resolution as of this date.

3. Opened Randall County gravel mining pit in 2007 without TCEQ Permit.

SOAH Docket No. 582-08-0523; TCEQ Docket 2007-0768-AIR-E. Currently awaiting addition to the Commissioner's Agenda with a Letter from the ALJ pending. Again violates all standards of the TCEQ permitting process

Advantage Asphalt Products, LTD. knows the legal procedures to by-pass, ignore, and disregard law and statute regarding the operation of its land and gravel mining operations. The pattern of behavior demonstrated by Advantage Asphalt Products is to disregard the Notice of Violations or orders to come into compliance.

This letter is to comment on the enforcement proceedings in process:

- **SOAH Docket No. 582-07-2484; TCEQ Docket 2006-1434-AIR-E** regarding the unauthorized and unpermitted addition of an impact rock crusher and power screens in the Armstrong County, Stockett Pit. Other violations also include no spraying to control dust and fugitive particulate matter. These violations were documented by TCEQ in Nov. 2005 through May 2006. A Feb. 13 hearing was conducted by Judge Penny Wilkov.

In the current "Executive Director's Preliminary Report and Petition Recommending that the TCEQ Enter an Enforcement Order Assessing an Administrative Penalty Against Certain Actions of Advantage Asphalt Products, LTd." (the EDPRP) certain factors are to be considered in the fines:

- *Gravity of prohibited act*
- *History and extent of previous violations*
- *Economic benefit by violation*
- *Amount necessary to deter future violations.*

The pattern of Advantage Asphalt is to plead "poor country boy, no lawyer, I didn't know better, I won't do it again." It has taken a great deal of Region I staff and resources along with enforcement staff to bring these violations to the commission's agenda. The Office of the Texas State Auditor's Report of Dec. 2003, details the loss of income to the state when violator's are not dealt with in a timely manner and are not given the maximum penalties allowed. This company has circumvented the process of enforcement and delayed through a variety of excuses, including lack of legal representation or calendar mix-ups. The gravity of the 2003 violations of operating a rock crusher without permit resulted in only a $750 fine. From 2003 to 2008, Advantage Asphalt Products should have known the rules and regulations applicable to the Stockett Pit crusher and operations.

Amount necessary to deter future violations:

The suggested penalty for operating the Armstrong County Pit is $13,800. When considered together, the actions of this company require that TCEQ levy significant monetary amounts necessary to deter future violations.

On May 11, 2007 I submitted the following calculations to numerous staff at TCEQ in enforcement concerning the economic benefits to Advantage Asphalt Products:

> "Comparison of TCEQ Economic Benefits with Data from Actual Sells of Mined Materials from the Stockett Pit
>
> **Stockett Pit Mined Materials Sold to the Public:** On April 30, 2007, Advantage Asphalt Products Manager Glen Braudt, quoted cost of materials consisting of sand and 3/4" gravel mix from the Stockett Pit at $25 per ton. Cost of materials only was quoted. Delivery is extra per truck load. Advantage Asphalt Products' belly dump truck holds 23 tons. Total cost of materials in a full load is $575, according to Advantage Asphalt representative Glen Braudt.
>
> **Loaded Trucks Leaving Stockett Pit Daily:** Approximately 70 trucks per day leave the Stockett Pit daily Monday-Friday. Seventy truck loads sold for $575 is a daily total of $40,250 in sales receipts for Advantage Asphalt.
>
> Since January, 2007, mining is conducted Monday through Saturday for a 6 day week (violation of permit). Since December 27, 2005, photographic documentation shows two rock crushers operating daily in the Stockett Pit. Permit allows only one cone crusher. Two non-permitted power screens also operate daily. It is estimated the Stockett Pit has operated 355 days and 17 Saturdays since Dec. 27, 2005 for a total of 372 days. No

production or load records sold exist at the pit offices according to the report by Joe Campa and Eddy Vance, Region I. Two crushers and two power screens produce materials loaded into the 70 trucks from the Stockett Pit. It can be deduced that one-half of the trucks are loaded with materials produced as the result of the second and unpermitted rock crusher in operation.

Therefore, each of the 35 the trucks loaded with $575 of materials obtained illegally is a daily gain of $20,125 in economic benefits. This contrasts with the $140 in economic benefits as calculated by TCEQ enforcement division—a difference of $19,985 benefiting the mining company on a single event.

The 372 days of operation since November 16, 2005 results in illegally obtained materials sold by Advantage Asphalt Products for $7,486,500. This is not a small business.

Additionally, the production and permit violations continue daily. If due process to finalize the Commissioner's Agreed Orders occurs by April 30, 2008, the company will continue to benefit economically. There is no indication that the company will cease to operate illegally in the coming year of 225 days. That being the case, an additional $4,528,125 of illegally derived materials will be sold by April 30, 2008.

In summary: In the 29 month period from Nov. 16, 2005 to April 30, 2008, Advantage Asphalt Products can avoid compliance through Commission protocol and enforcement procedures and derive more than $12,014,625 through the sale of illegally mined materials." Letter from Peggy Meathenia to TCEQ staff.

The above calculations were to April 30, 2008. By including production days through Dec. 30, 2008, another $3,582,250 will be gained in violation of TCEQ regulations. Advantage Asphalt Products will have illegally mined a whooping total of $15,596,875 in the period from Nov., 2005 to Dec., 2008, a 37 month period. Additionally that does not include the same amount calculated to be mined with one permitted rock crusher. To summarize the $13,800 fine as a deterrent to future violations is derisory. It is a contemptible amount compared to the sales receipts derived by operating outside the state's laws.

Enclosed photos document the total lack of any intent or compliance with permit requirements to the current date. There is no control of dust emissions, no spraying of water or chemicals, no removal of the illegal crusher or unpermitted power screens. Instead, the company has elected to push TCEQ as far as it can through maneuvers available to avoid operating legally as of mid-June, 2008 when I last drove past Stockett Pit operations.

Fraudulent representation on application of Permit:

On TCEQ Form PI-1 (2-10-2004), *General Application for Air Preconstruction Permits and Amendments*, the pit site was changed from prior information submitted to pit location, "6 miles east on FM 2272." In Scotty Knutson's verbal testimony of Feb. 13, 2008 before Judge Wilkov, he again stated the location as 6 miles east on FM 2272. That statement is a fraudulent representation as the Stockett Pit has two entrances at 2.8 and 3.1 miles north-east on Armstrong Co.Rd. 22. The misstated address and location is to confuse TCEQ staff so that future and new pit operations can be located at 6 miles east on FM2272 without seeking a new or amended permit. The actual location of the Stockett Pit by US Post office records and 911 lists the location as 4241 Co.Rd. 22. Such ambiguous information is another method of causing confusion in TCEQ data bases for permitting and/or enforcement. The TCEQ attorney did not ask for clarification of the location during the Feb. 13, 2008 SOAH hearing. To establish the location at 6 miles east at the end of FM 2272 is not a clerical error, but a carefully crafted attempt to open future pits in the area without following permitting procedures.

Another fraudulent statement by Mr. Knutson during the Feb. 13, 2008 hearing was that a new UNPERMITTED power screen had been purchased 3 months before the hearing. This is not true. Photos clearly show the two power screens in operation beginning in Nov., 2005.

In other testimony of Feb. 13, 2008, Mr. Knutson referred to the water and spray bars that are used to control dust and other fugitive emissions from the pit. There is no known source for water in the pit. The City of Claude reported that the city does not sell water to Advantage Asphalt Products according to city records. Therefore, no source of water is identified, even by Knutson's testimony. The ever present dust in the area has not been controlled (by water or chemical means from Nov. 2005 to June, 2008).

Amount to deter future violations:

The photos show the total disregard to ANY attempts to comply with permit requirements. If TCEQ believes a $13,800 fine will bring Advantage Asphalt Products into compliance with requirements and state law, then, "Yes, there is a Santa Claus, Peter Pan, and Ghost Riders in the Sky!" To allow Advantage

Asphalt Products another 180 days from the Agreed Order issue and to give grand-fathered permission and to stamp "approved" for the illegal behavior of this company since 2004, is to greatly undermine the intent of the Texas Legislature when it passed the laws governing companies such as this. The fine should be a percentage of the illegally derived sales. One percent fine would be $155,968. Even this will not compensate for the tons of dust and other emissions that have become air-borne due to the illegal actions of Advantage Asphalt Products. It is a slap in the face of all citizens in the state when a polluter such as this is given such a bizarre and absurd fine. It is an embarrassing moment in Texas history when a company operating in such a fraudulent manner is given legal approval to operate in the future in the same manner that it has been found to be illegal and out of compliance in the past.

This company has played loose and fast with the facts in the hearing and on application documents and continues to violate the terms and standards of TCEQ Permits as of June, 2008.

Finally, one would think that Advantage Asphalt Products would make attempts to right its operations with the state. However, in early spring of 2008, the gravel/materials mining in the Stockett Pit ceased and the lease between Stockett and Advantage Asphalt Products ended. Gravel mining is now being conducted on land owned by Gerald Wood west of the Stockett pit. According to TCEQ Permit Division staff there is no record of new application, amendment, or revision to the existing permit 54119L002. There is no record of changes or new application for the Storm Water Permit that will need to include additional tributaries of Mulberry Creek that will be affected.

The above reasons govern my respectful request that an Agreed Order include the following stipulations:

- Correction in all Advantage Asphalt Products, Ltd. records in the TCEQ data base of the actual location of the South Armstrong County pit mining equipment at 4241 Co.Rd. 22, not 6 miles east of HWY 207 at the end of FM 2272.
- Proof of source for water for required spray bars to control dust. Spray bars are not operative if there is no verified source of water.

- Meet sampling and testing requirements and submit reports monthly to TCEQ Region I office for 180 days from date of AO to verify opacity requirements are met.
- Provide to TCEQ Region I quarterly production records to verify daily and weekly production rates as approved in Permit 54119L002.
- Conduct a criminal investigation of the fraudulent information submitted by S. Knutson, Advantage Asphalt Products, Ltd., in all applications, amendments and other documents of both AIR and Storm Water Permits.
- If Permit amendment is allowed in the AO, require public notice and hearings available for interested parties in South Armstrong County.

Therefore, be it resolved that TCEQ will carefully consider the continuing and current illegal activities of Advantage Asphalt Products, LTd. and seek fines that will, in fact, deter future misbehaviors and illegal activities of the company whether in Randall, Potter, or Armstrong Counties.

Sincerely,

Peggy Meathenia

Peggy Meathenia

Cc: Blas Coy, Jr.

Enclosures:
Photos (50)
Memos of 2-19-2008 to B. Wade, A. Oloko, B. Elliot, J. Huhn, A. Inman
Letter 12-4-2007 to B. Wade

Fischer, TX 78623
830-935-2898
paloduro@gvtc.com

Dec. 4, 2007

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 JUN 20 PM 3: 29
CHIEF CLERKS OFFICE

Mr. Brent Wade
West Texas Area Director, Field Operations Division
Office of Compliance & Enforcement
Texas Commission on Environmental Quality
MC-174,
P.O. Box 13087
Austin, TX 78711-3097

Dear Mr. Wade:

Enclosed are 17 digital photos made on Nov. 30th, 2007 documenting the continuing violations of the permits issued to Advantage Asphalt Products Inc. These violations and documentation show the operation of the Stockett Pit in Armstrong County, located on County Road 22. Advantage Asphalt Products is scheduled for a hearing to be conducted by SOAH on Dec. 6, 2007. The hearing includes review of the violations as outlined in TCEQ Docket 2006-1434-AIR-E and TCEQ 2007-0548-WQ-E. The photos provide documentation that TCEQ requirements for compliance have been ignored. The photos show the continued use of two rock crushers, power screens on site, lack of control of dust emissions through water-spray bars at transfer points, and dumping of discarded materials and lack of control of storm water run-off into Indian Creek.

Photos document:

- The continued violation of the opacity requirements with visible emissions noted at the mining site and from 2.5 miles away north of the Stockett Pit on CoRd 22.

- Production rates are high due to use of unpermitted equipment. The belly-dump truck arrived at 4:24 p.m. and was filled with 6 loads deposited by a front loading dozer in 5 minutes. Each bucket load of 4 tons equals a 24 ton load for the belly-dump truck. The result is a truck leaving the pit over the load limit established by TxDot for public highways, including farm to market roads.

- No spray bars are visible at the points of material transfer.

- The cone rock crusher is married to the permitted rock crusher.

- Lack of erosion control measures to reduce or prevent discharge of storm water into Indian Creek continues. The man-made dam is still unstable with sand/gravel and native soil berms. Photographic evidence continues to show continuing erosion of the berms along Indian Creek as noted in the original investigations outlined in the TCEQ Enforcement Case 33143.

- Two crushers and one power screen were in production of materials in the Stockett Pit at the time photos were made on Nov. 30. Four dozers and one articulated truck were moving dirt and materials without stoppage throughout the plant area.

- It can be deduced that one-half of the trucks are loaded with materials mined as the result of the second and unpermitted cone rock crusher in operation. At $575 per loaded belly-dump truck, this is a daily sales of $40,250 for 70 truck loads. With one unpermitted and illegal cone rock crusher and the two unpermitted power screens, high production results in daily estimated sales revenue of $20,125 acquired by violating its TCEQ permits. On June 30, 2006, TCEQ Region I Office requested production records for the Stockett Pit operations. From that date until Nov. 30, 2007, a minimum of 360 days of production has occurred with revenues of $7,245,000 due to production of materials from the unpermitted cone crusher and two power screens. This is in addition to the estimated $7,245,00 of sales occurring due to permitted equipment. This is a phenomenal amount of sales generated illegally while the due process procedures of TCEQ are followed leading to a SOAH hearing. Advantage Asphalt Products clearly has benefited financially from due process by not coming into compliance prior to the SOAH hearing.

- Should Advantage Asphalt Products plan on being in compliance before the Dec. 6, 2007 hearing, the company has only Dec. 3-5, a three day period to do so. As of Nov. 30, there is no evidence to support efforts to come into compliance.

There is no photographic documentation that Advantage Asphalt Products has complied with the corrective actions as required in the Executive Director's Preliminary Report and Petition for Air Quality nor for the EDPRP for Water Quality. Advantage Asphalt Products continues to violate the provisions of its permits as shown on Nov. 30, three operating days before the SOAH Hearing.

Please add this letter and photographs to the violations/compliance files for the Dec. 6, 2007 scheduled SOAH hearing.

Regards,

Peggy Meathenia

Cc: Brad Jones
Jim McWilliams
Eddy Vance
Jeffrey J. Huhn
Alfred Aloko

Attachments—Digital photos of Nov. 30, 2007

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 JUN 20 PM 3: 29

CHIEF CLERKS OFFICE

Memorandum

To: Brent Wade, Alfred Oloko, Brian Elliott, and Jeffrey Huhn
From: Peggy Meathenia
Subject: Pertinent Information to the Record of the Feb. 13, 2008 Hearing with Advantage Asphalt Products, Ltd.
Date: Feb. 19, 2008

Statements given in testimony by Mr. Scotty Knutson represent a pattern of providing information that is incorrect, misleading, or fraudulent. Such was the testimony during the SOAH Hearing conducted by Judge Wilkov including the following:

1. The "just being a good neighbor out there" statement by Mr. Knutson that he saved several houses from burning is questionable as I have previously supplied information on. The single dwelling, one story house that was not at-risk of burning on Jan. 11, 2007 was Mr. N.M. Stockett's along with a large pen of feeder cattle. The Advantage Asphalt mining pit is below the stockyard pens and the personal residence of the Stockett's. Multiple cities sent fire fighting equipment; Armstrong Co. supplied graders, county employees, sheriff's officers, etc. Greenbelt Electric Coop sent crews to restore and/or take action on the electric poles as needed. I was also present with four other family members fighting the fire.

   The fire started and burned from the common corner of Mrs. Guffy's and my property at FM2272 and Romero Road. The fire burned a diagonal swath through approximately 300 acres of the Guffy Ranch to the northeast toward Stockett's property. There were no dwellings, barns, pens, animals, or houses at-risk other than those on the Stockett's property. By the late afternoon (around 4:53 p.m.) the fire had been generally contained on the Guffy property because the SW winds had died down to less than 19 miles per hour (according to US Weather Bureau Report). A report of the probable cause of the fire is available with Greenbelt Electric Cooperative, Wellington, Texas. The fire was of a suspicious nature, according to the report. A report of the fire can also be found with Sheriff J.R. Walker's office in Claude, Texas and with the Chief of the Claude Volunteer Fire Department. The case of "just being neighborly out there" needs specificity which Mr. Knutson did not provide in his testimony. Advantage Asphalt Products dozers and trucks on the Stockett property were used to prevent the fire from coming across the property line of Ms. Guffy and Mr. Stockett.

