

By: Howard

H.B. No. 2305

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of structural clay and brick raw materials extraction operations; providing an administrative penalty.

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

SECTION 1. Title 4, Natural Resources Code, is amended by adding Chapter 135 to read as follows:

CHAPTER 135. STRUCTURAL CLAY AND BRICK RAW MATERIALS SAFETY AND RECLAMATION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 135.001. SHORT TITLE. This chapter may be cited as the Texas Structural Clay and Brick Raw Materials Safety and Reclamation Act.

Sec. 135.002. DEFINITIONS. In this chapter:

(1) "Affected land" means:

(A) the area from which any materials are to be or have been extracted in an extraction operation;

(B) the area on which any materials that are extracted are to be or have been deposited;

(C) the impoundment basins within the extraction area constructed and used for the sole purpose of the extraction operation; or

(D) the roads within the extraction area constructed and used for the sole purpose of the extraction

1 operation.

2 (2) "Certificate area" means the land for which a
3 certificate of registration has been issued under this chapter.

4 (3) "Certificate holder" means an individual or entity
5 that holds a certificate of registration issued under this chapter.

6 (4) "Certificate term" means the period beginning with
7 the date on which a certificate of registration is issued under this
8 chapter and ending on a date not later than the 10th anniversary of
9 the date of issuance.

10 (5) "Commercial purposes" means the sale of material
11 from an extraction operation as a cash transaction or as part of a
12 contractual agreement involving payment for materials provided, or
13 the use of that material in another process to create a product with
14 value.

15 (6) "Commission" means the Railroad Commission of
16 Texas.

17 (7) "Director" means the executive head and active
18 administrator of the division.

19 (8) "Division" means the surface mining division of
20 the commission.

21 (9) "Extraction area" means the land from which
22 structural clay and brick raw materials are removed.

23 (10) "Extraction" and "extraction operation" mean the
24 activities associated with the removal and storage of structural
25 clay and brick raw materials for commercial purposes, including the
26 mechanical removal, cleaning, and preparation of materials at the
27 site.

1 (11) "Final cut" means the last pit created in a
2 structural clay and brick raw materials extraction area.

3 (12) "High wall" means the side of the pit, equal to or
4 greater than 10 vertical feet, that is adjacent to unmined land.

5 (13) "Operator" means an individual, partnership,
6 firm, or corporation engaged in or controlling an extraction
7 operation.

8 (14) "Ordinary high water mark" means the line
9 delineating the bed from the bank and is found by ascertaining where
10 the presence and actions of water are so usual and long, continuing
11 in ordinary years, as to mark on the soil of the bed a character
12 distinct from that of the banks, with respect to vegetation and the
13 nature of the soil.

14 (15) "Owner" means an individual, partnership, firm,
15 or corporation having title to all or part of the land on which an
16 extraction operation exists.

17 (16) "Peak" means a projecting point of spoil created
18 in an extraction operation.

19 (17) "Pit" means a tract of land where extraction is
20 taking place.

21 (18) "Reclamation" means the process of restoring to a
22 useful purpose land affected by an extraction operation.

23 (19) "Ridge" means a lengthened elevation of spoil
24 created in the extraction process.

25 (20) "Right-of-way" means the portion of land over or
26 under which certain facilities, including roadways, pipelines, or
27 power lines, are built.

1 (21) "Site" means the land on which an extraction
2 operation, including ancillary buildings such as shop, warehouse,
3 and maintenance support facilities, is located.

4 (22) "Spoil" means all waste material and debris
5 connected with the extraction operation.

6 (23) "Streambed" or "stream channel" means the area
7 that lies between the lines delineating the bed from the bank on
8 each side of a stream, creek, branch, or river.

9 (24) "Structural clay and brick raw materials" means
10 those materials within the North American Industrial
11 Classification System No. 212325 that are extracted in conjunction
12 with the production of structural clay products and brick.

13 (25) "Waterway" means the natural channel of any
14 perennial stream, creek, branch, or river.

15 Sec. 135.003. EXEMPTIONS. (a) This chapter does not apply
16 to:

17 (1) land, including all affected land, from which
18 structural clay and brick raw materials are produced before
19 September 1, 2003;

20 (2) a parcel of affected land of less than five acres;
21 or

22 (3) manufacturing activities located within or
23 adjacent or contiguous to any operation site or affected land.

