

1-1 By: Williams S.B. No. 359
1-2 (In the Senate - Filed January 29, 2007; February 21, 2007,
1-3 read first time and referred to Committee on Natural Resources;
1-4 April 23, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 23, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 359 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a Texas Commission on Environmental Quality water
1-11 quality protection area pilot program applicable to portions of the
1-12 San Jacinto River; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 26, Water Code, is amended by adding
1-15 Subchapter N to read as follows:

1-16 SUBCHAPTER N. SAN JACINTO RIVER WATER QUALITY PROTECTION AREA

1-17 Sec. 26.601. DEFINITIONS. In this subchapter:

1-18 (1) "Operator" means any person engaged in or
1-19 responsible for the physical operation and control of a quarry.

1-20 (2) "Owner" means any person holding title, wholly or
1-21 partly, to the land on which a quarry exists or has existed.

1-22 (3) "Pit" means an open excavation from which sand or
1-23 gravel has been or is being extracted from a depth of five feet or
1-24 more below the adjacent and natural ground level.

1-25 (4) "Quarry" means the site from which sand or gravel
1-26 for commercial sale or use is being or has been removed or extracted
1-27 from the earth to form a pit, including the entire excavation,
1-28 stripped areas, haulage ramps, and the immediately adjacent land on
1-29 which a plant processing the sand or gravel is located.

1-30 (5) "Responsible party" means the owner, operator,
1-31 lessor, or lessee who is responsible for the overall function and
1-32 operation of a quarry.

1-33 (6) "San Jacinto water quality protection area" means
1-34 territory located one-half mile or less from:

1-35 (A) that portion of the East Fork of the San
1-36 Jacinto River from State Highway 105 downstream to Lake Houston;

1-37 (B) that portion of the West Fork of the San
1-38 Jacinto River from Interstate Highway 45 downstream to Lake
1-39 Houston; and

1-40 (C) Spring Creek from Interstate Highway 45
1-41 downstream to its confluence with the West Fork of the San Jacinto
1-42 River.

1-43 (7) "Water quality protection area" means territory
1-44 located one-half mile or less from a river the water quality of
1-45 which is threatened by activities at a quarry.

1-46 Sec. 26.602. APPLICABILITY; PILOT PROGRAM. (a) This
1-47 subchapter applies only to sand and gravel quarries located in a
1-48 water quality protection area designated by commission rule.

1-49 (b) This subchapter does not apply to:

1-50 (1) permitting, construction, or operation of a
1-51 municipal solid waste landfill or other solid waste facility
1-52 regardless of whether the facility includes an excavation that is
1-53 associated with past quarrying activities; or

1-54 (2) an excavation, pit, or quarry associated with or
1-55 related to the operations of a municipal solid waste landfill or
1-56 other solid waste facility, regardless of the material extracted
1-57 from or the depth of the excavation, pit, or quarry.

1-58 (c) This subchapter does not apply to an activity, facility,
1-59 or operation regulated under Chapter 134, Natural Resources Code.

1-60 (d) For the period of September 1, 2007, to September 1,
1-61 2027, the commission shall apply this subchapter only as a pilot
1-62 program in the San Jacinto water quality protection area.

1-63 Sec. 26.603. REGULATION OF QUARRIES WITHIN WATER QUALITY

2-1 PROTECTION AREA. (a) The commission by rule shall require a
 2-2 responsible party to obtain an authorization to use a general
 2-3 permit under Section 26.040 for any discharges from a quarry any
 2-4 part of which is located in a water quality protection area
 2-5 designated under this subchapter.

2-6 (b) The commission by rule shall prohibit the construction
 2-7 or operation of a new quarry and the expansion of an existing quarry
 2-8 if the new or existing quarry is to be or is located 100 feet or less
 2-9 from a stream that is in a water quality protection area designated
 2-10 under this subchapter.