2. The Department of Labor's MSHA office in Carlsbad, NM sent an investigator to the Stockett Pit between Dec. 5 and Dec. 13, 2006. Advantage Asphalt Products was cited for a number of violations including no postings, no notification to the public that the site should be designated

a hard-hat area, and found no physical barriers to prevent the public entering the pit production area from the county road. On Jan. 9, 2007, Mr. Larry Parks, of the MSHA Carlsbad Office, made a follow-up visit to determine if safety regulations had been implemented. His report indicated gates and barriers along with signage were being installed as of that day.

3. According to Mr. Knutson's testimony, spraying occurs at the various designated points on the crushers, screens, and other points of contact. The photos I made between Nov. 14, 2005 and June 30, 2006 show lack evidence of containment of dust or fugitive emissions. The first photo evidence of a fiberglass tank on the premises is Feb. 21, 2006. The tank does not appear to be functional. The first evidence of a water truck associated with the pit is dated Nov. 13, 2006 after Mr. Campa's investigation had ended. There is no public water source or supply on the Stockett property. The water truck is not filled at the Stockett's private water well near their house and cattle feeding operation. There is no known source of water being readily available for daily and hourly spraying as required by the permits issued to Advantage Asphalt Products. At no time have I ever seen the water spraying truck active. Other residents in the area will verify that neither have they seen a water tank truck being used in the pit. The statement by Mr. Knutson that spraying takes place as necessary cannot be proved up without records of source of water, spraying dates, times, gallons utilized etc. One can deduce that spraying cannot occur without a steady and ready source of water.

   City Secretary for The City of Claude, TX, Martha Johnston, 806-226-3261, has verified that Advantage Asphalt Products does not purchase water from the City of Claude as there is no record of purchase or billing to Advantage Asphalt Products, Ltd. Spraying to contain dust requires water or chemicals. There is no data that water is available for the spray truck or spray bars located in the pit. Available facts do raise concern that any spraying or in-road dust is contained. Photos made during the Nov. 16, 2005 to June, 2006 prove the point of dust in the air over permitted emissions.

Through discussions with numerous TCEQ officials in the summer of 2007 I was advised that no new complaints or information occurring after the completion of Joe Campa's investigative reports of June 30, 2006 could become record for hearing procedures. No additional information after June 30, 2006 would be investigated, considered, or dealt with until the enforcement division had completed the commission's enforcement process and participated in a potential SOAH hearing. However, Mr. Knutson was allowed to testify about saving homes from burning and that he had implemented MSHA requirements. Both statements of testimony were in a time frame long-after the June 30, 2006 cut-off

of information applicable to this hearing. He was not asked to verify or prove the testimony with facts or documentation.

As to the location of the Stockett Pit, I have long pointed out in numerous letters, emails, and telephone conversations that there was intent to mislead from the first application in 2003 to the last amendment of the permits. The spread sheet to Mr. P. Bynum tracks numerous TCEQ internal documents raising questions about the location and types and numbers of crushers. From Central Files documents, one can determine that the paper trail location of the Stockett Pit changes. This is not a simple clerical error. Mr. Knutson's handwritten notations as to location of the pit are not an accidental error.

TCEQ's burden to prove the violations are weakened if data is not retrieved from your own Central File Records tracking the inconsistent and misleading documentation. I have read and copied numerous TCEQ file documents that when reviewed show a clear pattern to deceive and falsify information contained in the applications and amendments to obtain and operate a mining operation in Armstrong County. It is curious that the mailing address on many TCEQ documents of the Stockett Pit is an Amarillo address. I have, as a lay person, tracked the obvious deceptions noted in hundreds of pages of your own records which include TCEQ internal emails requesting a site visit before the PBR and amendment permit approvals were processed. Surely staff will review the misinformation and it will be utilized as part of the proof since the burden is on the Commission.

I appreciate the effort that each of you has dedicated to this matter. It may seem a vary small violation compared to other violators in the state. However, the pristine and often native prairie in Armstrong County is a precious environment and in need of the state's protection and enforcement as much any other part of the state.

Attachments:
Photos of--
Prairie grass fire,
Before and after photos of barricades due to MSHA citations,
Junction of Co. Rd. 21, Romero Road and end of FM 2272 (6 miles east of Hwy 207),
Water truck and fiber glass tank.
List of TCEQ Central File Records reviewed

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 JUN 20 PM 3: 29

CHIEF CLERKS OFFICE

To: Anne Inman, Jeffrey Huhn
From: Peggy Meathenia
Subject: Pertinent Information to the Record of the Feb. 13, 2008 Hearing with Advantage Asphalt Products, Ltd.
Date: Feb. 19, 2008

A review of certified TCEQ file records reveals that statements given in testimony by Mr. Scotty Knutson were incorrect and misleading during the SOAH Hearing conducted by Judge Wilkov. Mr. Knutson stated that the location of the plant was 13 miles S of Claude, then 6 miles east on FM 2272. This is in conflict with written documentation supplied to your division by Mr. Knutson.

1. The location of the Stockett Pit, operated by Advantage Asphalt Products in Armstrong County is located at 4241 Co. Rd. 22, more than 8.5 miles from Hwy 207. The Stockett Pit has two entrances on Co.Rd. 22; the south entrance is located 8.5 miles and the north entrance is located 8.9 miles in a northeasterly direction from HWY 207. Google Earth maps and other paper maps will confirm this. **What is located six miles east of Hwy 207 is the end of FM 2272 which joins with two county dirt roads.** Four land owners have submitted affidavits that they do not have any current or future intention to open any type of land or gravel mining operations at the junction of Texas FM 2272, and Armstrong County maintained roads known as Co.Rd. 21 and Romero Road. Joe Blanton owns the southwest corner of this junction with an address of 10100 FM 2272, Claude, TX 79019. Rex Glover who leased land (on the JA Ranch property) at this junction has moved his pre-fab home from the junction; his address was 10200 Romero Road when he lived there until late 2006.

   Affidavits concerning the above were submitted to Region I office in January of 2006. Since January of 2006, I have been asking that the information on the permits be corrected to the actual location.

2. Connie Guffy does not have an address at the junction, nor do I. Mr. NM Stockett's address is 4245 Co. Rd. 22 and is owner of the land on which the Advantage Asphalt Products' lease is current. The Stockett's house is 8.1 miles from Hwy 207 and is located above the pit operations.

This misrepresentation by Mr. Knutson on the witness stand detailing the location is not a clerical error, but an attempt to locate a pit (with paperwork authorized through TCEQ permitting procedures) at 6 miles east of Hwy 207. This would provide the basis to go north through the Meathenia and Guffy ranches on to land owned by another person. That individual has been trying since 2003 to open a land gravel mining operation by gaining access through Ms. Guffy's or my property. There is no public road available to open a new pit one mile north of my property nor Ms. Guffy's. Both my neighbor, Ms. Guffy and I been asked to and have refused to allow any land-mining operations to cross our property. To

have a location established at 6 miles east could result in a by-pass of TCEQ's own permitting process.

Certified copies of TCEQ Records show:

On TCEQ Core Data Form *faxed 07/07/2003* from Advanced Pavement (partner company with Advantage Asphalt Products, LTD.) established the location (page 2 of 2) **Line 34:** "Portable Plant From Claude go south on 207 13.6 miles to FM 2272 and go East 8.4 miles." **Section IV: Preparer Information:** "Scotty Knutson".
Page 4 of the same fax, **Item D. Applicant Information: Facility Location Information:** "Go south on US 287 south from Amarillo to Claude. In Claude turn south on Hwy 207 13.6 miles to FM 2272 east and go 8.4 miles to crusher location. City of Claude." This information was submitted to obtain Permit 54119L002.

The change of the Stockett Pit location occurred on TCEQ Form PI-1 General Application for Air Preconstruction Permits and Amendments. Stamped "Received Feb 10 2004, Air & Waste Applications Team." Page 29 of 34.
Applicant Information: Completed in handwriting and signed, Scotty Knutson, Date: 2-4-04. The location of the pit was listed as "6 miles east on FM 2272".
Part D. 1. Current location of facility "Claude, TX" **Street Address: (If no street address, provide clear driving directions to the site in writing.):** "Go 13 miles south of Claude on Hwy 207 to FM 2272 east 6 miles."

The information contained in Form PI-1 General Application resulted in the issuance on July 9, 2004 (signed by Dale Farrow) Permit Amendment 54119L002. From this point forward records in Central Files show the location of the Stockett Pit as 6 miles east on FM2272.

However, in the NOI for Storm Water Discharges Associated with Industrial Activity under TPDES General Permit, faxed on 11/01/06, Mr. Knutson in hand written form gives the **Physical Address of Project or Site:** 4241 Co. Rd. 22, Claude, TX, Armstrong" County. Please note the date is more than three years after the AIR Quality Permit was issued. Should a new mining pit be established elsewhere, an additional watershed would be involved.

The 6 mile east location provided by Mr. Knutson to the AIR Permits division is not a clerical error. It is an attempt to establish an additional location by which future mining operations can be established. If this fraudulent representation is allowed to stand as part of the record for this hearing, the Stockett Pit at 4241 Co. Rd. will continue to operate with an ambiguous location in TCEQ records. An additional pit can be established as an extension of the Stockett Pit, but at a new location (6 miles east). This puts the four land owners at-risk while TCEQ appears to have approved the location at 6 miles east.

I am asking that you intercede with the appropriate staff members in filing the written record with Judge Wilkov that provides the true and correct location of the Stockett Pit. It would be to the credit of TCEQ that action to verify the actual location at 4241 Co.Rd. 22 is taken on this matter. To allow this misrepresentation to go uncorrected is to cast a shadow over the staff and procedures of TCEQ to conduct business in a lawful and responsible manner.

Attachments: 1. Google Earth Map of Stockett Pit and FM2272

2. Photo-- End of FM 2272, junction with CR. 21 to the right, dirt road continues as Romero Road due east, then turns north on Stockett property to bisect Co.Rd. 22 at approximately 1.3 miles from the FM2272 junction.
3. Photo--Stockett Pit –photo made at a point 1.2 miles north of pit on Co.Rd. 22. Looking south.

1-24-04

Original location of Stockett Pit &
permitted equipment
Operated by Advantage Asphalt
Co. Rd. 22 Armstrong County

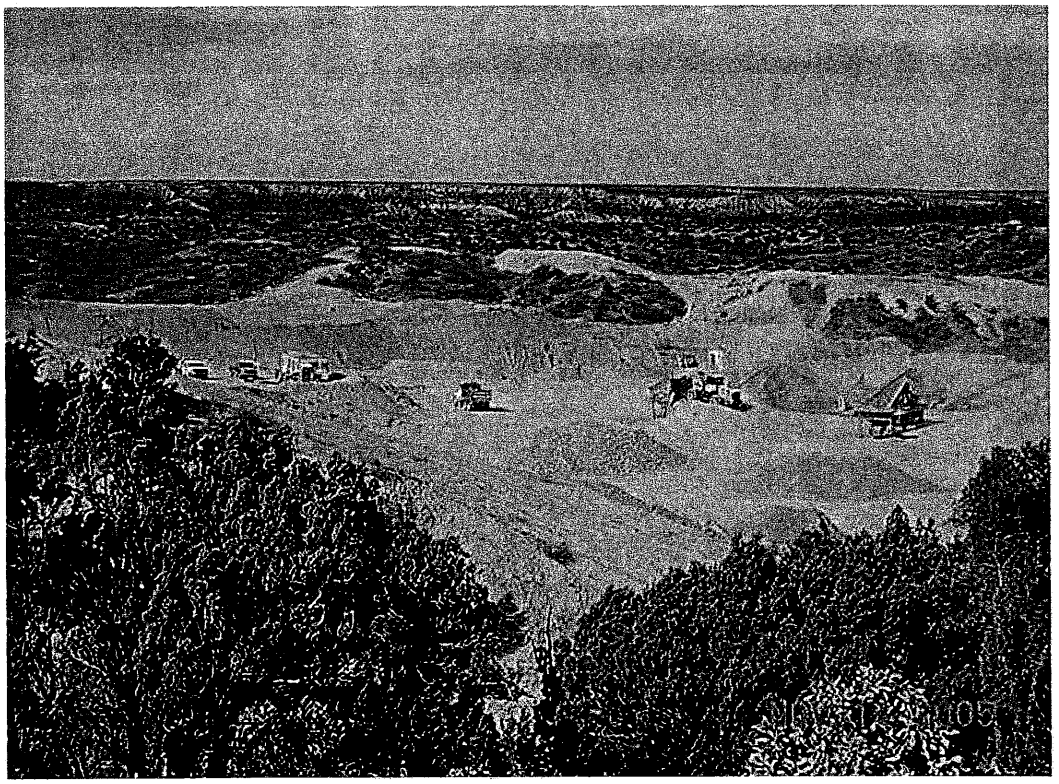
Pit was moved to another location
from identification on Permit Application

Stockett Pit operations by Advantage Asphalt

Armstrong County

Dust from 2 crushers seen on Co. Rd 22

11-14-05



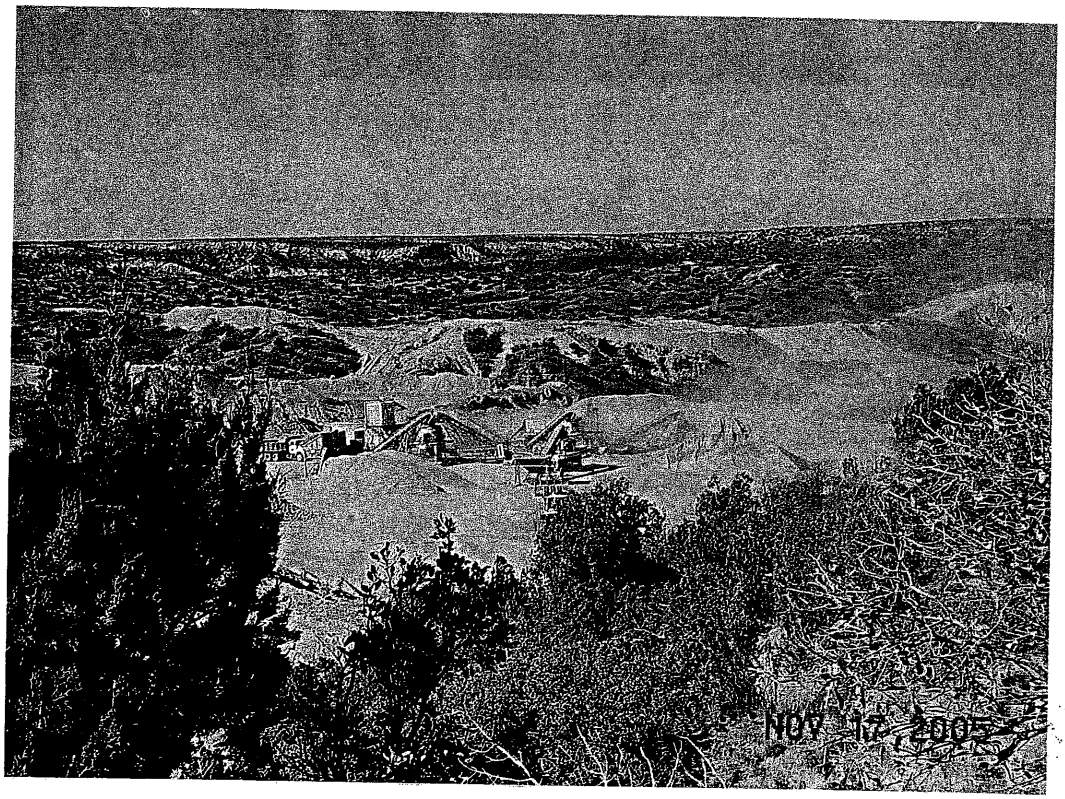
Stochell Pit operations by Advantage Asphalt
Armstrong County

