

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of quarries; providing penalties.

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

SECTION 1. The heading to Subtitle C, Title 5, Health and Safety Code, is amended to read as follows:

SUBTITLE C. AIR AND ENVIRONMENTAL QUALITY

SECTION 2. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 390 to read as follows:

CHAPTER 390. QUARRY PERMIT

Sec. 390.001. DEFINITIONS. In this chapter:

(1) "Aggregates" includes any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance.

(2) "Air quality permit" means a permit or other authorization to emit air contaminants under Chapter 382 and includes an authorization under a permit by rule.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Operator" means any person proposing the creation of a quarry or engaged in and responsible for the physical operation and control of a quarry.

(5) "Pit" means a commercial open excavation not less

1 than five feet below the adjacent and natural ground level from
2 which aggregates have been or are being extracted.

3 (6) "Quarry" means the site where aggregates are being
4 or have been removed or extracted from the earth to form the pit,
5 including the entire excavation, stripped areas, and haulage ramps
6 and land adjacent to those areas on which the plant processing the
7 raw materials is located. The term does not include land owned or
8 leased by the operator that is not used in the production of
9 aggregates.

10 Sec. 390.002. APPLICABILITY. This chapter applies only to
11 a quarry that begins operation on or after September 1, 2005, and
12 does not apply to a quarry or pit in operation before that date.

13 Sec. 390.003. PERMITS REQUIRED. An operator may not create
14 or begin operating a quarry unless the operator has obtained:

15 (1) a quarry permit under this chapter from the
16 commission; and

17 (2) an air quality permit for any rock crusher to be
18 operated at the quarry.

19 Sec. 390.004. APPLICATION PROCEDURE. (a) An application
20 for a quarry permit must include:

21 (1) a site plan that contains:

22 (A) a site map detailing the proposed permit
23 area;

24 (B) the location and identity of all affected and
25 unaffected areas;

26 (C) a description of the location of the quarry,
27 including the distance and direction from the nearest:

- 1 (i) stream and groundwater source;
- 2 (ii) state and county road;
- 3 (iii) intersection;
- 4 (iv) dwelling;
- 5 (v) school;
- 6 (vi) place of worship; and
- 7 (vii) commercial or institutional building
- 8 that is neither owned nor leased by the operator;

9 (D) the ingress and egress routes for materials
10 to be transported on public roadways;

11 (E) a general description of the anticipated
12 stages in which the quarry will be mined;

13 (F) subject to Subsection (e), a report from an
14 independent hydrologist, professional geoscientist, or
15 professional engineer retained by the operator on the groundwater
16 or surface water in the quarried area, including any
17 recommendations by the hydrologist, geoscientist, or engineer to
18 prevent a detrimental effect on the groundwater and surface water;
19 and

20 (G) if a report is required under Paragraph (F),
21 a description of how the operator will address the recommendations
22 made in the hydrologist's report;

23 (2) if blasting will be conducted in the quarry, a
24 blasting plan that contains:

25 (A) a description of the blasting equipment and
26 procedures to be used at the site; and

27 (B) a description of the procedures and plans for

1 the recording and retention of blasting records for each blast that
2 is to be conducted at the site; and

3 (3) proof that the operator has registered for or
4 submitted an application for, as applicable, an air quality permit
5 for any rock crusher constructed or proposed to be constructed at
6 the quarry.

7 (b) A quarry permit application fee of \$1,000 must accompany
8 the application.

9 (c) If the commission denies an application, not later than
10 the 60th day after the date the commission received the
11 application, the commission shall notify the applicant in writing
12 of the commission's decision, specifying any defects in the
13 application. An applicant denied a permit under this subsection
14 may submit a modified application.

15 (d) A proceeding to consider a quarry permit application or
16 to issue a quarry permit is not a contested case for purposes of
17 Chapter 2001, Government Code.

18 (e) An application for a permit under this section for a
19 quarry that does not have groundwater or surface water in the
20 quarried area is not required to include a report under Subsection
21 (a)(1)(F) or a description of how the operator will address
22 recommendations under Subsection (a)(1)(G).

23 Sec. 390.005. PERMIT EXPIRATION AFTER NONUSE. A permit
24 issued to create or begin operating a quarry expires on the fifth
25 anniversary of the date that the permit was issued if quarry
26 operations have not begun at the permit area before that date.

