

Section 63714 reads: “(1) If the department finds that an operator is not in compliance with this part, the rules promulgated under this part, or a permit under this part, the department may suspend or revoke the permit.”

Since the fall of 1997 Preserve the Dunes has monitored the operations at the Nadeau Pit. From time to time we have written to the Geological Survey Division (GSD) to report violations of the law and of the conditions of the permit. This correspondence is in the GSD files for this sand dune mining site. Collectively they paint a picture of an operation that is carelessly managed with little regard for the rights of adjacent property owners or for the requirements of the law and the permit. Some of the violations that we have reported are listed below.

### **Violations Of The Law And Permit Conditions**

1. The original Progressive Cell Unit Mining and Reclamation Plan (PCUMRP) made no provision for a “plant site.” Shortly before TechniSand purchased the site the permit was amended to create a 14-acre plant site. By the end of the following year, TechniSand made two requests to increase the plant site until it became 19 acres. Over the years since, TechniSand has gradually increased the plant site area. Without amendment to the permit or the PCUMRP, 6.2 acres from cell-unit 2 and 2.5 acres from cell-unit 4 have been added to the plant site.

The spokesman for TechniSand at the hearing said that this was due to a breach in the dam they had built to hold back reject sands. Our aerial photograph indicates that the dam itself is currently outside the plant area as defined by the amended PCUMRP.

The plant area is now about 28 acres. This is a serious violation with serious consequences. Fine dry sands can become airborne at wind speeds as slow as 8 MPH. During dry periods “clouds” of fine sand drift over residences south of the mine. These “clouds” drop silica dust on automobiles, houses, and anything left outside. These “clouds” are breathed into the lungs of children and create the threat of silicosis.

2. Part 301, the Inland Land and Streams Act, controls all dredging activities. It requires a permit issued by the Land and Water Management Division (LWMD) to initiate and to continue dredging activities. TechniSand bought the mine site in 1991. A Part 301 permit had been issued to Manley Brothers, the prior operator. It expired on December 31, 1993. In 1995, TechniSand wrote the LWMD regarding permit requirements, but made no further effort to acquire a permit. In December 1997, PTD notified the LWMD and GSD that no permit for dredging was in effect. TechniSand took until the spring of 1999 to file an acceptable and complete permit application with required supporting documents and analyses. A permit was finally issued in April 1999.

For nearly 5 1/2 years TechniSand had dredged without a permit — in clear and significant violation of the law. During this time, because no permit was in place, no one was monitoring the effects of the dredging. When the permit was finally issued the water table was down 10 feet from pre-dredging levels; several nearby wells had gone dry; and flow in Rogers Creek, a natural trout stream, had been significantly reduced. Had the analyses needed for the permit been done earlier,

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conditions could have been placed on the dredging that would have avoided these negative impacts.

3. Section 63701 defines an active cell-unit as a cell “in which vegetation and topsoil have been removed in preparation for sand dune mining ...”

Cell-units 8 and 11 were stripped of vegetation and very sandy “topsoil” stored in the cell before the cells were placed in active status. While 63701 allows removal of marketable forest products from a cell-unit, it does so only “if the removal maintains ground cover and topsoil within the cell-unit in stable condition.” In this case the areas were left with bare sand. This was a clear violation of the law.

4. Section 63712 establishes *minimum* standards for reclassifying a cell from active to interim status and from interim to released status.
  - a. Paragraphs (5)(a) and (8)(a) state, “All permitted sand dune mining activities within the cell-unit have been completed. PTD documented with an aerial photograph that TechniSand was mining cell-unit 3 after it had been placed in “interim” status in violation of the law.
  - b. Paragraphs (5)(b) and (8)(b) state, “All extraction or processing equipment has been removed from the cell-unit ...” PTD documented with aerial photographs that equipment was stored in released areas of cell-unit 1 and within cell-unit 3 after it was placed in interim status in violation of the law.
  - c. Paragraphs (5)(d) and (8)(d) require submerged grades to comply with section 63706(3)(b) — in this case, a slope of 1:6 must be maintained to a depth of 6 feet. PTD provided photographs that showed that the slope at the water’s edge in cell-unit 3 was closer to 1:1 during interim status.

We were told that the water table is down because of seasonal fluctuations and the slope had been established at 1:6 at some previous time. However, the fact remains, these grades do not comply with minimum requirements. The water level is down because of the dredging, the proximity of the lake to Rogers Creek, and evaporation from the large surface area of the lake. But no matter what the cause, the slopes do not qualify the cell-unit for interim status or for release from bonding.

5. The LWMD restricted TechniSand to dredge no closer than 500 feet to Rogers Creek. Within months TechniSand had dredged to a point just over 450 feet from the Creek. PTD documented this violation with an aerial survey photograph. LWMD ordered TechniSand to fill in the lake to re-establish the 500 feet setback. TechniSand’s explanation for the encroachment was that their site plans were incorrect and showed the creek in the wrong place. However, they regularly have aerial photographs taken and surveys made. TechniSand had accurate information available, they either ignored it or ignored the restrictions on the permit.
6. The current law requires 200’ setbacks (buffer zones) around the perimeter of the mine. When this mine was originally permitted, the minimum setback for this mine was set at 100± feet. In 1998 TechniSand mined the buffer zone adjacent to the Thunder Mountain Heights property. They removed 100-year-old trees, removed the topsoil and then extracted the sand — an obvious violation of the law, the permit and the progressive cell-unit mining and reclamation plan.