2 Crushers

No water spray to Control dust that drifts over Co. Rd. 22

No water tanks or trucks

11-14-05



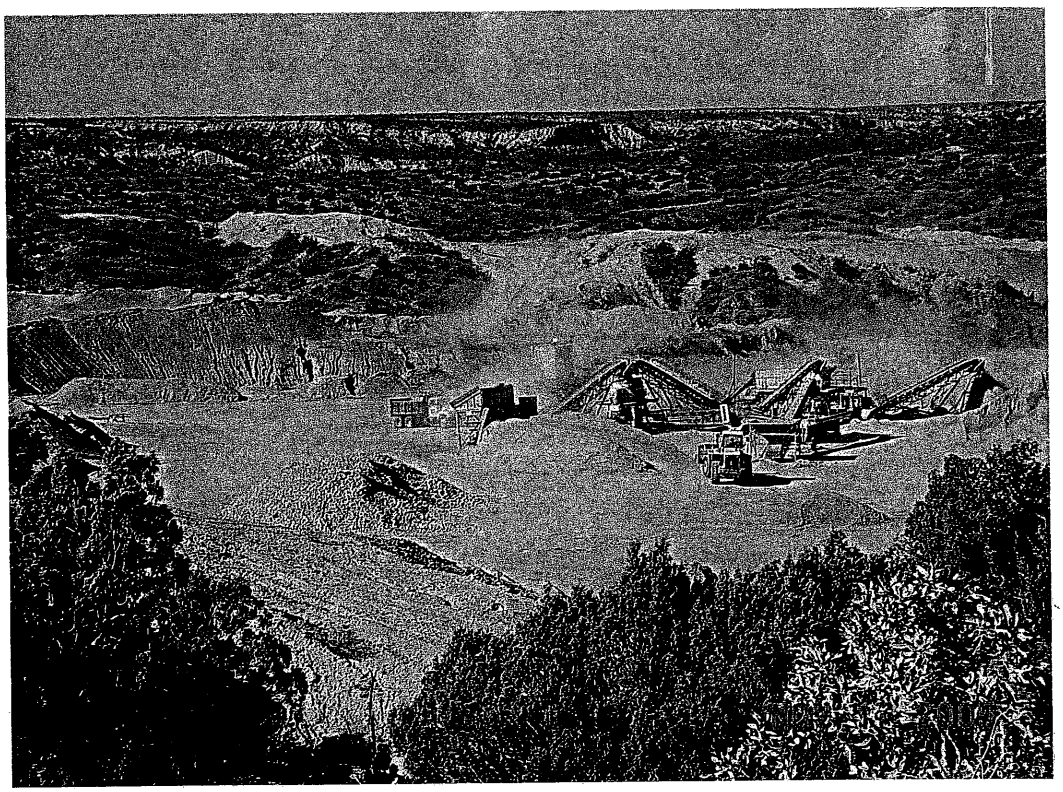
Uncontrolled dust from 2 crushers
rises from pit to cover Co. Rd. 22

Stockett Pit operated by Advantage
Asphalt Products

Armstrong County

11-17-05

97



Stockett Pit operations by Advantage Asphalt
Armstrong County

2 crushers create dust clouds that
cover entire valley

No water spraying

No source of water to control dust

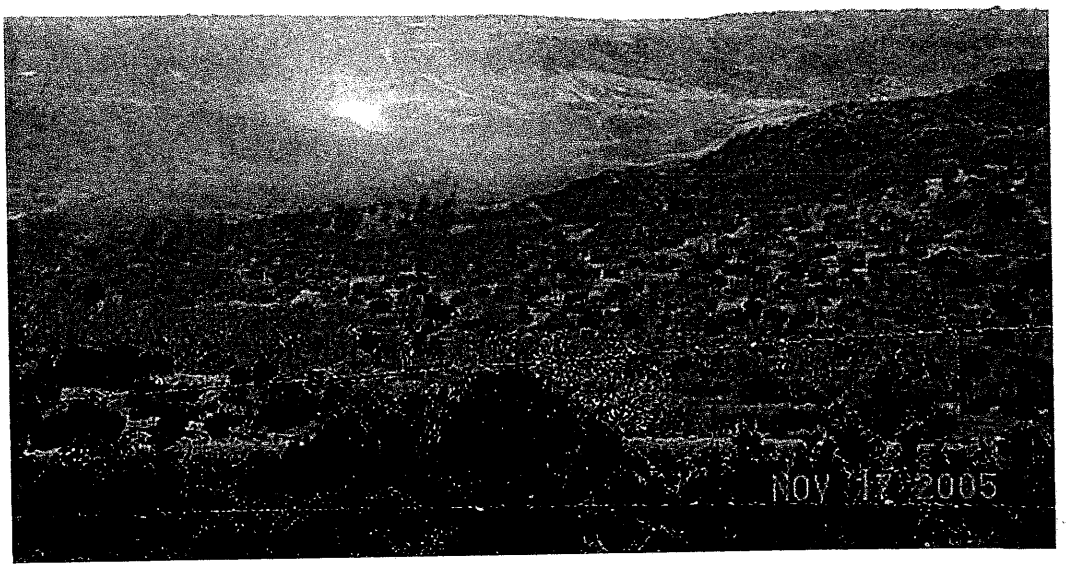
11-17-05

Dust from Stockett Pit Covers Mulberry Creek Valley

Photo is more than 4 miles distante from pit operations of Advantage Asphalt Products

Armstrong County - Co. Rd. 22

11-17-05

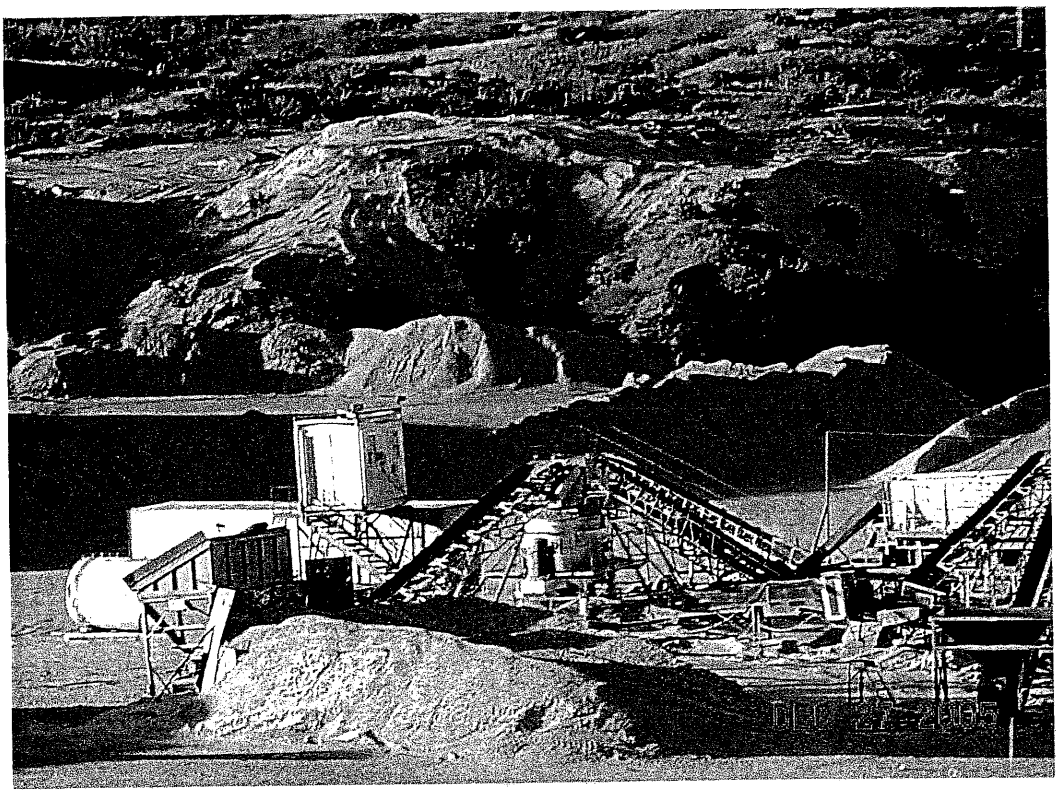


Stockett Pit
operated by Advantage Asphalt Products
Armstrong County

Dust covers 3 square miles of
adjoining land holders and
Co. Rd. 22

View is more than 3 miles away
from Crushers

11-17-05



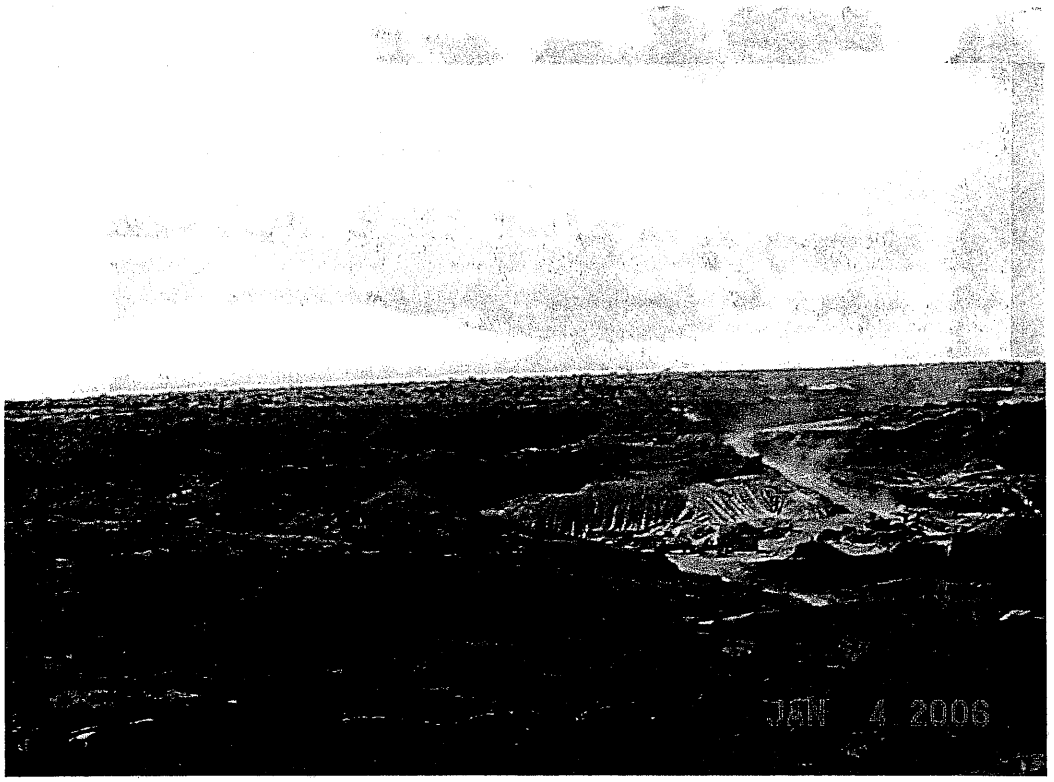
Sisquoc Pit operated by Advantage Asphalt

Plant is closed after hours

2 rock crushers massive

No evidence of water spray bars,
water tanker trucks or water tanks

12-27-05



Stockett Pit operated by Advantage Asphalt

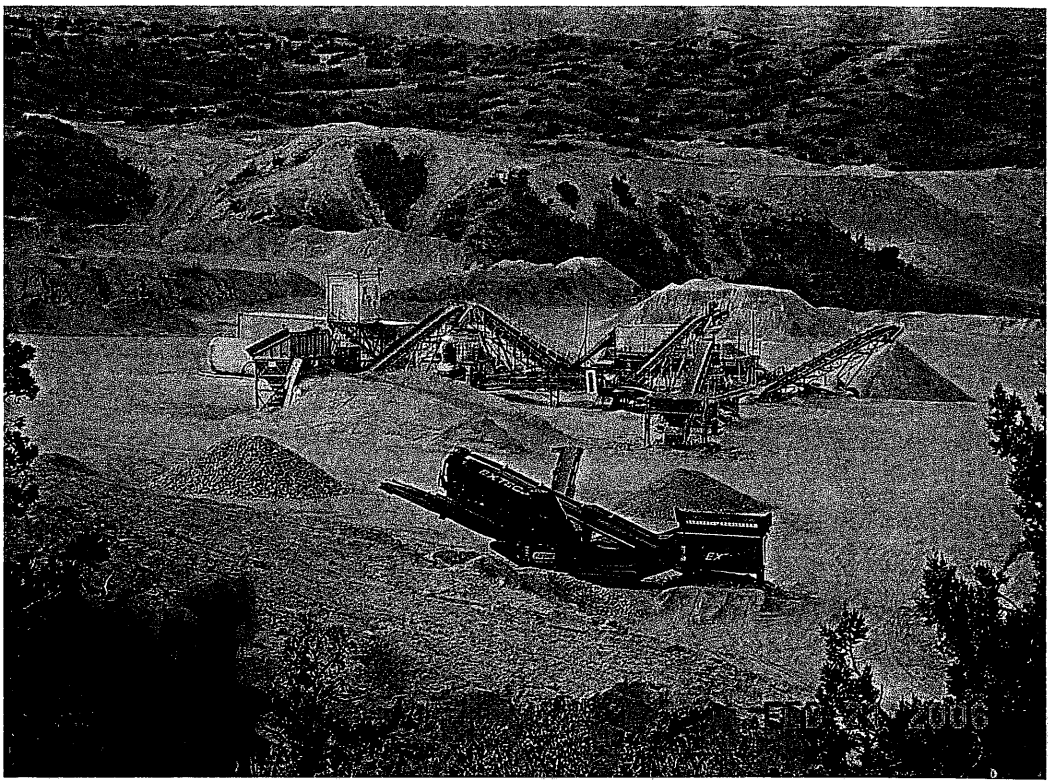
Dust is escaping pit operations over valley

No spraying of in-plant roads or materials transfer to control dust

View is from Co. Rd 22 approximately 3.5 miles from pit

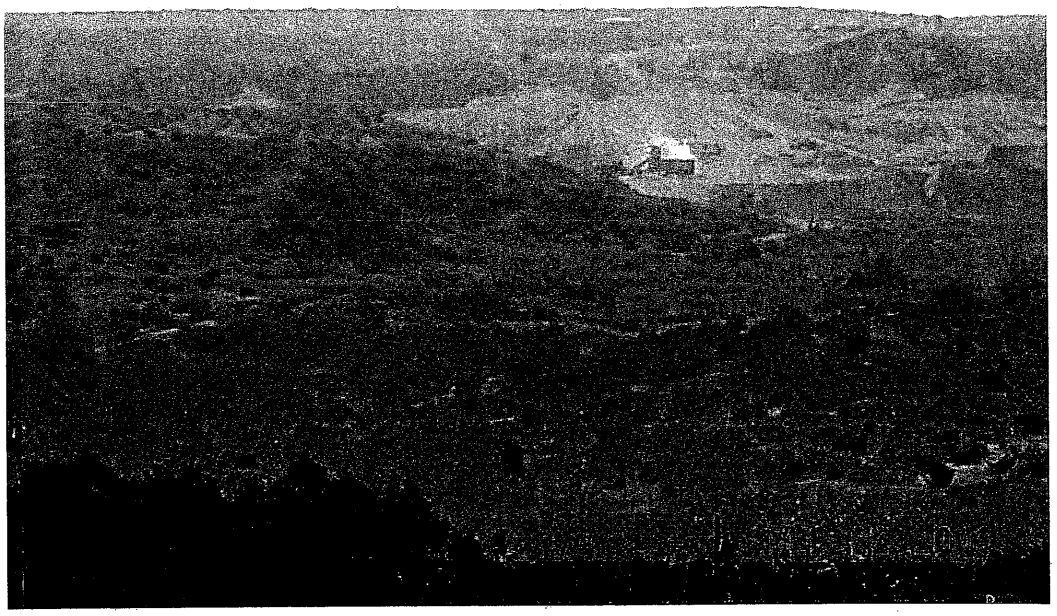
Armstrong County

1-4-06



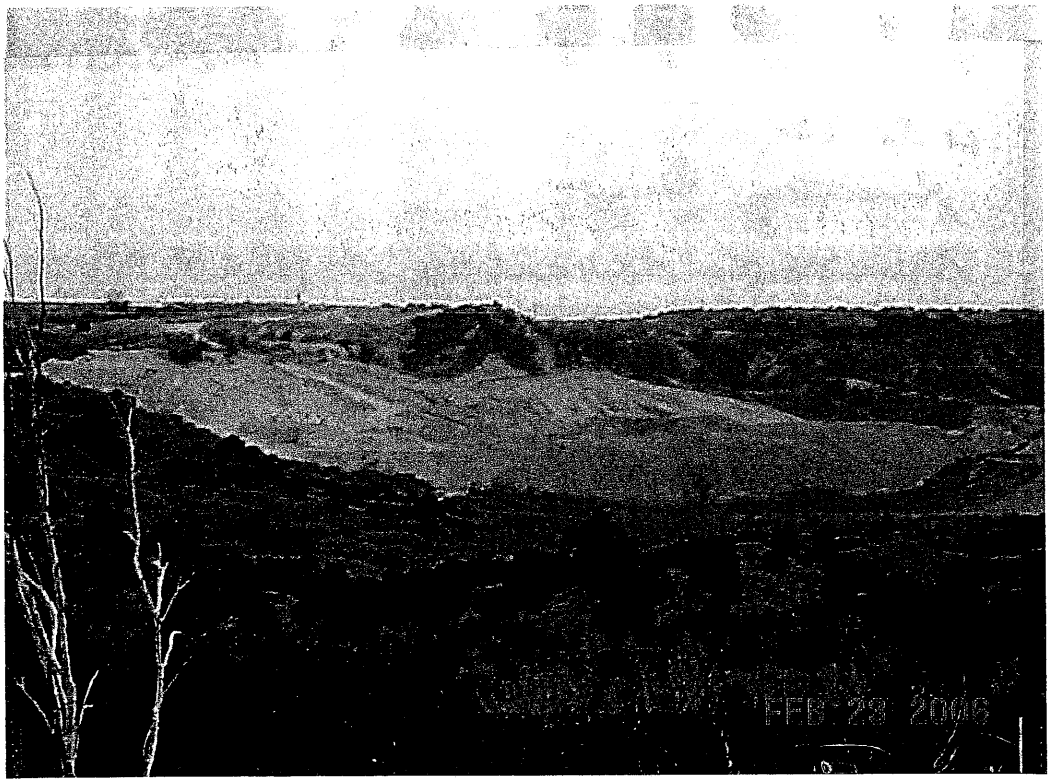
Advantage Asphalt Products
Stocked Pit after hours
2 Crushers
Armstrong County - CO Rd 22