2-11 (c) The commission by rule shall establish performance
 2-12 criteria and requirements for the general permit required under
 2-13 Subsection (a) to address:

2-14 (1) slope gradients that minimize the potential for
 2-15 erosion of quarry walls and banks into the surface waters and
 2-16 related water quality considerations;

2-17 (2) potential effects on areas subject to frequent
 2-18 flooding and related risks to public safety and property;

2-19 (3) the control of surface water drainage and water
 2-20 accumulation to prevent:

2-21 (A) erosion, siltation, or runoff; and

2-22 (B) damage to public or private property; and

2-23 (4) closure of a quarry, after quarry activities have
 2-24 ended, consistent with best management standards and practices
 2-25 adopted by the commission for quarry stabilization and reuse, which
 2-26 may include soil stabilization and compacting, grading, erosion
 2-27 control measures, removal of waste, debris, and structures, and
 2-28 revegetation.

2-29 (d) The commission by rule shall establish effluent
 2-30 standards or other water quality requirements, and requirements for
 2-31 financial responsibility, adequate to protect the water resources
 2-32 in the water quality protection area and include those requirements
 2-33 in the general permit required under Subsection (a).

2-34 (e) In addition to any other requirements established by
 2-35 commission rule under Subsections (c) and (d), the responsible
 2-36 party for a quarry located in a water quality protection area who is
 2-37 required to obtain an authorization to use a general permit shall
 2-38 include with an application filed with the commission for the
 2-39 authorization:

2-40 (1) a proposed plan of action for how the responsible
 2-41 party will restore a receiving water body to background conditions
 2-42 in the event of an unauthorized discharge that affects the water
 2-43 body; and

2-44 (2) a proposed plan of action for how the responsible
 2-45 party will close the quarry, consistent with commission standards,
 2-46 that includes:

2-47 (A) a description of the natural state of the
 2-48 land surrounding the quarry to which state the quarry will be
 2-49 restored, or the specific land use proposed for the quarry site; and

2-50 (B) a schedule within which the effort to close
 2-51 the quarry may reasonably be required to be completed after quarry
 2-52 activities have ended.

2-53 Sec. 26.604. FINANCIAL RESPONSIBILITY; VIOLATION.

2-54 (a) The commission by rule shall adopt requirements for
 2-55 maintaining acceptable evidence of financial responsibility for:

2-56 (1) restoration of a water body affected by an
 2-57 unauthorized discharge from a permitted quarry;

2-58 (2) taking corrective action for and compensating for
 2-59 water quality effects caused by an unauthorized discharge resulting
 2-60 from quarrying; and

2-61 (3) implementing an approved quarry closure and reuse
 2-62 plan if the responsible party is unwilling or unable to meet the
 2-63 requirements of the plan.

2-64 (b) A responsible party may not operate a permitted quarry
 2-65 knowing that acceptable evidence of financial responsibility has
 2-66 not been maintained.

2-67 Sec. 26.605. INSPECTIONS OF AND SAMPLING OF WATER IN PILOT
 2-68 AREA. (a) To detect potential violations of this subchapter in
 2-69 the San Jacinto water quality protection area, the commission, the

3-1 San Jacinto River Authority, and the Parks and Wildlife Department
3-2 shall coordinate efforts to conduct:

3-3 (1) visual inspections of the water quality protection
3-4 area; and

3-5 (2) analyses of surface water samples from the San
3-6 Jacinto River and its tributaries subject to this subchapter.

3-7 (b) The visual inspections and analyses of water samples
3-8 must be conducted at least twice annually. At least once each year,
3-9 an inspection of the San Jacinto water quality protection area must
3-10 be conducted from an aircraft flying over the area.

3-11 Sec. 26.606. UNAUTHORIZED DISCHARGES OF CERTAIN WASTES
3-12 WITHIN WATER QUALITY PROTECTION AREA; ENFORCEMENT. (a) The
3-13 commission shall enforce this subchapter and impose administrative
3-14 and civil penalties as authorized by this code for discharges from a
3-15 quarry in violation of this subchapter or of any commission rule.