They were subsequently ordered by the DEQ to stop mining the area and restore the buffer. The buffer restoration consisted of planting American beach grass and

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- a few trees that were, for the most part, knee high. This infraction has resulted in damage from which it will take at least 100 years to recover.
7. The original permit required deeper setbacks near Rogers Creek. Despite being caught mining the buffer at Thunder Mountain Heights, less than one year later they mined portions on this buffer in cell-unit 10. Now sand is blowing over the crest of the dune and down into Rogers Creek threatening to silt-up the creek.
  8. Special Permit Conditions were included in the original permit and have been a part of each renewal since. Of the seven that prescribe how the operation is to be conducted, five have been violated.
    - a. Condition 1 requires fencing around each active cell-unit. It even specifies that the fencing must be four feet high. PTD documented and reported this violation in 1997 and on several subsequent occasions. The small amount of fencing that exists does not enclose active cell-units and never has.
    - b. Condition 2 requires the operator to protect the reclaimed slopes from vehicular and pedestrian traffic. Condition 3 requires the operator to prohibit public access into the permit area and to not allow ORV's of any type onto the permit area. PTD asserted that there was evidence of ORV's recreational trespass. Subsequently, we photographed trespass by an ORV on one occasion. Failure to stop access by the ORV's was also a failure to protect reclaimed slopes.
    - c. Condition 4 requires the operator to confine all vehicles and equipment fundamental to the sand dune mining operation to active cell units. Cell units 9, 10 and 11 were used to move equipment around the site years before they were placed in active status. A haul road was built across cell-unit 8 before it was placed in active status. While a minor violation in retrospect, had mining ceased at any time these roadways could have been left un-reclaimed and the potential source of erosion.
    - d. Condition 10 requires that a permit be obtained under the Inland Lakes and Streams Act before sand is removed from below the water table. Techni-Sand's violation of this condition was discussed in 2 above.
  9. When the permit was originally issued, the operator proposed to use a tree spade to transplant temporarily trees from areas to be mined. They were to be replanted when mining in a cell was complete. In addition, the PCUMRP committed the operator to follow US Department of Agriculture guidelines for dune stabilization (Bulletin 342) where the transplanting procedure could not be implemented. These guidelines call for planting beach grass, followed in several years by planting selected species on stabilized dunes spaced 8 feet each way. The prescribed method was to be used for all slopes.

The transplanting process was not practicable. The operator requested an amendment to change the species of trees to be planted. This was done on August 20, 1987 by a letter from Okell of Manley Brothers. Initial reclamation done by Manley Brothers complied with the specified procedures. Since TechniSand acquired the mine, planting of trees has been minimal and coverage is significantly less than the sloped areas. Trees have been smaller than allowed by the USDA Publication 342. They have been planted at much wider spacing.
  10. Many of the violations have occurred because no one knew where the cell-unit boundaries actually were. The permit limitation "I" requires the operator to mark

all cell-unit boundaries. This was not done until after PTD persisted in its allegation of numerous violations. When the survey was originally completed, it was discovered that the cell-unit boundaries as mapped did not agree with where the operator and the DEQ thought the boundaries lay. To avoid numerous violations boundaries were changed in the field and then a new cell-unit map of the mine site was prepared to reflect those changes.

This confusion and numerous violations were caused by the operator's failure to comply with limitation "I" of the permit. Since the survey, markers have been removed by mining activities and have not been replaced.

11. No 15 year mining plan is on file. The original mining plan should have been replaced when TechniSand bought the mine and became the operator. Clearly a 15 year mining plan that has not been updated since it was first presented over 22 years ago is useless.

### **Conclusions**

These violations indicate that TechniSand has no commitment to comply with the law, the regulations or the permit. Their drive to maximize profits is un-tempered by respect for the law, the DEQ or their neighbors. **These violations justify revocation of the permit under Section 63714.** We request that the permit not be renewed and that the site be immediately reclaimed.

Special permit condition 7 states "At the time the permit is considered for renewal, it is possible that any, or all of these special permit conditions be amended or deleted or new conditions added as determined by the Department and in accordance with Administrative Procedures Act (Act No. 306, P.A. 1969, as amended).

**If the DEQ is not willing to revoke the permit, then at least the following conditions should be placed on the renewed permit.**

1. Limit the renewal period to two years from December 31, 2000.
2. As a condition of renewal, reduce the area of the plant site to 19 acres and reclaim areas being used as plant area but not included in the PCUMRP.
3. Require conformance bond for the plant site as a condition of renewal.
4. Require 200-foot setbacks on any cell placed in active status.
5. Require public hearings on any and all amendments.
6. State explicitly in the special permit conditions that prior to placing cell-unit 12 in active status an amendment to the permit will be required.
7. Require interim status to be completed within 90 days of cessation of mining of a cell (or after mining has been interrupted for a period of at least 120 days). Require full reclamation be completed 15 months thereafter. Should the operator fail to comply, the bond should be called to fund reclamation.
8. Require twice yearly aerial survey photographs at a scale of 1"=200' be submitted to the Department to confirm compliance.
9. Require reclamation to be in accordance with US Department of Agriculture, Publication 342, including density of planting, size of vegetation and areas covered.
10. Require windbreaks at northern edge to protect Rogers Creek from silt and sand blown over top of dune.

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11. Require continuing compliance with permit limitation "I."
12. Initiate monitoring by the Air Quality Division of air quality during dry periods to ensure that silica dust is not creating a health hazard and nuisance for nearby residences.
13. Require a 15-year mining plan be submitted prior to renewal.