2-21-06



Stockett Pit dust more than 3 miles away
Mulberry Creek bed + valley experiencing
limited visibility from dust emissions
from pit
Advantage Asphalt operated on CoRd 22
Armstrong County

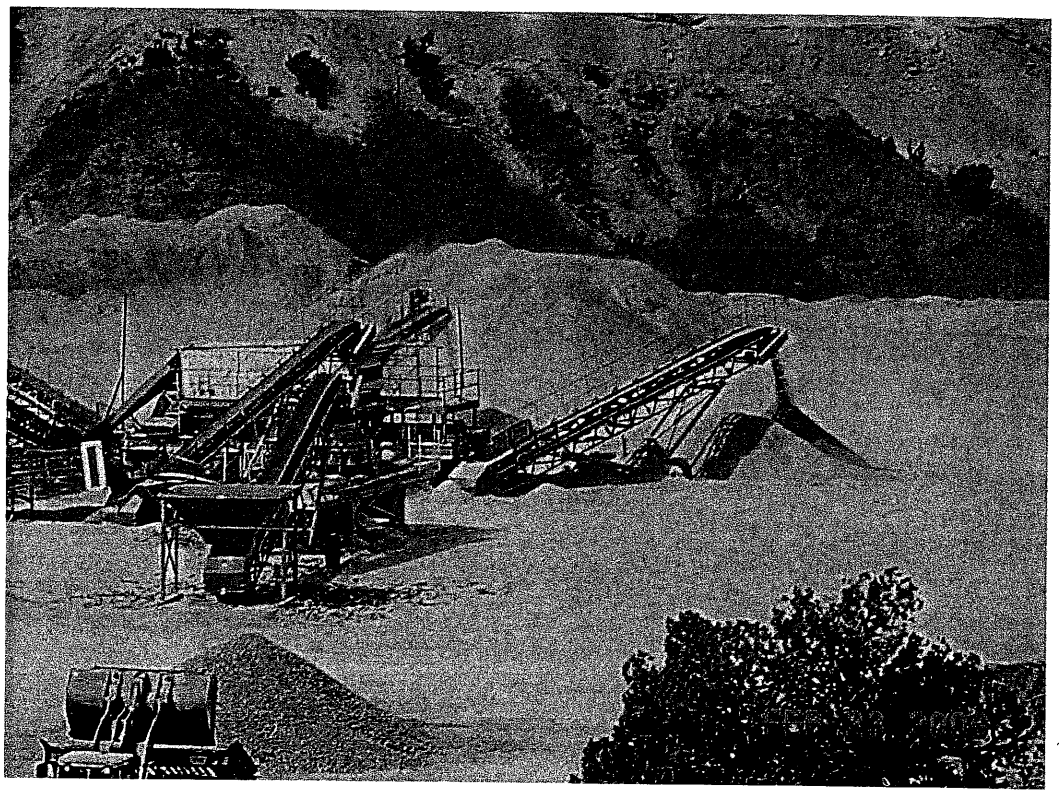
2-22-06



Dust from Stockett Pit operations over Valley
Co Rd 22
Armstrong County
Operated by Advantage Asphalt Products

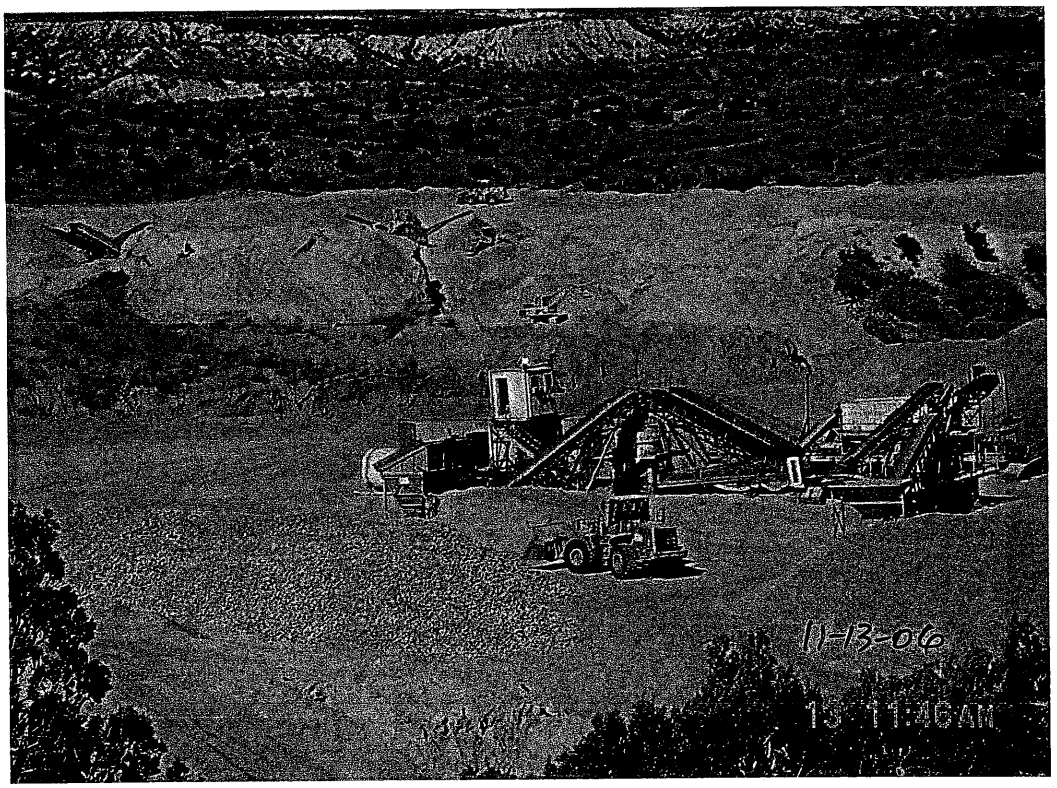
2-23-06

86



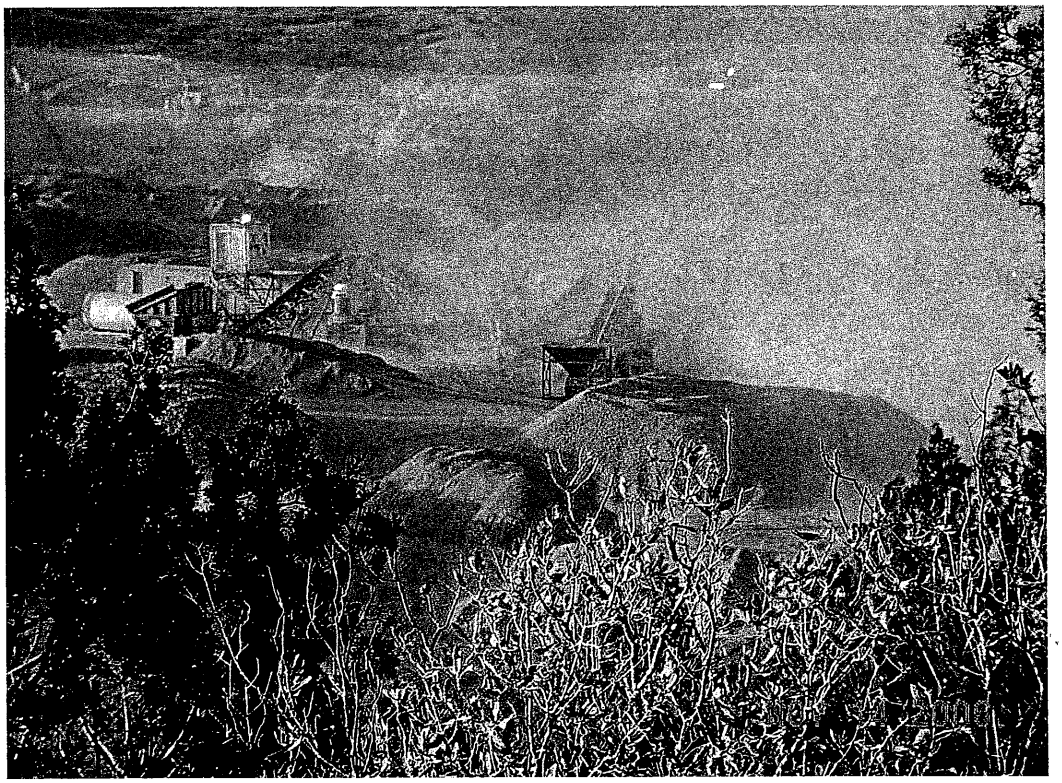
Stockett Pit - 2 crushers in operation
by Advantage Asphalt
Co Rd 22
Armstrong County

2-23-06



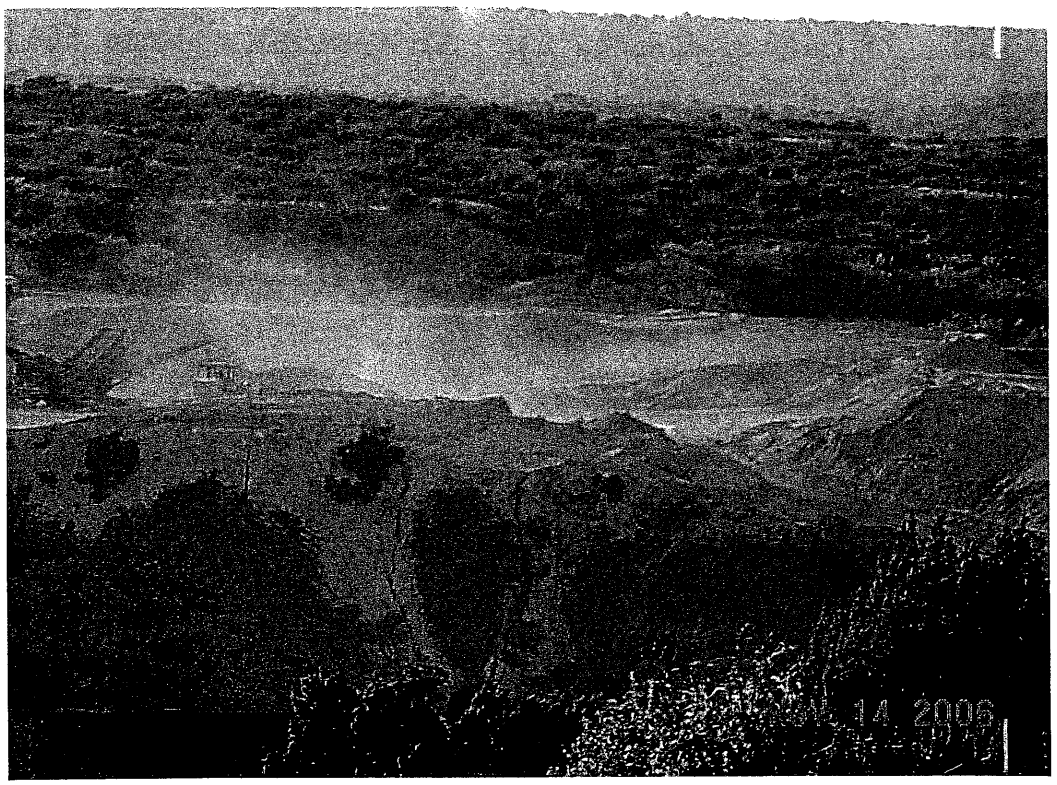
Stokett Pit operated by Advantage Asphalt
2 illegal power screens
2 manual crushers
No control of dust
No spray bars or use of water
Co. Rd. 22
Armstrong County

11-13-06



Dust from 2 rock crushers cross Co. Rd 22
Stochett Pit operated by Advantage Asphalt
Armstrong County

11-14-06



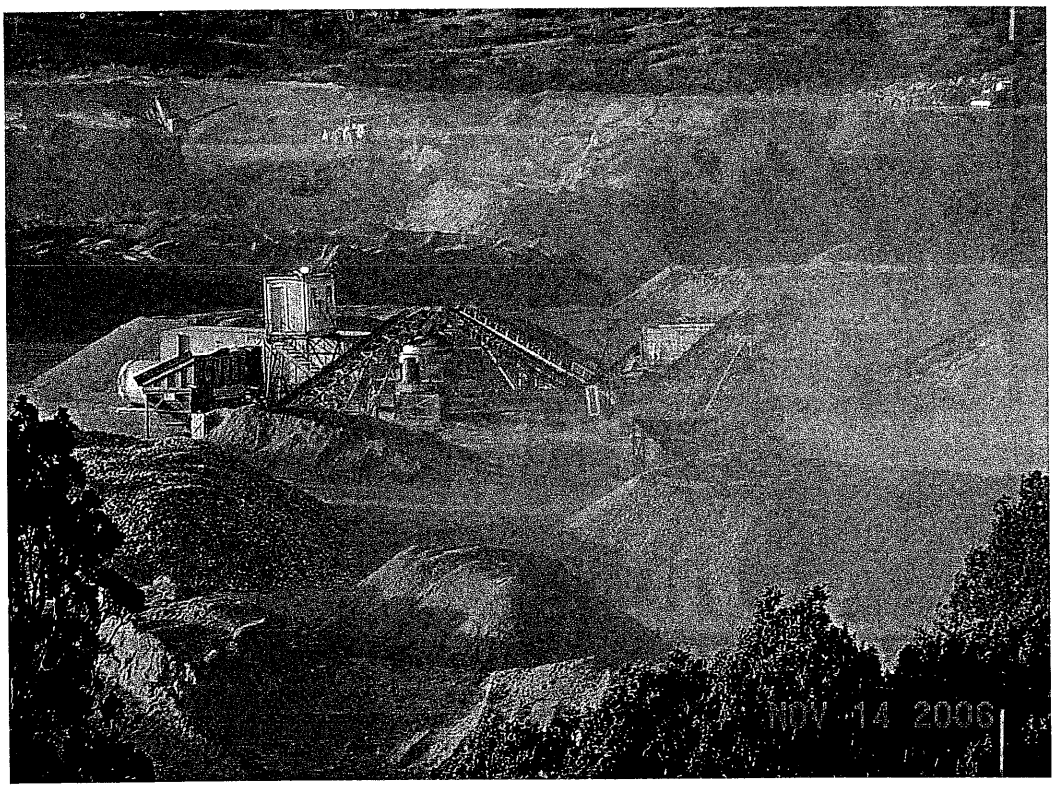
Stockett Pit
Operated by Advantage Asphalt
Armstrong County

Dust covers more than 3 square miles
and obscures Co Rd. 22

No dust control in effect

61

11-14-06



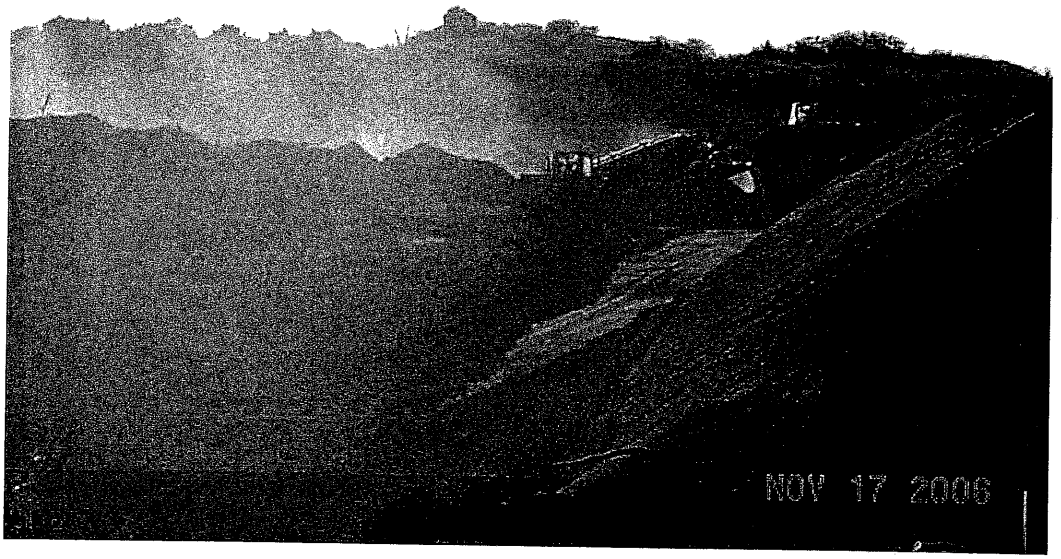
Dust from 2 rock crushers that
obscures Co. Rd. 22 & Indian Creek Valley