3-16 (b) In addition to the administrative penalties and other
3-17 available remedies or causes of action, the commission may seek
3-18 injunctive relief in the district courts of Travis County to
3-19 require:

3-20 (1) the temporary or permanent closure of a quarry
3-21 operated without authorization required under this subchapter;

3-22 (2) the temporary or permanent closure of a permitted
3-23 quarry under this subchapter for which acceptable evidence of
3-24 financial responsibility is not maintained;

3-25 (3) the temporary or permanent closure of any quarry
3-26 responsible for an unauthorized discharge; or

3-27 (4) corrective action by the responsible party for a
3-28 quarry that is responsible for an unauthorized discharge.

3-29 Sec. 26.607. EMERGENCY ORDERS. The commission may issue a
3-30 temporary or emergency order under Section 5.509 relating to a
3-31 discharge of waste or pollutants from a quarry into or adjacent to
3-32 water in a water quality protection area designated under this
3-33 subchapter.

3-34 Sec. 26.608. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES
3-35 WITHIN WATER QUALITY PROTECTION AREA. If the commission has
3-36 incurred any costs in undertaking a corrective or enforcement
3-37 action with respect to an unauthorized discharge from a quarry
3-38 under this subchapter, including a reclamation or restoration
3-39 action, the responsible party is liable to this state for all
3-40 reasonable costs of the corrective or enforcement action, including
3-41 court costs and reasonable attorney's fees, and for any punitive
3-42 damages that may be assessed by the court.

3-43 Sec. 26.609. COOPERATION WITH OTHER STATE AGENCIES.
3-44 (a) The commission is the principal authority in this state on
3-45 matters relating to the implementation of this subchapter. All
3-46 other state agencies engaged in water quality or water pollution
3-47 control activities in a water quality protection area designated
3-48 under this subchapter shall coordinate those activities with the
3-49 commission.

3-50 (b) The executive director, with the consent of the
3-51 commission, may enter into contracts, memoranda of understanding,
3-52 or other agreements with other state agencies for purposes of
3-53 developing effluent or other water quality requirements, including
3-54 requirements for financial responsibility, for inclusion in any
3-55 general permit required by this subchapter that are adequate to
3-56 protect the water resources in the water quality protection area.

3-57 Sec. 26.610. WATER QUALITY PROTECTION AREA REPORTS.
3-58 (a) On or before December 1, 2008, the commission shall prepare a
3-59 report describing its implementation of this subchapter and provide
3-60 copies of the report to the governor, lieutenant governor, and
3-61 speaker of the house of representatives.

3-62 (b) Beginning December 1, 2010, and on December 1 of each
3-63 succeeding even-numbered year, the commission shall deliver a
3-64 report to the governor, lieutenant governor, and speaker of the
3-65 house of representatives evaluating the implementation and
3-66 operation of the water quality protection permitting and
3-67 enforcement programs developed under this subchapter.

3-68 (c) At the discretion of the commission, the report under
3-69 Subsection (b) may be consolidated with any other appropriate

4-1 agency biennial report, including the report required under
4-2 Subchapter M, except that information specific to any water quality
4-3 protection area designated under this subchapter must be clearly
4-4 identified.

4-5 Sec. 26.611. EXPIRATION. This subchapter expires September
4-6 1, 2027.

4-7 SECTION 2. (a) The Texas Commission on Environmental
4-8 Quality shall adopt rules to implement Subchapter N, Chapter 26,
4-9 Water Code, as added by this Act, as soon as practicable.

4-10 (b) A responsible party required to obtain an authorization
4-11 to use a general permit described by Subchapter N, Chapter 26, Water
4-12 Code, as added by this Act, shall submit an application for the
4-13 authorization on or before the 180th day after the date rules of the
4-14 Texas Commission on Environmental Quality adopted under that
4-15 subchapter take effect.

4-16 SECTION 3. This Act takes effect immediately if it receives
4-17 a vote of two-thirds of all the members elected to each house, as
4-18 provided by Section 39, Article III, Texas Constitution. If this
4-19 Act does not receive the vote necessary for immediate effect, this
4-20 Act takes effect September 1, 2007.

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