27 Sec. 390.006. PERMIT AMENDMENT. (a) A quarry operator

1 must obtain a permit amendment:

2 (1) before a quarry may be expanded to an adjacent
3 tract of land; or

4 (2) if emissions from a rock crusher associated with
5 the quarry increase beyond a de minimis level, as determined by the
6 commission.

7 (b) An applicant for a permit amendment must submit an
8 application that contains the information required by Section
9 390.004.

10 Sec. 390.007. NOTICE TO CERTAIN OFFICIALS. On receipt of an
11 application for a quarry permit, the commission shall send notice
12 of the application to:

13 (1) each state senator and state representative who
14 represents the area in which the quarry will be located; and

15 (2) the county judge and county commissioners of each
16 county in which the quarry will be located.

17 Sec. 390.008. TRAFFIC SAFETY. The operator of a quarry
18 shall adhere to all Texas Department of Transportation rules
19 relating to the safe movement of normal highway traffic, including
20 those rules governing the construction and maintenance of private,
21 public, and commercial access driveways.

22 Sec. 390.009. BLASTING RECORD. (a) If blasting is
23 conducted in a quarry, the operator of the quarry shall maintain a
24 blasting record that includes the following information:

25 (1) the exact location, time, and date of the
26 detonation;

27 (2) the weather conditions during the blast;

1 (3) the seismograph or vibration monitor reading,
2 including the exact location of the seismograph or vibration
3 monitor and its distance from the blast; and

4 (4) the name of the person taking the seismograph or
5 vibration monitor reading.

6 (b) The operator shall maintain the blasting records of a
7 detonation, including the seismograph or vibration monitor
8 readings, for not less than two years after the date of the
9 detonation.

10 (c) The operator shall maintain the blasting records at the
11 quarry site.

12 (d) The operator shall make the blasting records available
13 for inspection by the commission.

14 Sec. 390.010. CIVIL PENALTY; INJUNCTION. (a)
15 Notwithstanding Section 7.102, Water Code, an operator who violates
16 this chapter is liable to the state for a civil penalty in the
17 amount of \$1,000 for each violation. Each day a violation continues
18 is a separate violation.

19 (b) At the request of the commission, the attorney general
20 shall bring suit for injunctive relief to restrain a continuing
21 violation of this chapter or to recover a civil penalty as provided
22 by Subsection (a) or for both injunctive relief and recovery of a
23 civil penalty.

24 SECTION 3. Section 725.003, Transportation Code, is amended
25 by amending Subsection (c) and adding Subsection (d) to read as
26 follows:

27 (c) Except as provided by Subsection (d), an [An] offense

1 under this section is a misdemeanor punishable by a fine of:

2 (1) not less than \$25 or more than \$200 for a first
3 conviction; and

4 (2) not less than \$200 or more than \$500 for a second
5 or subsequent conviction.

6 (d) An offense involving the violation of Section
7 725.021(e) is a misdemeanor punishable by a fine of not less than
8 \$25 or more than \$500.

9 SECTION 4. Section 725.021, Transportation Code, is amended
10 by amending Subsection (c) and adding Subsection (e) to read as
11 follows:

12 (c) Except as provided by Subsection (e), the ~~[The]~~ load
13 shall be covered and the covering firmly secured at the front and
14 back, unless the load:

15 (1) is completely enclosed by the load-carrying
16 compartment; or

17 (2) does not blow or spill over the top of the
18 load-carrying compartment.

19 (e) If the vehicle is a commercial motor vehicle
20 transporting aggregates from a quarry or pit, as those terms are
21 defined by Section 390.001, Health and Safety Code, the load shall
22 be covered and the covering firmly secured at the front and back or
23 shall be completely enclosed by the load-carrying compartment. For
24 purposes of this section, "commercial motor vehicle" means a motor
25 vehicle, trailer, or semitrailer used primarily in the business of
26 transporting property.