Stockett Pit operated by Advantage
Asphalt Products

Armstrong County

93

11-14-06

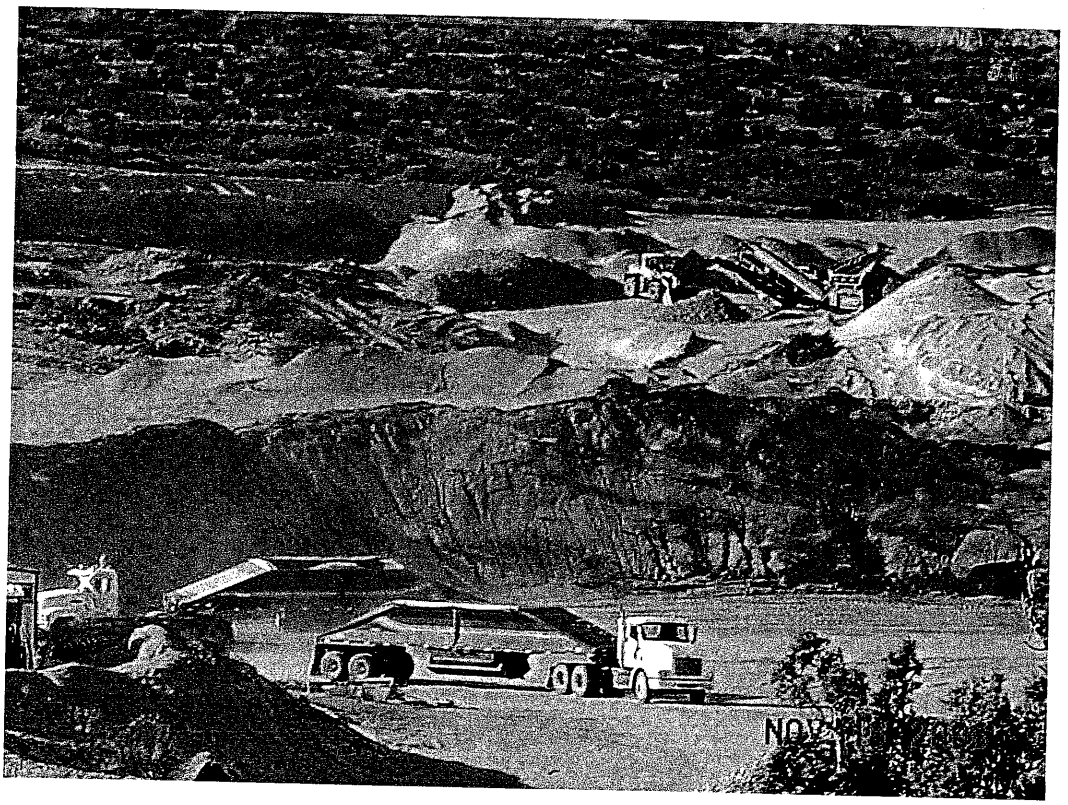


Dust from Stockett Pit as it Covers
Co. Rd. 22

Operated by Advantage Asphalt Products
Armstrong County

95

11-17-06



Stockett Pit operated by Advantage Asphalt

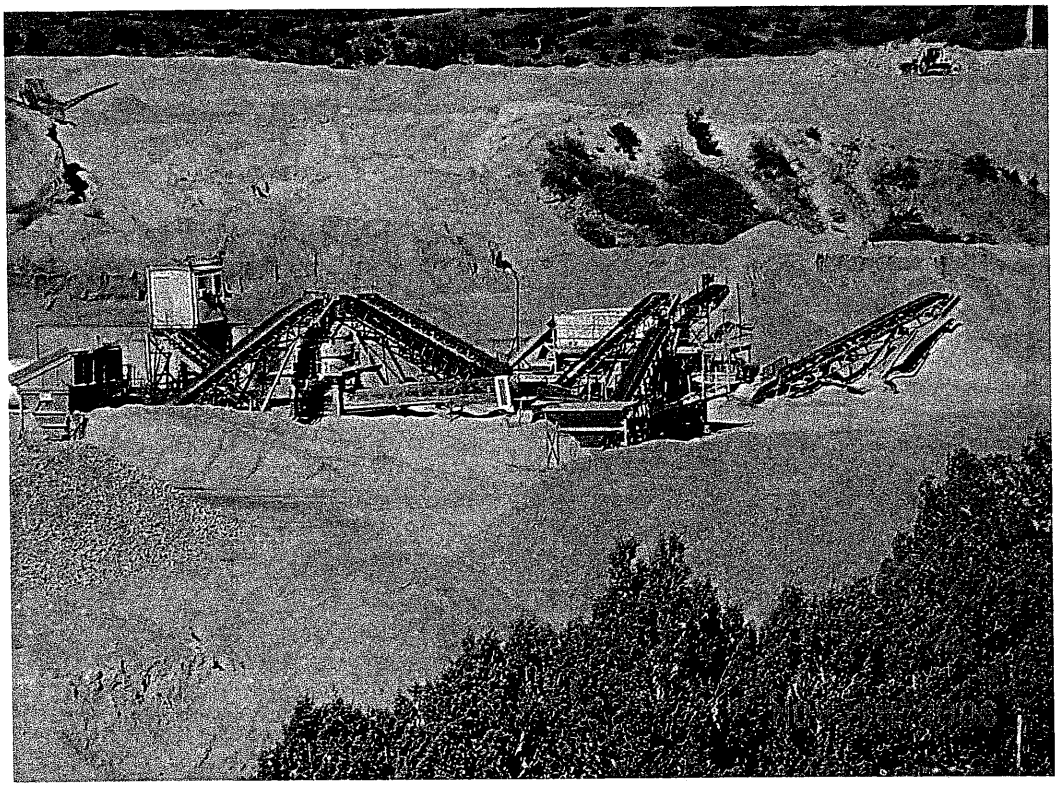
2 belly-dump trucks with logo and paint design of Advantage Asphalt Products

Each loads 23 to 24 tons of materials each

Co. Rd 22 - Armstrong County

11-18-06

~~24~~ 91



2 Crushers located in Stockett Pit
Advantage Asphalt Products
Co. Rd. 22- Armstrong County

11-18-06

Stockett Pit operated by Advantage Asphalt

Armstrong County

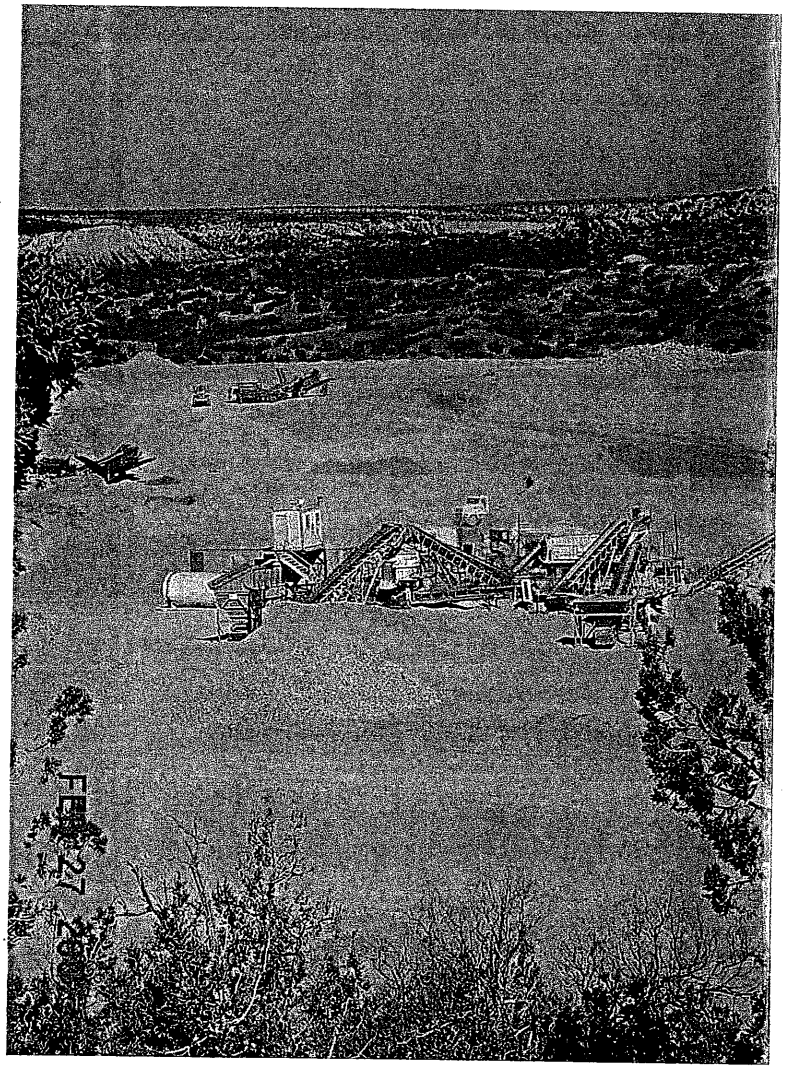
Dust obscures visibility on Co. Rd. 22

1-10-07

Stockett Pit
Operated by Advantage Asphalt Products
Armstrong County
View from Co. Rd 22
of dust leaving pit operations
No dust control
Dust creates driving hazard on Co. Rd. 22

1-10-07

62



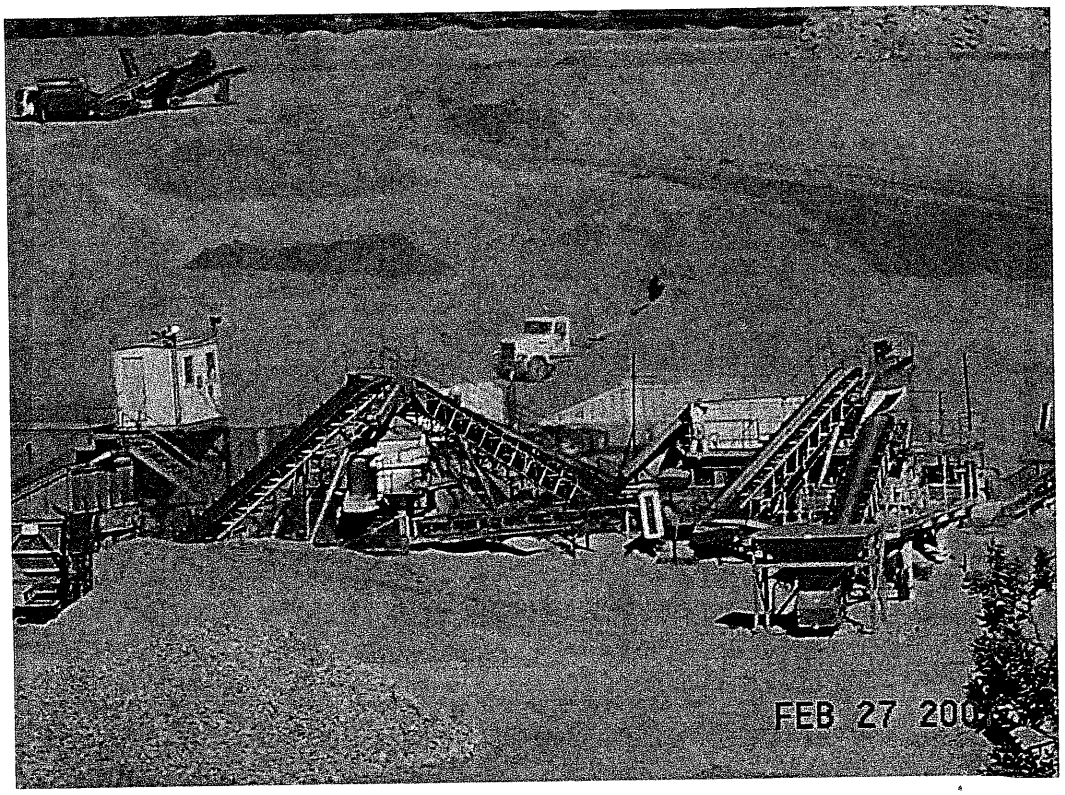
Stockett Pit in operation by
Advantage Asphalt
Armstrong County
to. Rd 22

2 power screen unpermitted

2 crushers

no spraying to control dust

2-27-07



Advantage Asphalt Products
Stockett Pit in Armstrong County

2 crushers manned with dust emissions

Co Rd 22

2-27-07

Escaping dust blowing over valley
near Indian and Mulberry Creeks

Stockett pit operated by Advantage
Asphalt Products

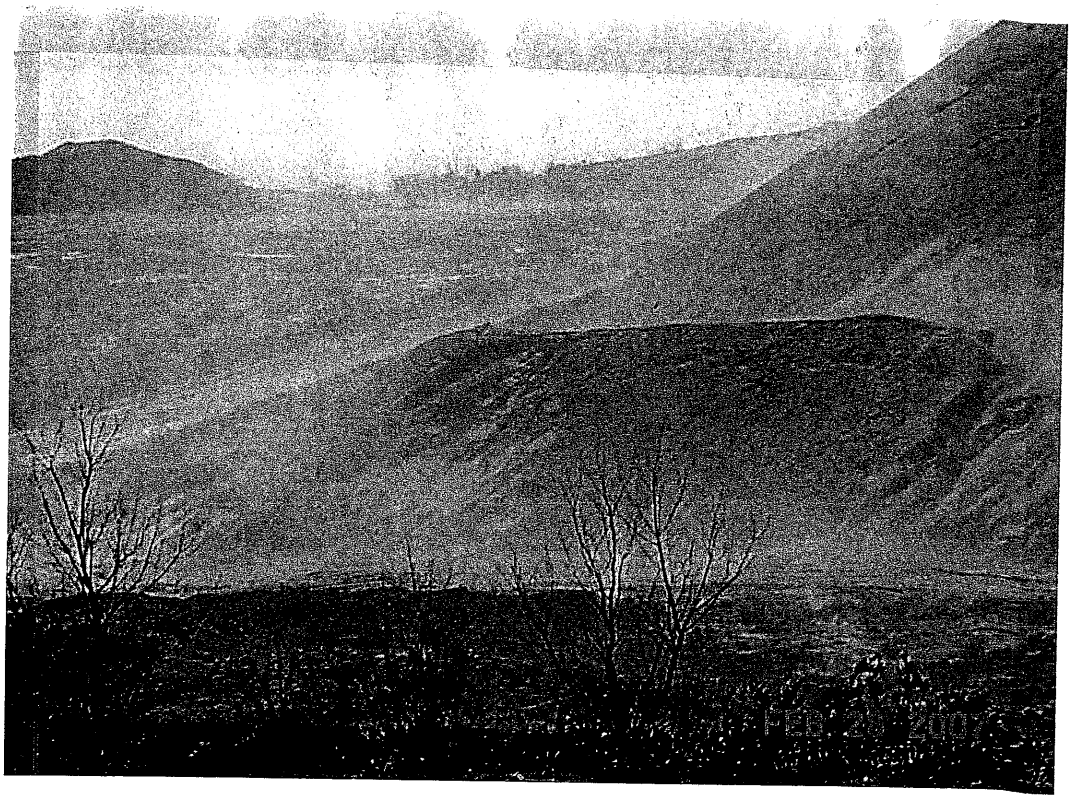
2 miles from North pit entrance

Co Rd 22

Armstrong County

83

2-28-07

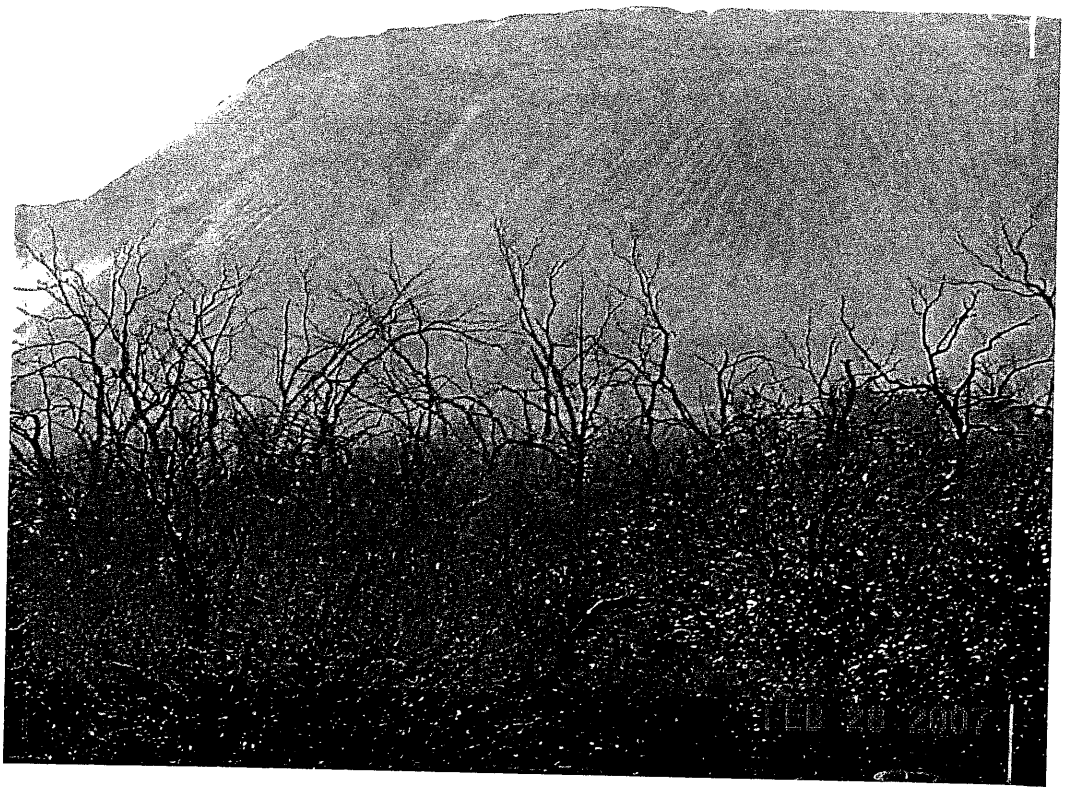


Dust from Stockett Pit operations behind berms
Operated by Advantage Asphalt Products

