

Amend CSHB 3 by adding the following SECTIONS to the bill and by renumbering any subsequent SECTIONS accordingly:

SECTION ____ . Chapter 26, Water Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. SAN JACINTO RIVER WATER QUALITY PROTECTION AREA

Sec. 26.601. DEFINITIONS. In this subchapter:

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

(2) "Owner" means any person holding title, wholly or partly, to the land on which a quarry exists or has existed.

(3) "Pit" means an open excavation from which sand or gravel has been or is being extracted from a depth of five feet or more below the adjacent and natural ground level.

(4) "Quarry" means the site from which sand or gravel for commercial sale or use is being or has been removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which a plant processing the sand or gravel is located.

(5) "Responsible party" means the owner, operator, lessor, or lessee who is responsible for the overall function and operation of a quarry.

(6) "San Jacinto water quality protection area" means territory located one-half mile or less from:

(A) that portion of the East Fork of the San Jacinto River from State Highway 105 downstream to Lake Houston;

(B) that portion of the West Fork of the San Jacinto River from Interstate Highway 45 downstream to Lake Houston; and

(C) Spring Creek from its most easterly intersection with Farm-to-Market Road 1736 downstream to its confluence with the West Fork of the San Jacinto River.

(7) "Water quality protection area" means territory located one-half mile or less from a river the water quality of which is threatened by activities at a quarry.

Sec. 26.602. APPLICABILITY; PILOT PROGRAM. (a) This subchapter applies only to sand and gravel quarries located in a water quality protection area designated by commission rule.

(b) This subchapter does not apply to:

(1) permitting, construction, or operation of a municipal solid waste landfill or other solid waste facility regardless of whether the facility includes an excavation that is associated with past quarrying activities; or

(2) an excavation, pit, or quarry associated with or related to the operations of a municipal solid waste landfill or other solid waste facility, regardless of the material extracted from or the depth of the excavation, pit, or quarry.

(c) This subchapter does not apply to an activity, facility, or operation regulated under Chapter 134, Natural Resources Code.

(d) For the period of September 1, 2007, to September 1, 2027, the commission shall apply this subchapter only as a pilot program in the San Jacinto water quality protection area.

Sec. 26.603. REGULATION OF QUARRIES WITHIN WATER QUALITY PROTECTION AREA. (a) The commission by rule shall require a responsible party to obtain an authorization to use a general permit under Section 26.040 for any discharges from a quarry any part of which is located in a water quality protection area designated under this subchapter.

(b) Except as provided by Subsection (c), the commission by rule shall prohibit the construction or operation of a new quarry and the expansion of an existing quarry if the new or existing quarry is to be or is located 100 feet or less from a stream that is in a water quality protection area designated under this subchapter.

(c) A quarry that is covered by a permit issued by the United States Army Corps of Engineers under Section 404 of the federal Clean Water Act (33 U.S.C. Section 1344) may operate within 100 feet of a stream if that permit authorizes the operation, regardless of whether the quarry is located in a water quality protection area designated under this subchapter.

(d) The commission by rule shall establish performance criteria and requirements for the general permit required under Subsection (a) to address:

(1) slope gradients that minimize the potential for erosion of quarry walls and banks into the surface waters and

related water quality considerations;

(2) potential effects on areas subject to frequent flooding and related risks to public safety and property;

(3) the control of surface water drainage and water accumulation to prevent:

(A) erosion, siltation, or runoff; and

(B) damage to public or private property; and

(4) closure of a quarry, after quarry activities have ended, consistent with best management standards and practices adopted by the commission for quarry stabilization and reuse, which may include soil stabilization and compacting, grading, erosion control measures, removal of waste, debris, and structures, and revegetation.

(e) The commission by rule shall establish requirements for financial responsibility that are adequate to protect the water resources in the water quality protection area and include those requirements in the general permit required under Subsection (a).

(f) In addition to any other requirements established by commission rule under Subsections (d) and (e), the responsible party for a quarry located in a water quality protection area who is required to obtain an authorization to use a general permit shall include with an application filed with the commission for the authorization:

(1) a proposed plan of action for how the responsible party will restore a receiving water body to background conditions in the event of an unauthorized discharge that affects the water body; and

(2) a proposed plan of action for how the responsible party will close the quarry, consistent with commission standards, that includes:

(A) a description of the natural state of the land surrounding the quarry to which state the quarry will be restored, or the specific land use proposed for the quarry site; and

(B) a schedule within which the effort to close the quarry may reasonably be required to be completed after quarry activities have ended.