27 SECTION 5. Subsection (a), Section 5.013, Water Code, is

1 amended to read as follows:

2 (a) The commission has general jurisdiction over:

3 (1) water and water rights including the issuance of
4 water rights permits, water rights adjudication, cancellation of
5 water rights, and enforcement of water rights;

6 (2) continuing supervision over districts created
7 under Article III, Sections 52(b)(1) and (2), and Article XVI,
8 Section 59, of the Texas Constitution;

9 (3) the state's water quality program including
10 issuance of permits, enforcement of water quality rules, standards,
11 orders, and permits, and water quality planning;

12 (4) the determination of the feasibility of certain
13 federal projects;

14 (5) the adoption and enforcement of rules and
15 performance of other acts relating to the safe construction,
16 maintenance, and removal of dams;

17 (6) conduct of the state's hazardous spill prevention
18 and control program;

19 (7) the administration of the state's program relating
20 to inactive hazardous substance, pollutant, and contaminant
21 disposal facilities;

22 (8) the administration of a portion of the state's
23 injection well program;

24 (9) the administration of the state's programs
25 involving underground water and water wells and drilled and mined
26 shafts;

27 (10) the state's responsibilities relating to regional

1 waste disposal;

2 (11) the responsibilities assigned to the commission
3 by Chapters 361, 363, 382, 390, and 401, Health and Safety Code;

4 (12) the administration of the national flood
5 insurance program;

6 (13) administration of the state's water rate program
7 under Chapter 13 of this code; and

8 (14) any other areas assigned to the commission by
9 this code and other laws of this state.

10 SECTION 6. Subchapter L, Chapter 5, Water Code, is amended
11 by adding Section 5.517 to read as follows:

12 Sec. 5.517. EMERGENCY ORDER CONCERNING OPERATION OF QUARRY
13 WITHOUT PERMIT. (a) Except as provided by Subsection (b), the
14 commission shall issue an emergency order under this subchapter
15 suspending operations of a quarry or other facility that:

16 (1) produces aggregates, as that term is defined by
17 Section 390.001, Health and Safety Code;

18 (2) is required to obtain a permit under Chapter 26,
19 Water Code; and

20 (3) is operating without the necessary permit.

21 (b) The commission is not required to impose the penalty
22 under Subsection (a) if the operator submits to the commission
23 information demonstrating that the quarry operator relied in good
24 faith on the opinion of a professional engineer or licensed
25 attorney that a permit under Chapter 26, Water Code, was not
26 required at the facility.

27 SECTION 7. Section 7.052, Water Code, is amended by adding

1 Subsections (b-1) and (b-2) and amending Subsection (d) to read as
2 follows:

3 (b-1) Except as provided by Subsection (b-2), the amount of
4 the penalty for operating a quarry or other facility that produces
5 aggregates, as those terms are defined by Section 390.001, Health
6 and Safety Code, that is required to obtain a permit under Chapter
7 26, Water Code, and that is operating without the required permit is
8 \$10,000. Each day that a continuing violation occurs is a separate
9 violation.

10 (b-2) The amount of the penalty under Subsection (b-1) is
11 not less than \$1,000 or more than \$10,000 if the operator submits to
12 the commission information demonstrating that the quarry operator
13 relied in good faith on the opinion of a professional engineer or
14 licensed attorney that a permit under Chapter 26, Water Code, was
15 not required at the facility.

16 (d) Except as provided by Subsections [~~Subsection~~] (b) and
17 (b-1), each day that a continuing violation occurs may be
18 considered a separate violation. The commission may authorize an
19 installment payment schedule for an administrative penalty
20 assessed under this subchapter, except for an administrative
21 penalty assessed under Section 7.057 or assessed after a hearing
22 under Section 7.058.

23 SECTION 8. (a) The changes in law made by Sections 725.003
24 and 725.021, Transportation Code, as amended by this Act, apply
25 only to an offense committed on or after the effective date of this
26 Act. For purposes of this section, an offense is committed before
27 the effective date of this Act if any element of the offense occurs

1 before that date.

2 (b) An offense committed before the effective date of this
3 Act is governed by the law in effect when the offense was committed,
4 and the former law is continued in effect for that purpose.

5 SECTION 9. The changes in law made by Section 5.517, Water
6 Code, as added by this Act, and Section 7.052, Water Code, as
7 amended by this Act, apply only to a violation that occurs on or
8 after the effective date of this Act. A violation that occurs
9 before that date is governed by the law in effect at the time the
10 violation occurred, and the former law is continued in effect for
11 that purpose.

12 SECTION 10. (a) The Texas Commission on Environmental
13 Quality shall be prepared to accept applications for permits under
14 Chapter 390, Health and Safety Code, as added by this Act, not later
15 than March 1, 2006.

16 (b) A person is not required to hold a permit to create or
17 operate a quarry under Chapter 390, Health and Safety Code, as added
18 by this Act, before June 1, 2006.

19 SECTION 11. This Act takes effect September 1, 2005.