24 (b) Notwithstanding Subsection (a)(1), an operator may not
25 expand the surface acreage of a pit from which structural clay and
26 brick raw materials are extracted after September 1, 2003, unless
27 the operator obtains a certificate of registration for any land

1 affected by the expansion and complies with other provisions of
2 this chapter applicable to that land.

3 [Sections 135.004-135.050 reserved for expansion]

4 SUBCHAPTER B. AUTHORITY OF COMMISSION

5 Sec. 135.051. GENERAL AUTHORITY OF COMMISSION. (a) The
6 commission may:

7 (1) adopt rules and issue orders as necessary to
8 implement and enforce this chapter;

9 (2) conduct, encourage, request, and participate in
10 studies, surveys, investigations, research, experiments, training,
11 and demonstrations by contract, grant, or otherwise;

12 (3) apply for, accept, receive, and administer grants,
13 gifts, loans, or other money from any source for the purposes of
14 this chapter;

15 (4) hire employees, adopt employment standards, and
16 hire or authorize the hiring of outside contractors to assist in
17 implementing this chapter; and

18 (5) enter into contracts with other state agencies
19 with pertinent expertise to obtain professional and technical
20 services necessary to implement this chapter.

21 (b) This chapter does not authorize the commission to:

22 (1) adjudicate property title or property rights
23 disputes; or

24 (2) add or modify fees for specific actions required
25 by or otherwise described by this chapter.

26 Sec. 135.052. INSPECTIONS. (a) On 24-hour notice and
27 presentation of appropriate credentials, a commission member or an

1 authorized representative of the commission may inspect a site to
2 determine whether the extraction operation is complying with this
3 chapter and commission rules adopted under this chapter.

4 (b) An inspection may be conducted only during normal
5 operating hours.

6 (c) An inspector must inform the operator of the reasons for
7 the inspection.

8 (d) An inspector shall prepare an inspection report
9 adequate to document site conditions and compliance with this
10 chapter and commission rules adopted under this chapter. The
11 inspector shall provide a draft copy of the inspection report to the
12 certificate holder or an authorized representative of the
13 certificate holder before leaving the site. The commission shall
14 provide a final copy of the inspection report to the certificate
15 holder not later than the fifth business day after the inspector
16 leaves the site.

17 (e) The certificate holder is not subject to a fee for
18 inspections conducted by the commission under this section.

19 [Sections 135.053-135.100 reserved for expansion]

20 SUBCHAPTER C. CERTIFICATE OF REGISTRATION

21 Sec. 135.101. CERTIFICATE OF REGISTRATION REQUIRED. A
22 person may not conduct an extraction operation in this state unless
23 the person holds a certificate of registration for that operation
24 issued by the commission under this chapter.

25 Sec. 135.102. APPLICATION. (a) To obtain a certificate of
26 registration, a person must file an application with the commission
27 on a concise form prescribed by the commission, accompanied by a fee

1 of \$200 and the bond or alternate form of financial security
2 required by Subchapter D.

3 (b) The application must include:

4 (1) the name, address, and telephone number of the
5 operator;

6 (2) the name, address, and telephone number of each
7 owner of the site of the proposed extraction operation who is not
8 the operator;

9 (3) the type of extraction activities to be conducted
10 on the site of the proposed extraction operation, including an
11 estimate of the number of acres of land to be disturbed annually for
12 extraction purposes;

13 (4) a legal description of the land on which the
14 extraction operation is to be located;

15 (5) a map of the site of the proposed extraction
16 operation showing any easement, public or private road, or
17 right-of-way;

18 (6) a notarized statement certifying that the operator
19 has the legal right to conduct an extraction operation on the land
20 described; and

21 (7) a reclamation plan that complies with the
22 provisions of this chapter governing the reclamation activities to
23 be undertaken.

24 (c) A separate application is required for each extraction
25 operation located on property that is noncontiguous or is at a
26 distance greater than one mile from the noncontiguous extraction
27 area, at the closest point between each extraction area, unless the

1 extraction operation is located within the boundary described in
2 the legal description provided under Subsection (b)(4).

3 (d) A certificate issued under this chapter does not:

4 (1) exempt the certificate holder from obtaining other
5 state or federal permits or licenses; or

6 (2) authorize the start-up of site activities that
7 require other permits or licenses.