Sec. 26.604. FINANCIAL RESPONSIBILITY; VIOLATION.

(a) The commission by rule shall adopt requirements for maintaining acceptable evidence of financial responsibility for:

(1) restoration of a water body affected by an unauthorized discharge from a permitted quarry;

(2) taking corrective action for and compensating for water quality effects caused by an unauthorized discharge resulting from quarrying; and

(3) implementing an approved quarry closure and reuse plan if the responsible party is unwilling or unable to meet the requirements of the plan.

(b) A responsible party may not operate a permitted quarry knowing that acceptable evidence of financial responsibility has not been maintained.

Sec. 26.605. INSPECTIONS OF AND SAMPLING OF WATER IN PILOT AREA. (a) To detect potential violations of this subchapter in the San Jacinto water quality protection area, the commission, the San Jacinto River Authority, and the Parks and Wildlife Department shall coordinate efforts to conduct:

(1) visual inspections of the water quality protection area; and

(2) analyses of surface water samples from the San Jacinto River and its tributaries subject to this subchapter.

(b) The visual inspections and analyses of water samples must be conducted at least twice annually. At least once each year, an inspection of the San Jacinto water quality protection area must be conducted from an aircraft flying over the area.

Sec. 26.606. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The commission shall enforce this subchapter and impose administrative and civil penalties as authorized by this code for discharges from a quarry in violation of this subchapter or of any commission rule.

(b) In addition to the administrative penalties and other available remedies or causes of action, the commission may seek injunctive relief in the district courts of Travis County to require:

(1) the temporary or permanent closure of a quarry operated without authorization required under this subchapter;

(2) the temporary or permanent closure of a permitted quarry under this subchapter for which acceptable evidence of financial responsibility is not maintained;

(3) the temporary or permanent closure of any quarry responsible for an unauthorized discharge; or

(4) corrective action by the responsible party for a quarry that is responsible for an unauthorized discharge.

Sec. 26.607. EMERGENCY ORDERS. The commission may issue a temporary or emergency order under Section 5.509 relating to a discharge of waste or pollutants from a quarry into or adjacent to water in a water quality protection area designated under this subchapter.

Sec. 26.608. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES WITHIN WATER QUALITY PROTECTION AREA. If the commission has incurred any costs in undertaking a corrective or enforcement action with respect to an unauthorized discharge from a quarry under this subchapter, including a reclamation or restoration action, the responsible party is liable to this state for all reasonable costs of the corrective or enforcement action, including court costs and reasonable attorney's fees, and for any punitive damages that may be assessed by the court.

Sec. 26.609. COOPERATION WITH OTHER STATE AGENCIES.

(a) The commission is the principal authority in this state on matters relating to the implementation of this subchapter. All other state agencies engaged in water quality or water pollution control activities in a water quality protection area designated under this subchapter shall coordinate those activities with the commission.

(b) The executive director, with the consent of the commission, may enter into contracts, memoranda of understanding, or other agreements with other state agencies for purposes of developing requirements, including requirements for financial responsibility, for inclusion in any general permit required by this subchapter that are adequate to protect the water resources in the water quality protection area.

Sec. 26.610. WATER QUALITY PROTECTION AREA REPORTS.

(a) On or before December 1, 2008, the commission shall prepare a

report describing its implementation of this subchapter and provide copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(b) Beginning December 1, 2010, and on December 1 of each succeeding even-numbered year, the commission shall deliver a report to the governor, lieutenant governor, and speaker of the house of representatives evaluating the implementation and operation of the water quality protection permitting and enforcement programs developed under this subchapter.

(c) At the discretion of the commission, the report under Subsection (b) may be consolidated with any other appropriate agency biennial report, including the report required under Subchapter M, except that information specific to any water quality protection area designated under this subchapter must be clearly identified.

Sec. 26.611. EXPIRATION. This subchapter expires September 1, 2027.

SECTION ____ . (a) The Texas Commission on Environmental Quality shall adopt rules to implement Subchapter N, Chapter 26, Water Code, as added by this Act, as soon as practicable.

(b) A responsible party required to obtain an authorization to use a general permit described by Subchapter N, Chapter 26, Water Code, as added by this Act, shall submit an application for the authorization on or before the 180th day after the date rules of the Texas Commission on Environmental Quality adopted under that subchapter take effect.