

By: Cunningham

H.B. No. 1093

A BILL TO BE ENTITLED

AN ACT

relating to planning and financial responsibility requirements for certain aggregate production operations; providing for the imposition of an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 28A, Water Code, is amended to read as follows:

CHAPTER 28A. [~~REGISTRATION AND INSPECTION OF CERTAIN~~] AGGREGATE PRODUCTION OPERATIONS

SECTION 2. Chapter 28A, Water Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. PLANNING AND FINANCIAL RESPONSIBILITY

Sec. 28A.151. DEFINITION. In this subchapter, "water body" means a navigable watercourse, river, stream, or lake.

Sec. 28A.152. APPLICABILITY. This subchapter applies only to an aggregate production operation at a site located not more than 1,500 feet from the San Jacinto River.

Sec. 28A.153. RESTORATION PLAN. (a) In this section, "restore" means to change the physical, chemical, or biological qualities of a receiving water body in order to return the water body to its background condition, including on- and off-site stabilization to reduce or eliminate an unauthorized discharge or a substantial threat of an unauthorized discharge.

(b) The initial application the responsible party files to

1 register an aggregate production operation must include the
2 responsible party's proposed plan to restore a receiving water body
3 affected by an unauthorized discharge from the operation. The
4 responsible party shall update the plan as necessary with each
5 operation registration renewal.

6 (c) The restoration plan must:

7 (1) identify receiving water bodies at risk of an
8 unauthorized discharge from the aggregate production operation;

9 (2) describe the process to be used in documenting the
10 existing physical, chemical, and biological background conditions
11 of each adjacent receiving water body;

12 (3) provide a schedule for completing the background
13 conditions documentation of each receiving water body and for
14 future updating of background conditions, as appropriate;

15 (4) identify the goals and objectives of potential
16 restoration actions;

17 (5) provide a reasonable range of restoration
18 alternatives and the preferred restoration alternative that may be
19 implemented to return affected receiving water bodies to background
20 conditions in the event of an unauthorized discharge;

21 (6) describe the process for monitoring the
22 effectiveness of the preferred restoration action, including
23 performance criteria, that will be used to determine the success of
24 the restoration or need for interim site stabilization;

25 (7) identify a process for public involvement in the
26 selection of the restoration alternative to be implemented to
27 restore the receiving water bodies to background conditions; and

1 (8) provide a detailed estimate of the maximum
2 probable cost of completing a restoration action, given the size,
3 location, and description of the operation and the nature of the
4 receiving water bodies, based on the cost of conducting the action
5 by a third party without a financial interest or ownership in the
6 operation.

7 (d) The responsible party must submit to the commission
8 certification of the restoration plan, within the appropriate area
9 or discipline, issued by a licensed engineer or licensed
10 geoscientist. Components of the restoration plan may be
11 independently certified, as appropriate.

12 Sec. 28A.154. RECLAMATION PLAN. (a) In this section,
13 "reclaim" means to use land treatment processes designed to
14 minimize degradation of water quality, damage to fish or wildlife
15 habitat, erosion, and other adverse effects from aggregate
16 production operations and includes backfilling, soil stabilization
17 and compacting, grading, erosion control measures, appropriate
18 revegetation, or other measures, as appropriate.

19 (b) The initial application the responsible party files to
20 register an aggregate production operation must include the
21 responsible party's proposed plan to reclaim the area disturbed by
22 the operation. The responsible party shall update the plan as
23 necessary with each operation registration renewal.

24 (c) The reclamation plan must:

25 (1) provide a description of the proposed use of the
26 disturbed area following reclamation;

27 (2) develop site-specific reclamation standards

1 appropriate to the proposed use that address:

2 (A) removal or final stabilization of all raw
3 material, intermediate material, final product, waste product,
4 byproduct, and ancillary material;

5 (B) removal of waste or closure of all waste
6 disposal areas;

7 (C) removal of structures, where appropriate;

8 (D) removal and reclamation of all temporary
9 roads and railroads;

10 (E) backfilling, regrading, and recontouring;

11 (F) slope stability for remaining highwalls and
12 detention ponds;

13 (G) revegetation of the reclaimed area, giving
14 consideration to species diversity and the use of native species;

15 (H) establishment of wildlife habitat;

16 (I) establishment of drainage patterns;

17 (J) establishment of permanent control
18 structures, such as retention ponds, where necessary to address
19 erosion, siltation, and runoff from post-aggregate production and
20 reclaimed areas; and

21 (K) removal of all equipment; and

22 (3) provide a description of the manner in which the
23 reclamation will be conducted, such as in phases, and a time for
24 completion of reclamation activities.