8 Sec. 135.103. ISSUANCE OF CERTIFICATE. (a) Not later than
9 the 30th day after the date the commission receives an application
10 containing the information required by Section 135.102, the
11 application fee, and a bond or alternate form of financial security
12 as required by Subchapter D, the commission shall:

13 (1) issue a certificate of registration to the
14 applicant entitling the applicant to engage in extraction
15 operations on the land described in the application; or

16 (2) deny the certificate and provide the applicant a
17 written statement explaining the reason for denial of the
18 certificate.

19 (b) The commission may not give public notice or hold a
20 public hearing before issuing a certificate of registration.

21 Sec. 135.104. TERM OF CERTIFICATE. A certificate of
22 registration expires on the 10th anniversary of the date of
23 issuance.

24 Sec. 135.105. RENEWAL OF CERTIFICATE. A certificate holder
25 may renew an unexpired certificate of registration by paying a
26 renewal fee of \$200 to the commission before the expiration date of
27 the certificate.

1 Sec. 135.106. RECLAMATION REQUIREMENTS. A certificate of
2 registration must require that the extraction operation meet the
3 applicable reclamation requirements of this chapter and commission
4 rules adopted under this chapter before the commission may release
5 the full amount of the bond or alternate form of security for the
6 certificate term.

7 Sec. 135.107. TRANSFER OF CERTIFICATE. (a) A certificate
8 holder must provide written notice to the commission not later than
9 the 30th day before the date the certificate holder transfers a
10 certificate of registration. The notice must:

11 (1) include the name of the individual or entity to
12 whom the certificate holder proposes to transfer the certificate;
13 and

14 (2) be accompanied by a bond or alternate form of
15 financial security as required by Subchapter D, provided by the
16 individual or entity to whom the certificate holder proposes to
17 transfer the certificate.

18 (b) A certificate holder may transfer a certificate of
19 registration on or after the 30th day after the date the operator
20 provides notice under Subsection (a) unless the commission before
21 that day notifies the certificate holder that the transfer is
22 disapproved.

23 (c) On transfer of the certificate:

24 (1) the new certificate holder assumes all obligations
25 of the former operator with respect to the extraction operation
26 covered by the certificate;

27 (2) the former certificate holder is released from all

1 obligations with respect to the extraction operation covered by the
2 certificate; and

3 (3) the commission shall return to the former
4 certificate holder the bond or alternate form of financial security
5 provided by the former certificate holder.

6 Sec. 135.108. AMENDMENT OF CERTIFICATE. (a) On receipt of
7 an application, the commission may amend a certificate of
8 registration to cover additional land that is in the immediate
9 vicinity of the extraction area for which the certificate was
10 issued, including land that is not contiguous to the extraction
11 operation but is within one mile of the closest point of the
12 boundary for which the certificate was issued. An amendment
13 application fee of \$200 must be submitted to the commission with the
14 application to amend the certificate.

15 (b) An application to amend a certificate of registration
16 must describe:

17 (1) the additional land to be covered by the
18 certificate;

19 (2) the extraction operations to be conducted on the
20 land; and

21 (3) the reclamation plan for the additional land.

22 (c) The application to amend a certificate of registration
23 must include a new or revised bond or additional alternate form of
24 financial security to cover the additional land.

25 (d) The filing of an application to amend a certificate of
26 registration does not affect:

27 (1) the authority granted under the certificate to be

1 amended; or

2 (2) the term of the certificate to be amended.

3 (e) Not later than the 30th day after the date the
4 commission receives a completed application to amend a certificate
5 of registration, the commission shall:

6 (1) issue an amended certificate of registration to
7 the certificate holder entitling the certificate holder to engage
8 in the extraction operations identified in the amendment
9 application; or

10 (2) provide the certificate holder with a written
11 statement explaining the reason for denial of the amendment
12 application.

13 (f) The commission may not give public notice or hold a
14 public hearing before issuing an amended certificate of
15 registration.

16 Sec. 135.109. TEMPORARY VARIANCES. (a) The director may,
17 for compelling reasons and good cause shown, grant a temporary
18 variance from the requirements of any certificate of registration
19 issued by the commission.

20 (b) The variance may not exceed a period of 90 days unless a
21 longer period is justified by circumstances beyond the applicant's
22 control. The commission may grant a request to extend a variance at
23 any time before the expiration date of the variance.