View from Co. Rd. 22
Armstrong County

85

2-28-07



Escaping dust from Stockett Pit operations
Advantage Asphalt Products
View from Co Rd 22 and Indian Creek Valley
Armstrong County

84

2-28-07

Stocker Pit
Operated by Advantage Asphalt
Dust over Indian Creek, Co. Rd. 22, and
the valley
Armstrong County

72

2-28-07

Stochett Pit in full operation

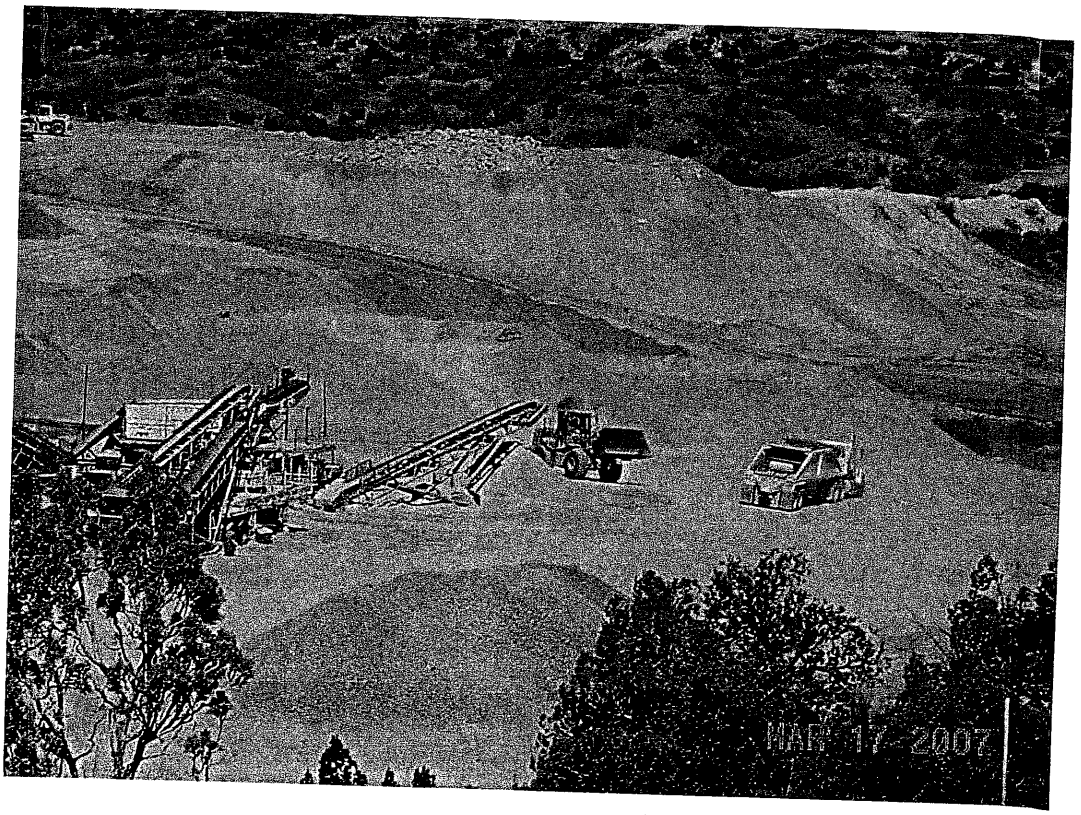
2 crushers

2 power screens; no spray bars

Advantage Asphalt Products

Armstrong County - Co. Rd. 22

3-3-07



Stockert Pit operated by Advantage Asphalt Products

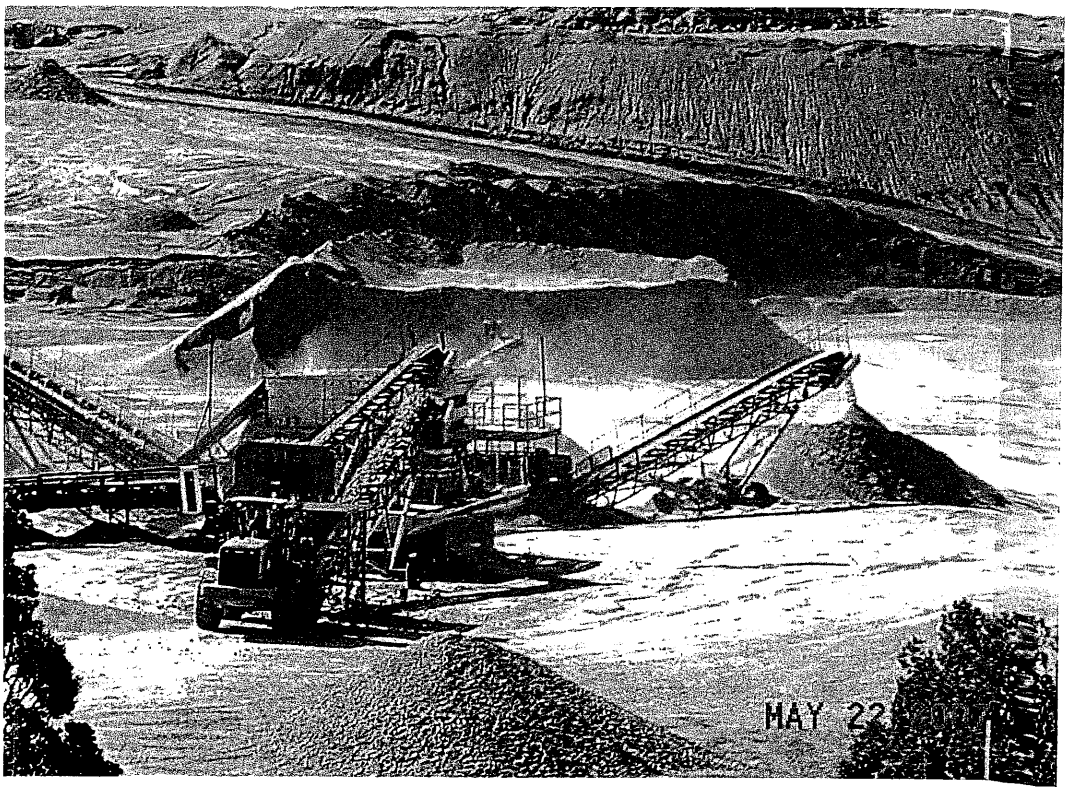
2 Crushers in operation

No spray bars or water spraying

Co. Rd. 22 - Armstrong County

3-17-07

100



Stockett Pit operated by Advantage Asphalt
Armstrong County - Co Rd 22

2 crushers
No control of dust

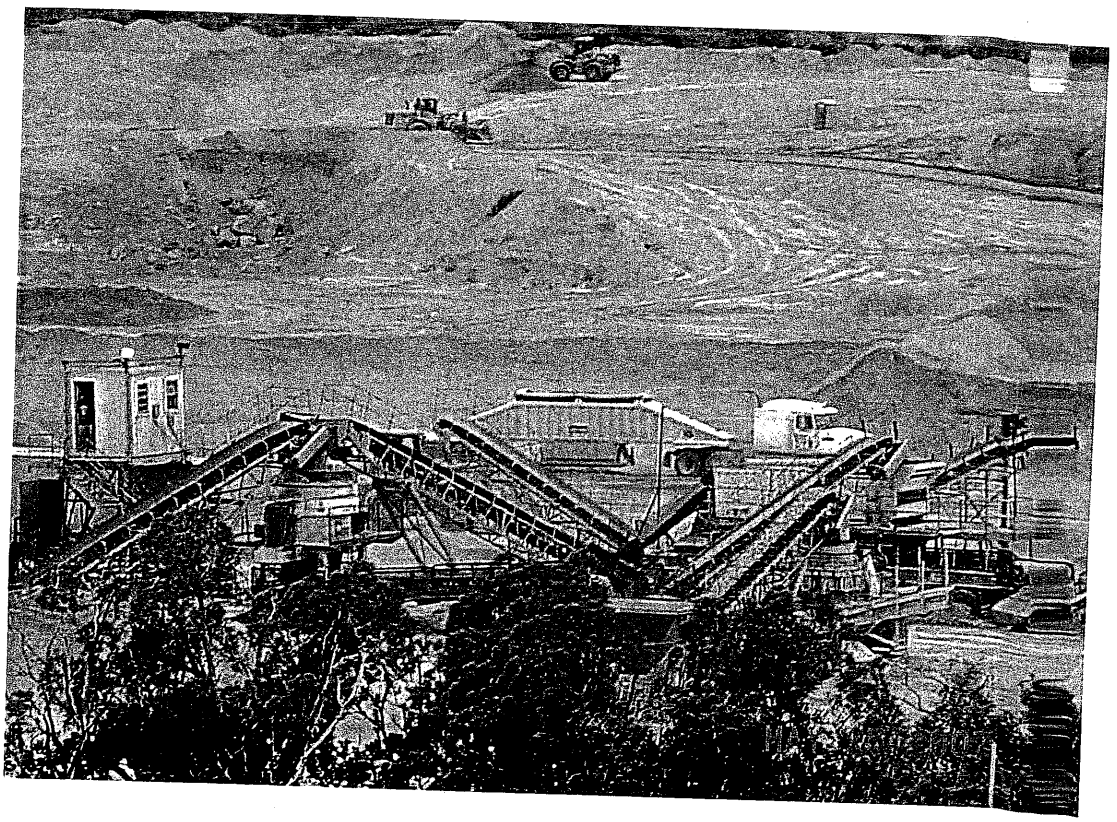
66

5-22-07

Stockett Pit - Advantage Asphalt Products
Armstrong County
2 Crushers create dust that covers valley

63

5-22-07

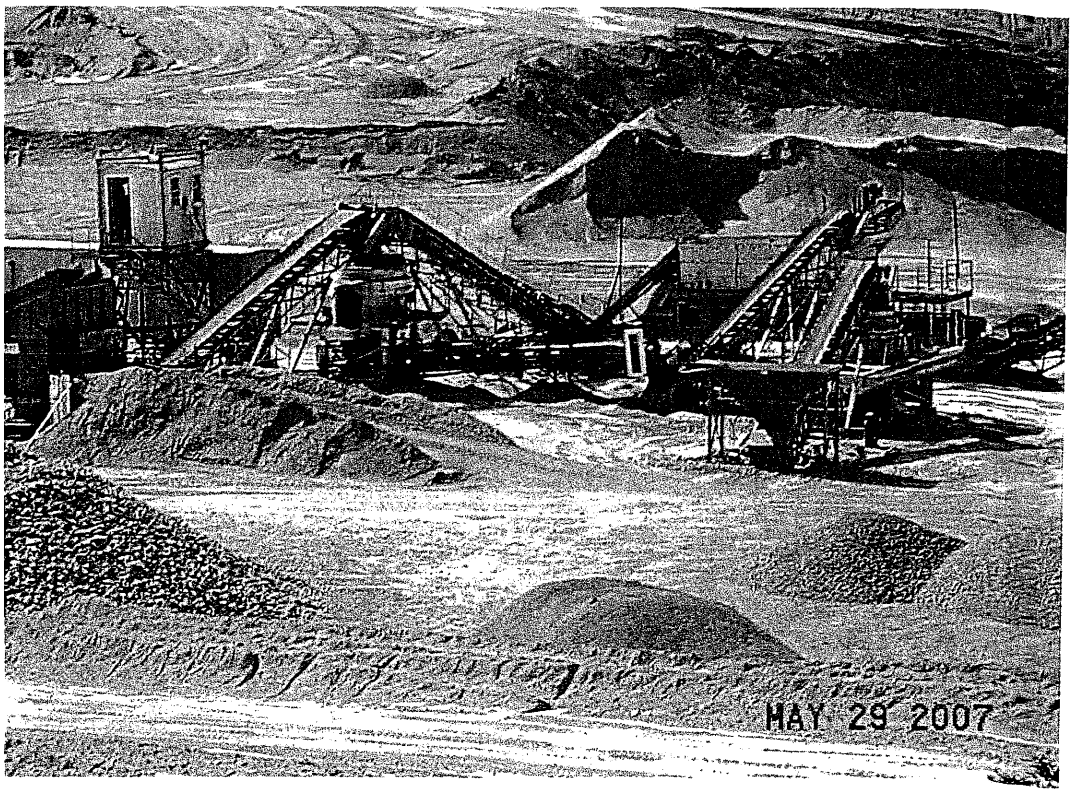


Stoutell Pit

Co Rd 22 Armstrong County

Belly dump truck preparing to be loaded after 2 crushers process materials

5-25-07

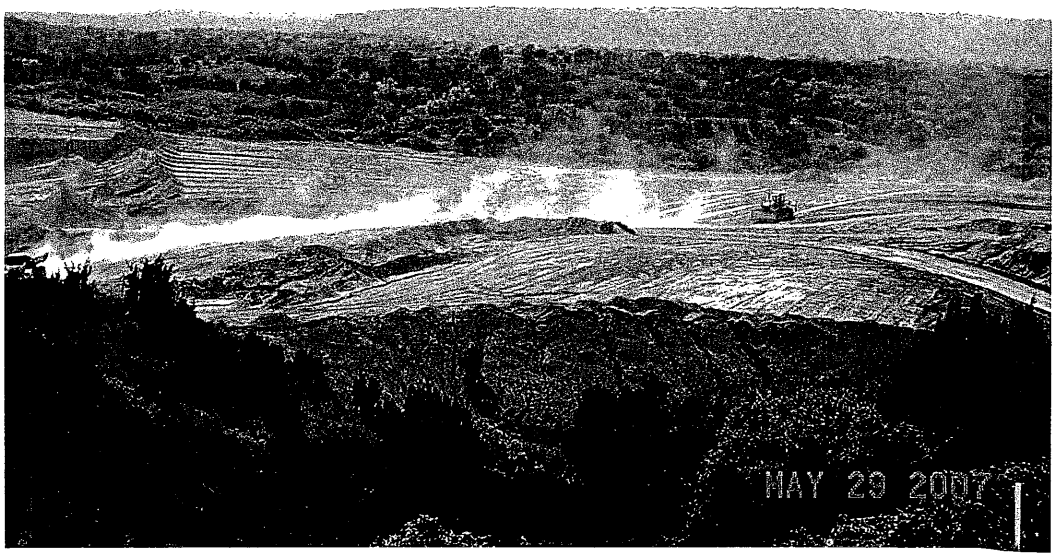


Stochert Pit operated by Advantage Asphalt
Plant closed after hours

2 Crushers
No evidence of spray bars
Armstrong County

77

5-29-07



Stockett Pit dust escaping into air
through valley of Mulberry Creek
operated by Advantage Asphalt Products