25 (d) The reclamation plan must include a detailed estimate of
26 the maximum probable cost required to complete and implement the
27 plan, including inflation costs. The maximum probable cost must be

1 based on the cost of conducting the reclamation by a third party
2 without a financial interest or ownership in the aggregate
3 production operation.

4 (e) The responsible party must submit to the commission
5 certification of the reclamation plan, within the appropriate area
6 or discipline, issued by a licensed engineer or licensed
7 geoscientist. Components of the reclamation plan may be
8 independently certified, as appropriate.

9 Sec. 28A.155. FINANCIAL RESPONSIBILITY. (a) Until the
10 commission determines that the responsible party for an aggregate
11 production operation has successfully complied with all
12 restoration and reclamation requirements of this subchapter and the
13 restoration and reclamation plans, the commission by rule shall
14 require the responsible party to establish and maintain evidence of
15 financial responsibility for:

16 (1) restoration of a water body affected by an
17 unauthorized discharge from the operation; and

18 (2) reclamation of the area disturbed by the
19 operation.

20 (b) The amount of financial assurance must be at least the
21 amount the executive director of the commission determines is
22 sufficient to meet the requirements of the:

23 (1) restoration plan filed for the aggregate
24 production operation under Section 28A.153; and

25 (2) reclamation plan filed for the aggregate
26 production operation under Section 28A.154.

27 Sec. 28A.156. ADMINISTRATIVE PENALTY. The commission may

1 assess an administrative penalty in an amount of not less than
2 \$5,000 and not more than \$20,000 for each year in which an aggregate
3 production operation operates without maintaining the evidence of
4 financial responsibility required by Section 28A.155. The total
5 amount of the penalty assessed under this section may not exceed
6 \$40,000 for an aggregate production operation that is operated in
7 three or more years without maintaining the evidence of financial
8 responsibility.

9 Sec. 28A.157. RECOVERY OF COSTS FOR UNAUTHORIZED
10 DISCHARGES. If the commission incurs any costs in undertaking a
11 corrective or enforcement action with respect to an unauthorized
12 discharge from an aggregate production operation to which this
13 subchapter applies, including a reclamation or restoration action,
14 the responsible party is liable to this state for all reasonable
15 costs of the corrective or enforcement action, including court
16 costs and reasonable attorney's fees, and for any punitive damages
17 that may be assessed by the court.

18 Sec. 28A.158. AGGREGATE PRODUCTION OPERATION RECLAMATION
19 AND RESTORATION FUND ACCOUNT. (a) Penalties and other money the
20 commission receives as a result of an enforcement action taken
21 under this subchapter, and any gift or grant the commission
22 receives for the purposes of this subchapter, shall be deposited in
23 the aggregate production operation reclamation and restoration
24 fund account in the general revenue fund. Money in the account may
25 be appropriated only to the commission for the reclamation and
26 restoration of the beds, bottoms, and banks of water bodies
27 affected by the unlawful discharges subject to this subchapter.

1 (b) At least 60 days before spending money from the
2 reclamation and restoration fund account, the commission shall
3 publish notice of its proposed plan and conduct a hearing for the
4 purpose of soliciting oral or written public comment. The
5 commission shall fully consider all oral and written submissions on
6 the proposed plan.

7 (c) At least 30 days before the date of the public hearing,
8 the notice must be published in the Texas Register and in a
9 newspaper of general circulation in the county where the violation
10 resulting in the payment of the penalties or other money occurred.

11 (d) Interest and other income earned on money in the account
12 shall be credited to the account. The account is exempt from the
13 application of Section 403.095, Government Code.

14 SECTION 3. (a) This section applies only to an aggregate
15 production operation, as defined by Section 28A.001, Water Code,
16 that is registered under Chapter 28A, Water Code, before the
17 effective date of this Act.

18 (b) The responsible party for an aggregate production
19 operation to which Subchapter D, Chapter 28A, Water Code, as added
20 by this Act, applies shall:

21 (1) file the restoration and reclamation plans
22 required by that subchapter with the Texas Commission on
23 Environmental Quality with the first operation registration
24 renewal that occurs after the effective date of this Act; and

25 (2) establish the evidence of financial
26 responsibility required by that subchapter not later than the date
27 of the first operation registration renewal that occurs after the

1 effective date of this Act.

2 SECTION 4. This Act takes effect September 1, 2023.