24 (c) The commission may not give public notice or hold a
25 public hearing before granting or denying a temporary variance
26 request.

27 (d) In considering any request for a variance, the director

1 shall consider:

2 (1) the environmental and public health and safety
3 effects of the temporary variance; and

4 (2) any economic advantage obtained by the applicant
5 requesting the variance over other similarly situated facilities
6 operating in accordance with similar permit conditions that did not
7 request a variance.

8 (e) In addition, the director may take into account whether:

9 (1) strict compliance with the certificate of
10 registration or reclamation plan is inappropriate because of
11 conditions beyond the control of the certificate holder requesting
12 the variance;

13 (2) strict compliance would result in substantial
14 curtailment or closing down of a business, plant, or operation; and

15 (3) the variance request is prompted by recurrent or
16 unavoidable compliance problems.

17 [Sections 135.110-135.150 reserved for expansion]

18 SUBCHAPTER D. BOND OR ALTERNATE FORM OF FINANCIAL SECURITY

19 Sec. 135.151. BOND REQUIRED. (a) An application for a
20 certificate of registration must be accompanied by a bond on a form
21 prescribed by the commission, payable to the state, and conditioned
22 on the operator's compliance with the requirements of this chapter
23 and rules adopted or orders issued by the commission under this
24 chapter for the extraction operation.

25 (b) A bond must be signed by the operator as principal and by
26 a good and sufficient surety licensed to do business in this state.

27 Sec. 135.152. AMOUNT OF BOND. A bond must be in the amount

1 of \$1,000 for each acre of proposed affected land as provided by the
2 application plan for the proposed extraction operation.

3 Sec. 135.153. TERM OF BOND. (a) A bond remains in effect
4 for a certificate holder until the commission determines that the
5 extraction operation has been reclaimed in accordance with this
6 chapter and commission rules unless the certificate of registration
7 is transferred in accordance with Section 135.107.

8 (b) The commission may release a part of the amount of the
9 bond if the commission determines that part of an extraction
10 operation site has been reclaimed in accordance with this chapter.

11 Sec. 135.154. CANCELLATION OF BOND. The surety on a bond
12 may not cancel the bond until the commission gives written notice
13 that a substitute bond has been accepted or that the bond is no
14 longer required.

15 Sec. 135.155. SUBSTITUTION OF SURETY. (a) If the surety on
16 a bond ceases to do business in this state or the surety's license
17 to do business is suspended or revoked, the certificate holder,
18 after receiving notice from the commission, shall substitute
19 another good and sufficient surety licensed to do business in this
20 state not later than the 30th day after receiving the notice.

21 (b) If a certificate holder fails to substitute sureties as
22 required by Subsection (a), the certificate holder is in violation
23 of this chapter, and the commission may suspend the certificate
24 holder's certificate of registration until the substitution is
25 made.

26 (c) The certificate holder may file a substitute bond or
27 alternate form of financial security with the commission and

1 request that the previously approved bond or alternate form of
2 security be returned on approval of the substitute by the
3 commission.

4 Sec. 135.156. ALTERNATE FORM OF FINANCIAL SECURITY. In
5 lieu of filing a bond, an operator may deposit cash, government
6 securities, a certificate of deposit, or an irrevocable letter of
7 credit with the commission in an amount equal to the amount of a
8 bond required by Section 135.152, on terms prescribed by the
9 commission.

10 Sec. 135.157. APPLICATION FOR RELEASE OF BOND OR ALTERNATE
11 FORM OF FINANCIAL SECURITY. (a) An operator may file an
12 application with the commission requesting the release of all or
13 part of the bond or alternate form of financial security.

14 (b) The application requesting release of the bond must
15 state the acreage and describe the type of and the approximate dates
16 on which reclamation work was performed and the results achieved as
17 they relate to the certificate holder's reclamation plan.

18 [Sections 135.158-135.200 reserved for expansion]

19 SUBCHAPTER E. CONDUCT OF EXTRACTION OPERATIONS

20 Sec. 135.201. MINIMUM DISTANCE FROM PIT PERIMETER TO
21 PROPERTY LINE. (a) An extraction pit perimeter must be located at
22 least:

23 (1) 50 feet from the nearest property line control
24 boundary if the pit high wall depth is 10 feet or less; or

25 (2) 100 feet from the nearest property line control
26 boundary if the pit high wall depth is greater than 10 feet.