Co Rd 22
Armstrong County

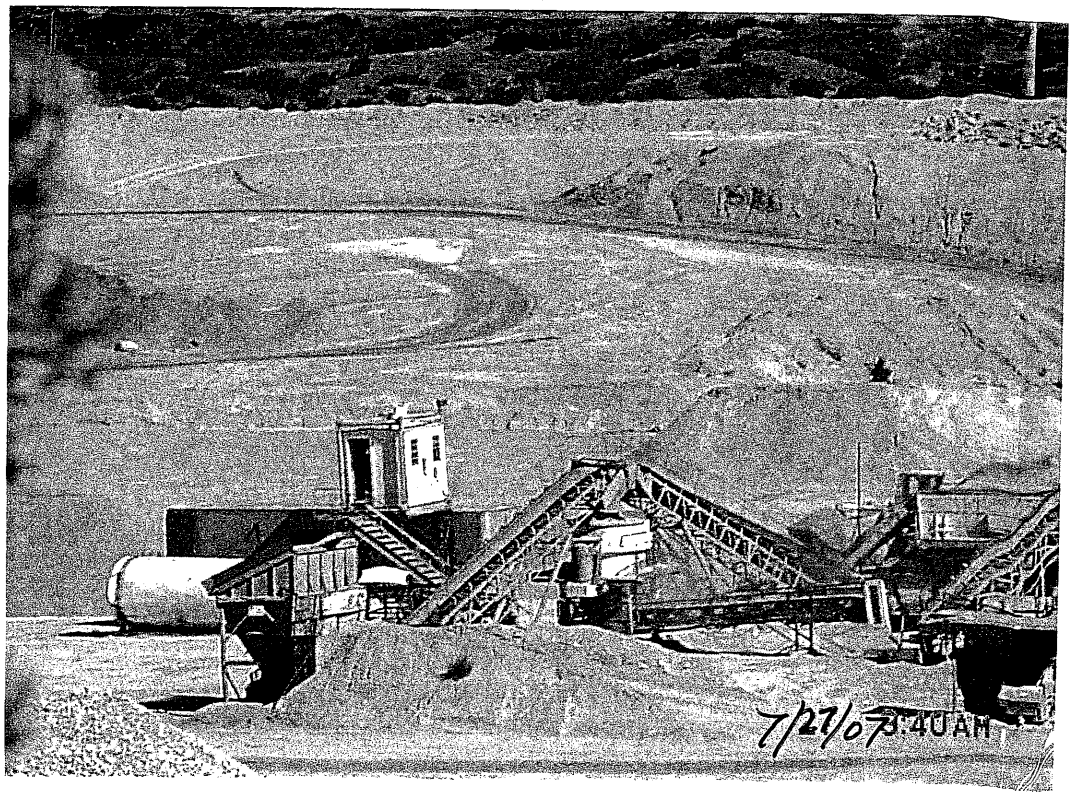
78

5-29-07

Stockett Pit operated by Advantage Asphalt
Unpermitted power screen
Co Rd 22
Armstrong County

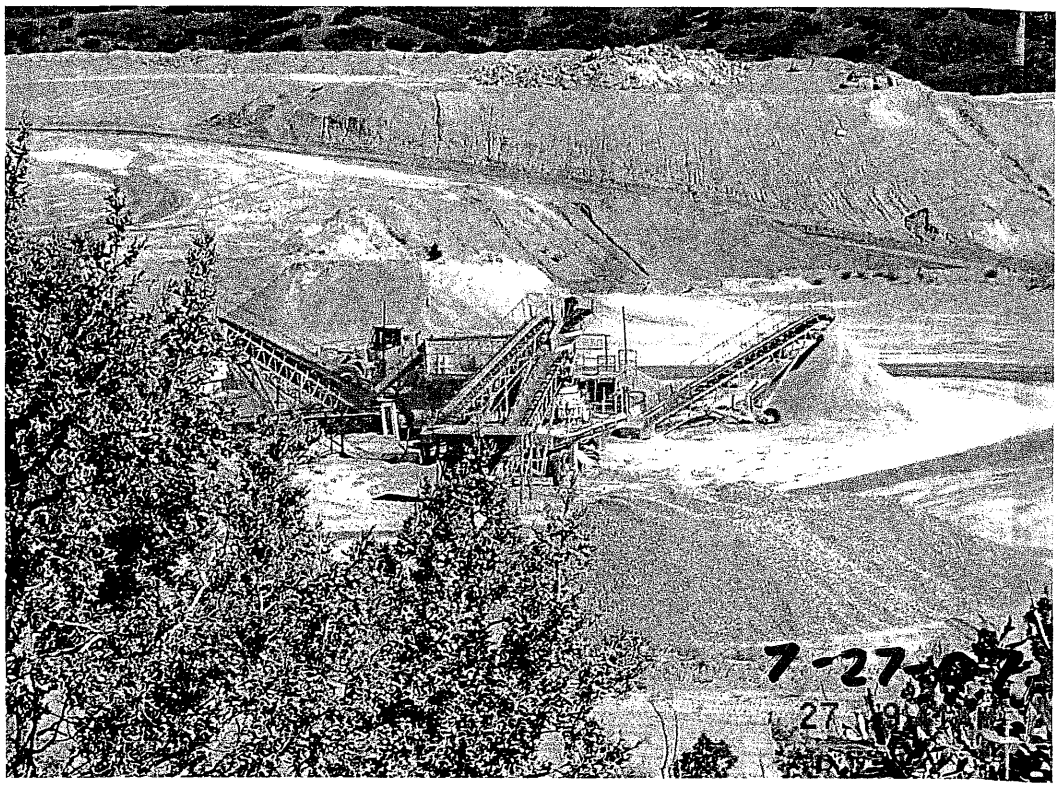
80

6-5-07



Stockett Pit in operation
Armstrong County
No evidence of water spray bars
No containment of dust

7-27-07

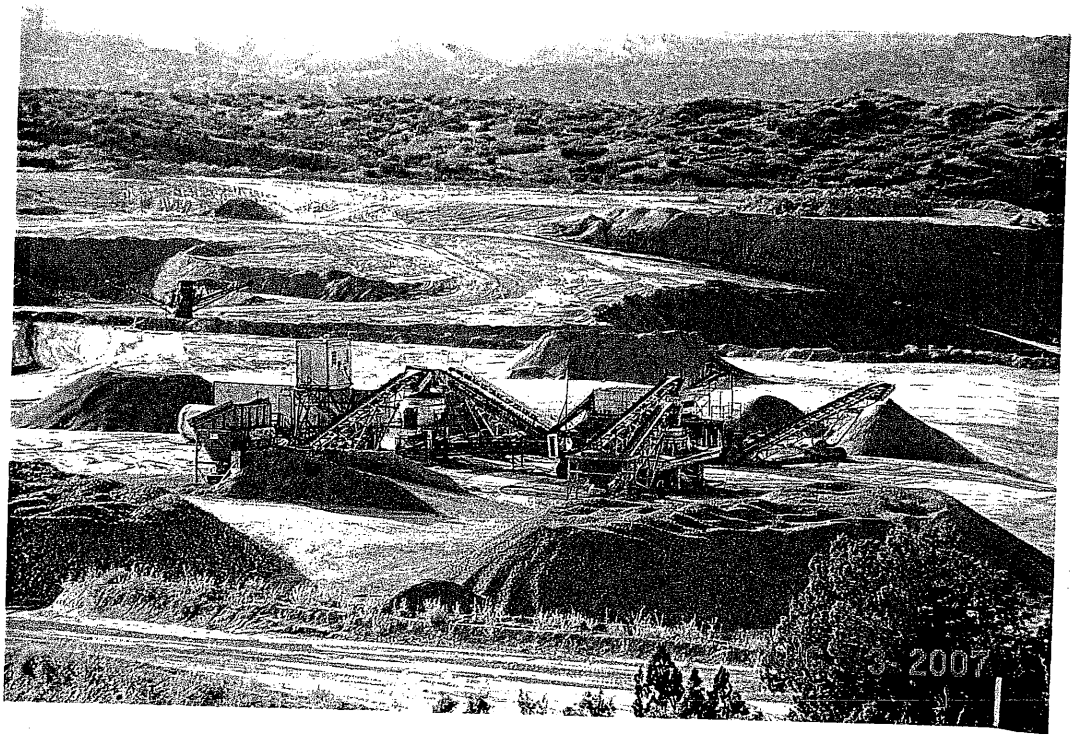


Stockett Pit operated by Advantage Asphalt
Armstrong County – Co Rd 22

2 rock crushers

No control of dust

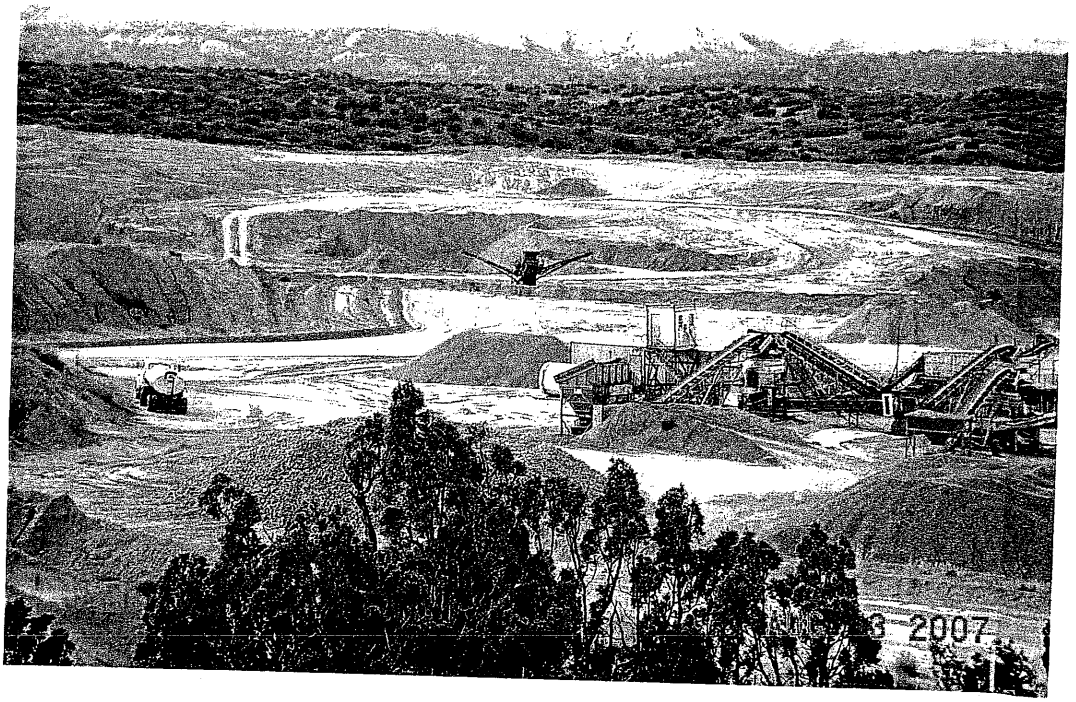
7-27-07



Stockett Pit operated by Advantage Asphalt
2 Crusher after hours
Co Rd 22
Armstrong County

8-3-07

73



Stockett Pit operated by Advantage Asphalt
Armstrong County - Co. Rd 22

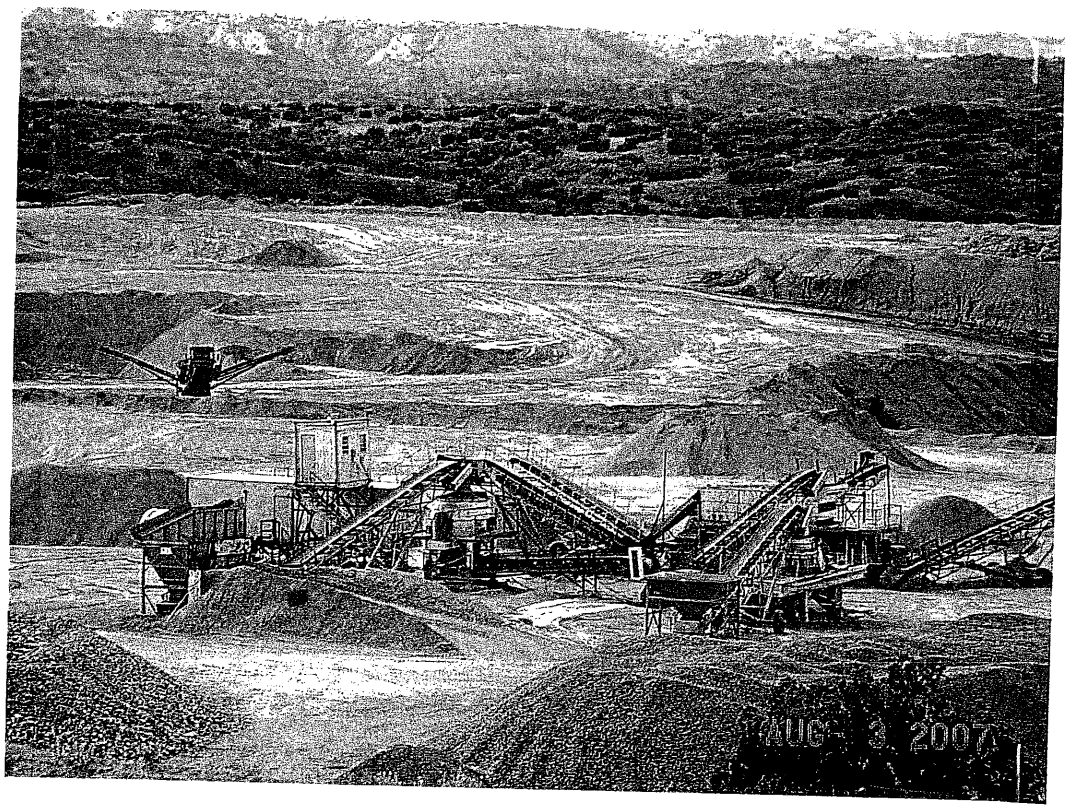
2 rock crusher

1 power screen

1 power screen out of camera view
below dam road

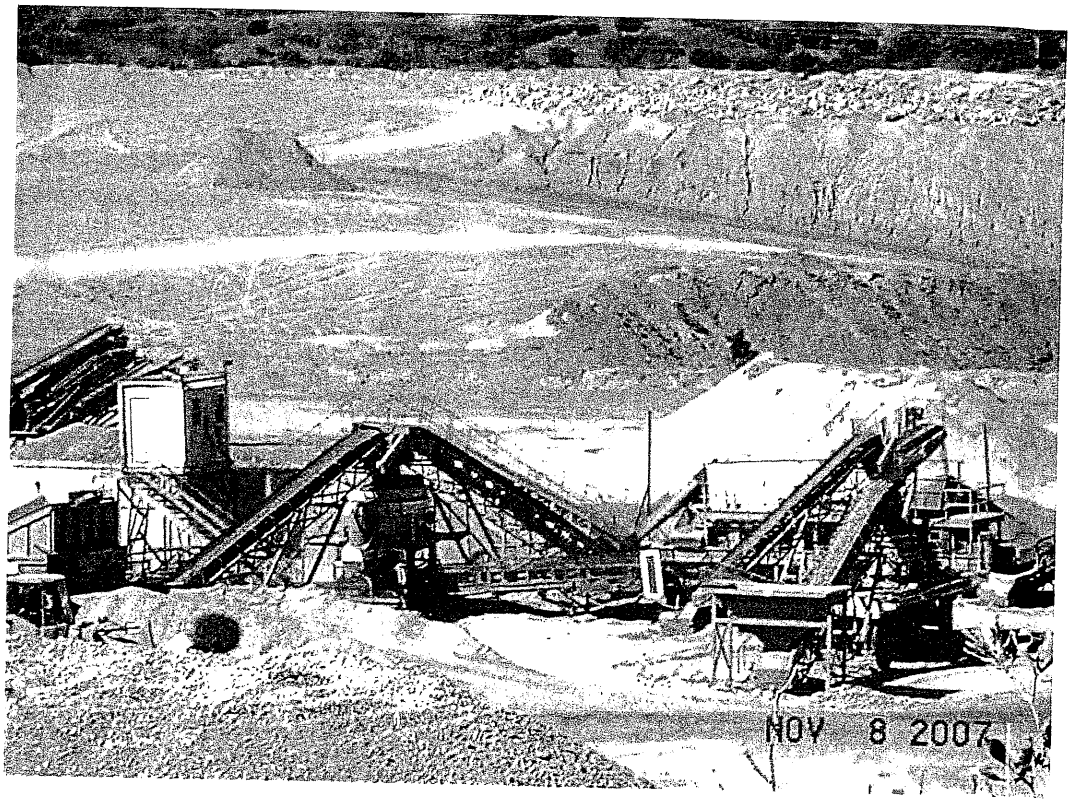
68

8-3-07



2 Crushers moved in
Stocked Pit operated by Advantage
Asphalt Products
1 illegal power screen
Co. Rd. 22 - Armstrong County

