

By: Williams

S.B. No. 359

Substitute the following for S.B. No. 359:

By: Lucio III

C.S.S.B. No. 359

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a Texas Commission on Environmental Quality water
3 quality protection area pilot program applicable to portions of the
4 San Jacinto River; providing penalties.

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

6 SECTION 1. Chapter 26, Water Code, is amended by adding
7 Subchapter N to read as follows:

8 SUBCHAPTER N. SAN JACINTO RIVER WATER QUALITY PROTECTION AREA

9 Sec. 26.601. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

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

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

17 (b) This subchapter does not apply to:

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

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

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

1 (d) For the period of September 1, 2007, to September 1,
2 2027, the commission shall apply this subchapter only as a pilot
3 program in the San Jacinto water quality protection area.

4 (e) A quarry, pit, or associated facility that commenced
5 operations after January 1, 2007, is subject to the permit
6 requirements of this subchapter. Notwithstanding other provisions
7 of this subchapter, the responsible party for a quarry, pit, or
8 associated facility that commenced operations before January 1,
9 2007, may choose to:

10 (1) continue to operate under a multi-sector general
11 permit under Section 26.040 governing storm water discharge from
12 Sector J mining activity until authorization under that general
13 permit expires; or

14 (2) obtain permit authorization under this subchapter
15 in place of the authorization described by Subdivision (1).

16 (f) The legislature intends that for quarries, pits, and
17 associated facilities in water quality protection areas designated
18 under this subchapter, the authorization under a permit required by
19 this subchapter will replace authorization under the multi-sector
20 general permit for Sector J mining activities as authorizations
21 under the general permit expire.

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

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

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

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

16 (1) slope gradients that minimize the potential for
17 erosion of quarry walls and banks into the surface waters and
18 related water quality considerations;

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

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

23 (A) erosion, siltation, or runoff; and

24 (B) damage to public or private property; and

25 (4) closure of a quarry, after quarry activities have
26 ended, consistent with best management standards and practices
27 adopted by the commission for quarry stabilization and reuse, which

1 may include soil stabilization and compacting, grading, erosion
2 control measures, removal of waste, debris, and structures, and
3 revegetation.

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

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

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

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

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

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

27 Sec. 26.604. FINANCIAL RESPONSIBILITY; VIOLATION. (a) The

1 commission by rule shall adopt requirements for maintaining
2 acceptable evidence of financial responsibility for:

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

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

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

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

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

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

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

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

27 Sec. 26.606. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES

1 WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The
2 commission shall enforce this subchapter and impose administrative
3 and civil penalties as authorized by this code for discharges from a
4 quarry in violation of this subchapter or of any commission rule.

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

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

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

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

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

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

23 Sec. 26.608. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES
24 WITHIN WATER QUALITY PROTECTION AREA. If the commission has
25 incurred any costs in undertaking a corrective or enforcement
26 action with respect to an unauthorized discharge from a quarry
27 under this subchapter, including a reclamation or restoration

1 action, the responsible party is liable to this state for all
2 reasonable costs of the corrective or enforcement action, including
3 court costs and reasonable attorney's fees, and for any punitive
4 damages that may be assessed by the court.

5 Sec. 26.609. COOPERATION WITH OTHER STATE AGENCIES.

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

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

19 Sec. 26.610. WATER QUALITY PROTECTION AREA REPORTS. (a) On
20 or before December 1, 2008, the commission shall prepare a report
21 describing its implementation of this subchapter and provide copies
22 of the report to the governor, lieutenant governor, and speaker of
23 the house of representatives.

24 (b) Beginning December 1, 2010, and on December 1 of each
25 succeeding even-numbered year, the commission shall deliver a
26 report to the governor, lieutenant governor, and speaker of the
27 house of representatives evaluating the implementation and

1 operation of the water quality protection permitting and
2 enforcement programs developed under this subchapter.

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

9 Sec. 26.611. EXPIRATION. This subchapter expires September
10 1, 2027.

11 SECTION 2. (a) The Texas Commission on Environmental
12 Quality shall adopt rules to implement Subchapter N, Chapter 26,
13 Water Code, as added by this Act, as soon as practicable.

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

20 SECTION 3. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2007.