27 (b) For purposes of this section, the pit depth is

1 determined by measuring the vertical distance from the toe of the
2 high wall slope to the pit perimeter elevation.

3 (c) This section does not apply if the certificate holder of
4 the extraction operation for which the certificate was issued
5 obtains written consent from each adjacent property owner agreeing
6 to disturbance closer than allowed under Subsection (a)(1) or
7 (a)(2). Adjacent property includes rights-of-way.

8 Sec. 135.202. IDENTIFICATION SIGNS AND MARKERS. (a) The
9 perimeter of the certificate area must be clearly marked on the
10 ground at all times using metal posts, stakes, or a similar device
11 projecting a minimum of 36 inches aboveground and painted orange.
12 These markings must remain in place until the operator has
13 reclaimed the site and obtained full bond release from the
14 commission.

15 (b) The certificate holder shall protect the public from the
16 dangers inherent in an extraction operation by restricting access
17 to the site and posting adequate warning signs.

18 (c) Identification signs must:

19 (1) be displayed at each point of access to the
20 certificate area from public roads;

21 (2) show the current certificate of registration
22 identification number and the name, business address, and telephone
23 number of the certificate holder; and

24 (3) be retained and maintained until after full
25 release of the bond from the commission.

26 [Sections 135.203-135.250 reserved for expansion]

27 SUBCHAPTER F. RECLAMATION

1 Sec. 135.251. RECLAMATION PLAN. (a) A reclamation plan
2 submitted as part of an application for a certificate of
3 registration must specify:

4 (1) the number of acres estimated to be affected by the
5 proposed extraction operation during:

6 (A) the 10-year certificate term; and

7 (B) the life of the operation; and

8 (2) the estimated year in which the extraction
9 operation will cease extraction of structural clay and brick raw
10 materials.

11 (b) A reclamation plan must include:

12 (1) a map showing the projected affected land for
13 extraction of structural clay and brick raw materials during the
14 10-year certificate of registration term;

15 (2) a map showing the projected affected land for
16 extraction of structural clay and brick raw materials during the
17 life of the extraction operation that also describes the existing
18 land of any area contiguous to any extraction area;

19 (3) a description of how the affected land will be
20 returned to a condition relative to its intended use; and

21 (4) the location and intended use of all land to be
22 affected by the extraction operation during the term of the
23 certificate of registration.

24 (c) Reclamation activities may include land grading,
25 vegetation planting, and surface contour drainage reestablishment
26 in accordance with Sections 135.254 and 135.256. Reclamation
27 activities may not include restrictions on any characteristics of

1 the material used in reestablishing the surface topography,
2 including soil characteristics and fill material permeability, or
3 the comparison of hydrological conditions of the affected land
4 before and after extraction.

5 (d) A certificate holder may amend a reclamation plan at any
6 time, subject to commission approval.

7 Sec. 135.252. ACCESS TO LAND ABOVE BENCH OR HIGH WALL. The
8 operator shall provide at least one suitable route of ingress and
9 egress to land above the bench or high wall if an extraction
10 operation produces a bench or high wall.

11 Sec. 135.253. RESTRICTION OF WATERWAY. An operator may not
12 move overburden in a manner that restricts a waterway unless a
13 drainage may be reconstructed with the approval of each appropriate
14 state or federal agency in accordance with the applicable rules and
15 regulations of the appropriate state or federal agency. The
16 certificate holder shall obtain the necessary approvals.

17 Sec. 135.254. GRADING OF OVERBURDEN. (a) An operator
18 shall:

19 (1) place, grade, and stabilize all overburden removed
20 so as to minimize soil erosion, surface disturbance, and stream
21 sedimentation; and

22 (2) grade all ridges and peaks of overburden created
23 by the extraction operation to a rolling topography traversable by
24 equipment customarily used in connection with the use to be made of
25 the land after reclamation, except that the slope is not required to
26 be reduced to less than the original grade of the area surrounding
27 the pit before mining.

(b) This section does not apply to an extraction operation if:

(1) the extraction operation is conducted:

(A) in the floodplain of a river or stream subject to periodic flooding; or

(B) in a wetland as designated by the appropriate state or federal agency; or

(2) the pit resulting from the extraction operation is covered by a lake as provided by Section 135.255.