8-3-07



2. Crusher produce dust leaving Stockpit area

Dust covers valley for several miles in all directions

Advantage Asphalt Products

Co. Rd. 22 Armstrong County

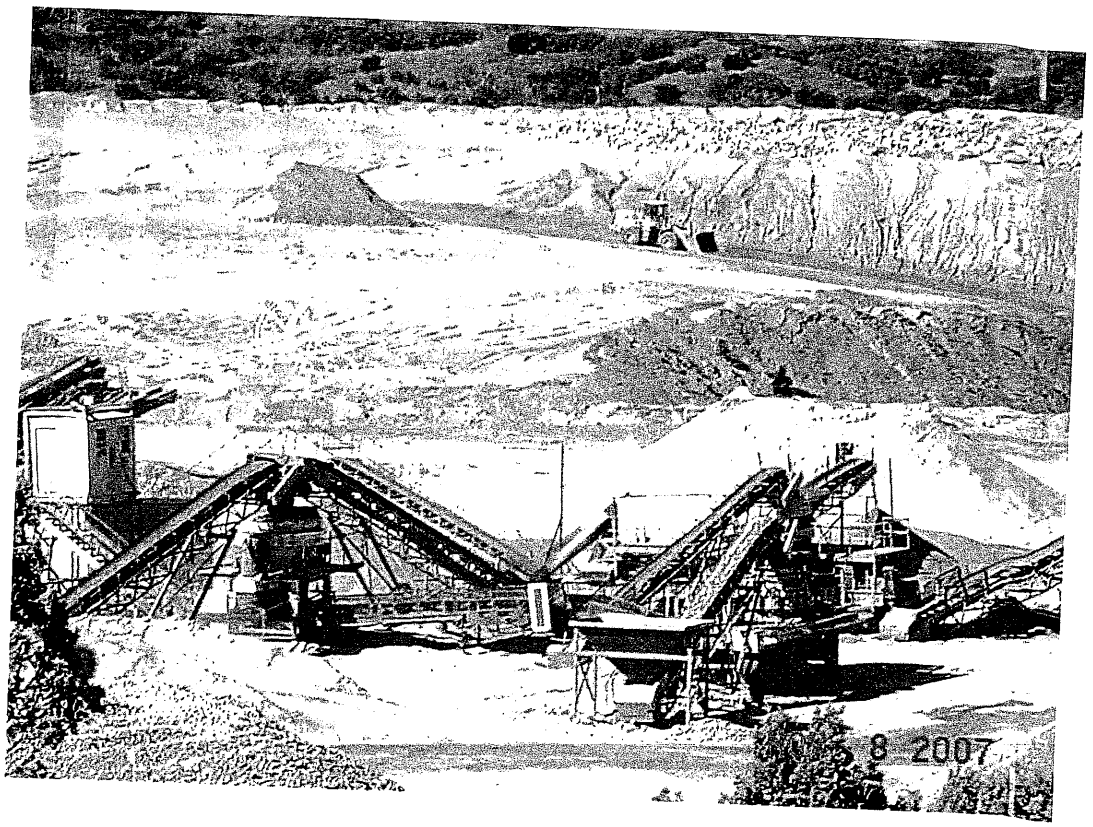
104

11-8-07

Two power screens in operation
Stochett Pit
Advantage Asphalt Products
Armstrong County - Co. Rd. 22

103

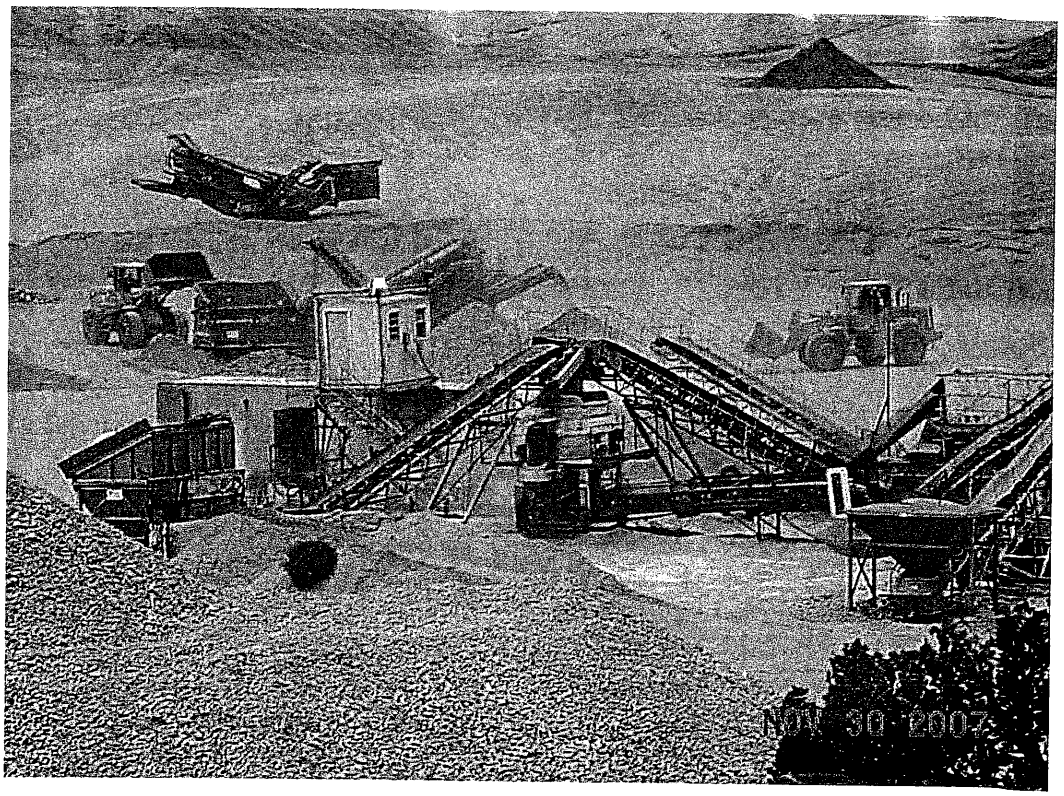
11-8-07



No spray bars;
2 crushers operate in Stoneett Pit
Advantage Asphalt Products
Co. Rd. 22
Armstrong County

11-8-07

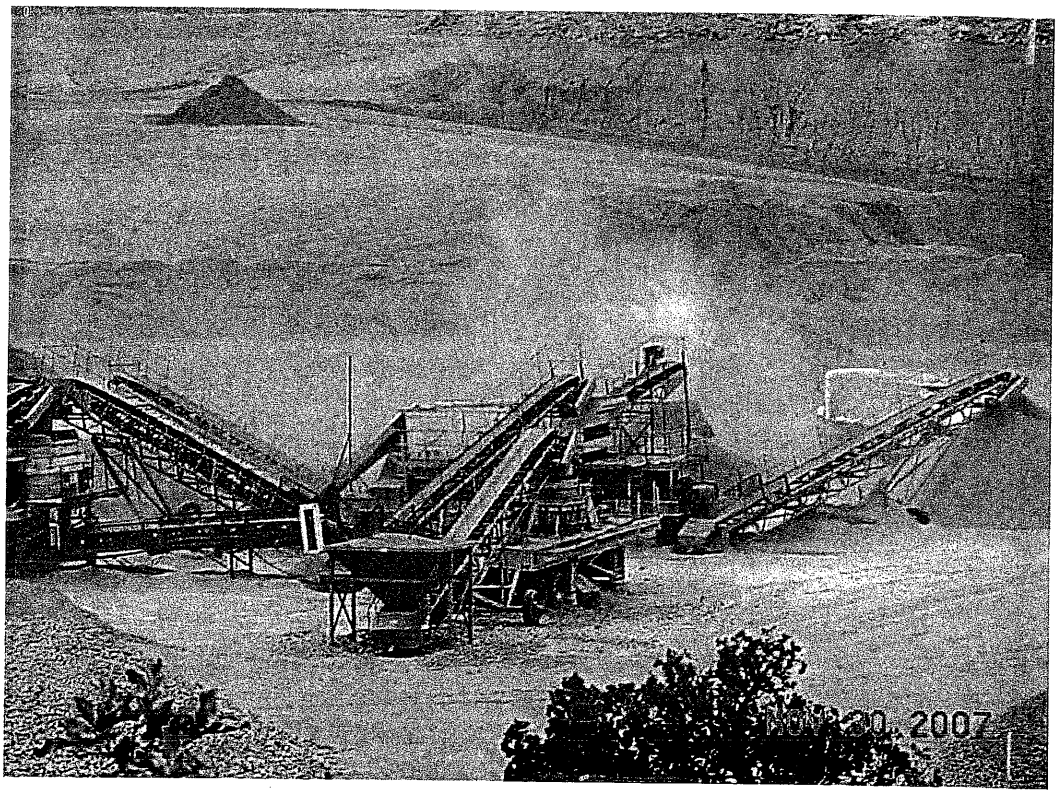
102



Stockett Pit
2 rock crushers
2 power screens
No control of dust
No spray bars
operated by Advantage Asphalt Products
Cold 22 Armstrong County

11-30-07

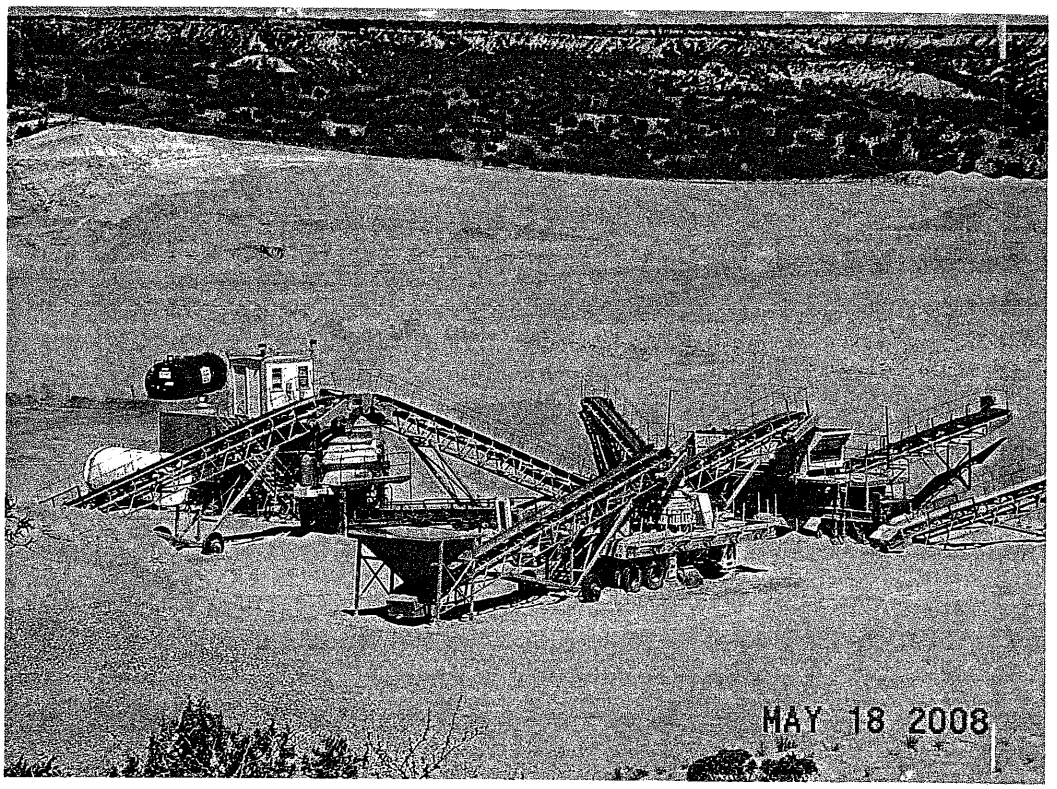
81



2 Crusher produce clouds of dust that
Cover Mulberry Creek valley and Co. Rd. 22
Stockett Pit operated by Advantage
Asphalt Products
Armstrong County

101

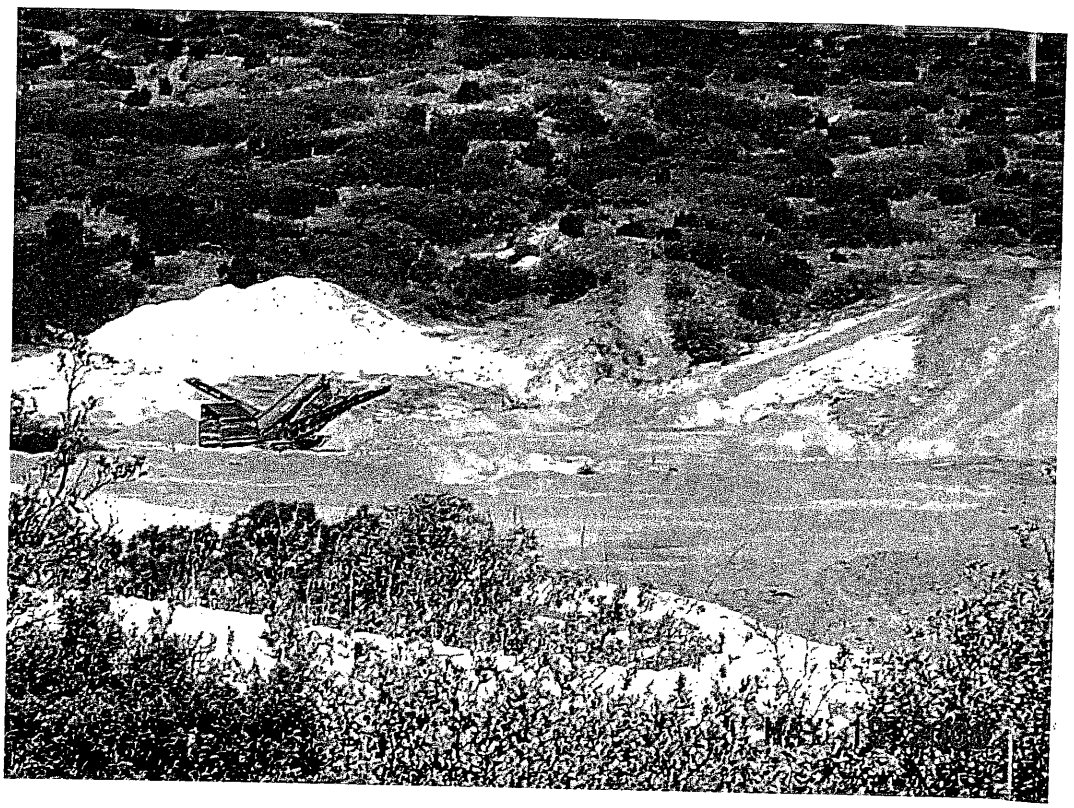
11-30-07



Two crushers operating in Wood Pit;
a new area off Co. Rd. 22 operated
by Advantage Asphalt Products –
Mining is West of Stockett Pit location
Armstrong County

5-18-08

105

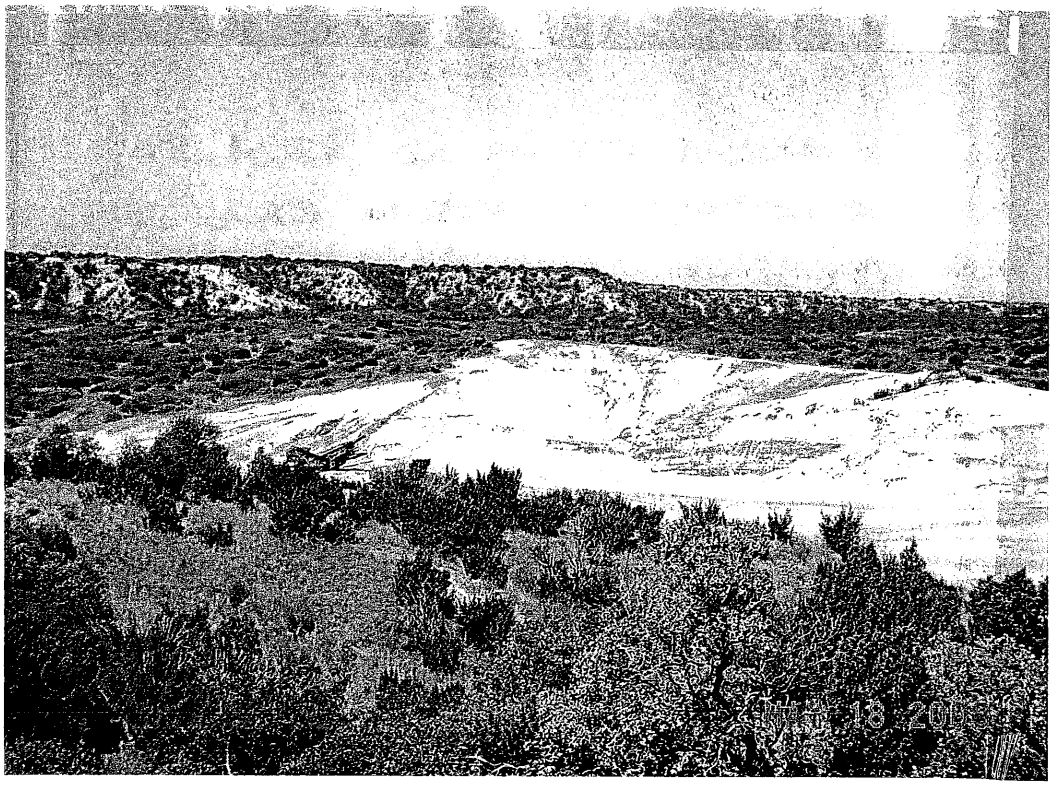


Power screen located in New pit on
Wood Property
Opened to mining by Advantage
Asphalt Products

TCEQ has no record of permit to
open new Wood pit nor of
closing Stockton Pit

Armstrong County - off Co. Rd. 22

5-18-08



New Pit- Wood Property
opened to mining by Advantage
Asphalt Products in early 2008
Photo shows 1 power screen located
in Wood Pit mining area

Off Co. Rd. 22
Armstrong County

5-18-08

106

~~Hodgett~~ Wood Pit operated by Advantage Asphalt

2 rock crushers in operation

Co. Rd 22

Armstrong County

79

5-26-08