(c) Notwithstanding Subsection (a), an operator:

(1) is not required to backfill a pit; and

(2) may leave boulders in a pit.

Sec. 135.255. CONSTRUCTION OF DAM. An operator may construct a dam to form a lake resulting from an extraction operation. The certificate holder shall comply with applicable regulations of other agencies for the construction of a dam.

Sec. 135.256. REVEGETATION. Revegetation of land affected by an extraction operation is not required if:

(1) the chemical or physical characteristics of the soil seriously inhibit plant growth;

(2) the land is to be covered by a permanent lake or pond; or

(3) the use of land following the extraction operation is one that does not warrant establishment of vegetation.

[Sections 135.257-135.300 reserved for expansion]

SUBCHAPTER G. ADMINISTRATIVE PENALTY

Sec. 135.301. IMPOSITION OF PENALTY. The commission shall

1 impose an administrative penalty on a certificate holder for an
2 extraction operation who violates this chapter or a rule adopted or
3 order issued under this chapter. The certificate holder may
4 continue to operate an extraction operation when a penalty has been
5 imposed by the commission in accordance with this chapter.

6 Sec. 135.302. AMOUNT OF PENALTY. The amount of the penalty
7 is not less than \$100 or more than \$1,000 for each act of violation.
8 The commission shall develop a point system to determine the amount
9 of the penalty.

10 Sec. 135.303. NOTICE OF VIOLATION AND PENALTY. (a) If,
11 after investigation of a possible violation and the facts
12 surrounding that possible violation, the commission determines
13 that a violation has occurred, the commission shall give written
14 notice of the violation to the certificate holder alleged to have
15 committed the violation.

16 (b) The notice must:

17 (1) include a brief summary of the alleged violation;
18 (2) state the amount of the proposed administrative
19 penalty; and
20 (3) inform the certificate holder of the right to a
21 hearing on the occurrence of the violation, the amount of the
22 penalty, or both.

23 Sec. 135.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
24 Not later than the 20th day after the date the certificate holder
25 receives the notice, the certificate holder in writing may:

26 (1) accept the determination and the proposed
27 administrative penalty; or

1 (2) make a request for a hearing on the occurrence of
2 the violation, the amount of the penalty, or both.

3 (b) If the certificate holder accepts the determination and
4 proposed penalty, the commission by order shall approve the
5 determination and impose the proposed penalty.

6 Sec. 135.305. HEARING. (a) If the certificate holder
7 requests a hearing or fails to respond in a timely manner to the
8 notice, the commission shall set a hearing and give written notice
9 of the hearing to the certificate holder. The commission may employ
10 a hearings officer to hold the hearing.

11 (b) The hearings officer shall make findings of fact and
12 conclusions of law and promptly issue to the commission a proposal
13 for a decision about the occurrence of the violation and the amount
14 of a proposed penalty.

15 Sec. 135.306. DECISION BY COMMISSION. (a) Based on the
16 findings of fact, conclusions of law, and proposal for a decision,
17 the commission by order may:

18 (1) find that a violation occurred and impose a
19 penalty; or

20 (2) find that a violation did not occur.

21 (b) The notice of the commission's order given to the
22 certificate holder must include a statement of the right of the
23 certificate holder to judicial review of the order.

24 Sec. 135.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
25 Not later than the 30th day after the date the commission's order
26 becomes final, the certificate holder shall:

27 (1) pay the penalty; or

1 (2) file a petition for judicial review contesting the
2 occurrence of the violation, the amount of the penalty, or both.

3 Sec. 135.308. STAY OF ENFORCEMENT OF PENALTY. (a) Within
4 the 30-day period prescribed by Section 135.307, a certificate
5 holder who files a petition for judicial review may:

6 (1) stay enforcement of the penalty by:

7 (A) paying the penalty to the court for placement
8 in an escrow account; or

9 (B) giving the court a supersedeas bond approved
10 by the court that:

11 (i) is for the amount of the penalty; and

12 (ii) is effective until all judicial review
13 of the commission's order is final; or

14 (2) request the court to stay enforcement of the
15 penalty by:

16 (A) filing with the court a sworn affidavit of an
17 authorized representative of the certificate holder stating that
18 the certificate holder is financially unable to pay the penalty and
19 is financially unable to give the supersedeas bond; and

20 (B) giving a copy of the affidavit to the
21 commission by certified mail.

22 (b) If the commission receives a copy of an affidavit under
23 Subsection (a)(2), the commission may file with the court, within
24 five days after the date the copy is received, a contest to the
25 affidavit. The court shall hold a hearing on the facts alleged in
26 the affidavit as soon as practicable and shall stay the enforcement
27 of the penalty on finding that the alleged facts are true. The

1 certificate holder who files an affidavit has the burden of proving
2 that the certificate holder is financially unable to pay the
3 penalty and to give a supersedeas bond.

4 Sec. 135.309. COLLECTION OF PENALTY. (a) If the
5 certificate holder does not pay the penalty and the enforcement of
6 the penalty is not stayed, the penalty may be collected.

7 (b) The attorney general may sue to collect the penalty.

8 (c) A penalty collected under this subchapter shall be
9 deposited to the credit of the Texas structural clay and brick raw
10 materials safety and reclamation account in the general revenue
11 fund.

12 Sec. 135.310. DECISION BY COURT. (a) If the court sustains
13 the finding that a violation occurred, the court may uphold or
14 reduce the amount of the penalty and order the certificate holder to
15 pay the full or reduced amount of the penalty.

16 (b) If the court does not sustain the finding that a
17 violation occurred, the court shall order that a penalty is not
18 owed.

19 Sec. 135.311. REMITTANCE OF PENALTY AND INTEREST. (a) If
20 the certificate holder paid the penalty and if the amount of the
21 penalty is reduced or the penalty is not upheld by the court, the
22 court shall order, when the court's judgment becomes final, that
23 the appropriate amount plus accrued interest be remitted to the
24 certificate holder.

25 (b) The interest accrues at the rate charged on loans to
26 depository institutions by the New York Federal Reserve Bank.

27 (c) The interest shall be paid for the period beginning on

1 the date the penalty is paid and ending on the date the penalty is
2 remitted.

3 Sec. 135.312. RELEASE OF BOND. (a) If the certificate
4 holder gave a supersedeas bond and the penalty is not upheld by the
5 court, the court shall order, when the court's judgment becomes
6 final, the release of the bond.

7 (b) If the certificate holder gave a supersedeas bond and
8 the amount of the penalty is reduced, the court shall order the
9 release of the bond after the certificate holder pays the reduced
10 amount.

11 Sec. 135.313. ADMINISTRATIVE PROCEDURE. A proceeding to
12 impose the penalty is considered to be a contested case under
13 Chapter 2001, Government Code.

14 [Sections 135.314-135.350 reserved for expansion]

15 SUBCHAPTER H. RECLAMATION ACCOUNT

16 Sec. 135.351. TEXAS STRUCTURAL CLAY AND BRICK RAW MATERIALS
17 SAFETY AND RECLAMATION ACCOUNT. (a) The Texas structural clay and
18 brick raw materials safety and reclamation account is an account in
19 the general revenue fund that may be appropriated only for the
20 purpose of undertaking corrective or enforcement action under this
21 chapter.

22 (b) The commission shall deposit the amount recovered on a
23 bond or alternate form of financial security as required by
24 Subchapter D or an administrative penalty collected under
25 Subchapter G to the credit of the Texas structural clay and brick
26 raw materials safety and reclamation account.

27 SECTION 2. (a) This Act takes effect September 1, 2003.

1 (b) Not later than March 1, 2004, the Railroad Commission of
2 Texas shall adopt rules as necessary to implement this Act.

3 (c) Notwithstanding Section 135.101, Natural Resources
4 Code, as added by this Act, an operator may begin conducting a
5 structural clay and brick raw materials extraction operation in
6 this state on or after the effective date of this Act and before the
7 Railroad Commission of Texas adopts rules as provided by Subsection
8 (b) of this section without obtaining a certificate of registration
9 for that operation from the commission under Chapter 135, Natural
10 Resources Code, as added by this Act. Not later than 120 days after
11 the commission adopts rules, an operator described by this
12 subsection must file an application for a certificate of
13 registration under Section 135.102, Natural Resources Code, as
14 added by this Act. An operator who files an application accompanied
15 by a reclamation plan may continue conducting the operation under
16 this subsection until the commission approves or denies the
17 application.