

By: Fraser

S.B. No. 712

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 391 to read as follows:

CHAPTER 391. QUARRY PERMIT

Sec. 391.001. 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. 391.002. APPLICABILITY. (a) This chapter applies
11 only to a quarry that begins operation on or after September 1,
12 2007, and does not apply to a quarry or pit in operation before that
13 date.

14 (a-1) This chapter does not apply to a quarry or pit to which
15 Subchapter M, Chapter 26, Water Code, applies. This subsection
16 expires September 1, 2025.

17 Sec. 391.003. PERMITS REQUIRED. An operator may not create
18 or begin operating a quarry unless the operator has obtained:

19 (1) a quarry permit under this chapter from the
20 commission; and

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

23 Sec. 391.004. APPLICATION PROCEDURE. (a) An application
24 for a quarry permit must include:

25 (1) a site plan that contains:

26 (A) a site map detailing the proposed permit
27 area;

1 (B) the location and identity of all affected and
2 unaffected areas;

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

5 (i) stream and groundwater source;

6 (ii) state and county road;

7 (iii) intersection;

8 (iv) dwelling;

9 (v) school;

10 (vi) place of worship; and

11 (vii) commercial or institutional building
12 that is neither owned nor leased by the operator;

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

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

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

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

27 (2) if blasting will be conducted in the quarry, a

1 blasting plan that contains:

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

4 (B) a description of the procedures and plans for
5 the recording and retention of blasting records for each blast that
6 is to be conducted at the site; and

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

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

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

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

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

27 Sec. 391.005. PERMIT EXPIRATION AFTER NONUSE. A permit

1 issued to create or begin operating a quarry expires on the fifth
2 anniversary of the date that the permit was issued if quarry
3 operations have not begun at the permit area before that date.

4 Sec. 391.006. PERMIT AMENDMENT. (a) A quarry operator
5 must obtain a permit amendment:

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

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

11 (b) An applicant for a permit amendment must submit an
12 application that contains the information required by Section
13 391.004.

14 Sec. 391.007. NOTICE TO CERTAIN OFFICIALS. On receipt of an
15 application for a quarry permit, the commission shall send notice
16 of the application to:

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

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

21 Sec. 391.008. TRAFFIC SAFETY. The operator of a quarry
22 shall adhere to all Texas Department of Transportation rules
23 relating to the safe movement of normal highway traffic, including
24 those rules governing the construction and maintenance of private,
25 public, and commercial access driveways.

26 Sec. 391.009. BLASTING RECORD. (a) If blasting is
27 conducted in a quarry, the operator of the quarry shall maintain a

1 blasting record that includes the following information:

2 (1) the exact location, time, and date of the
3 detonation;

4 (2) the weather conditions during the blast;

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

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

10 (b) The operator shall maintain the blasting records of a
11 detonation, including the seismograph or vibration monitor
12 readings, for not less than two years after the date of the
13 detonation.

14 (c) The operator shall maintain the blasting records at the
15 quarry site.

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

18 Sec. 391.010. CIVIL PENALTY; INJUNCTION. (a)
19 Notwithstanding Section 7.102, Water Code, an operator who violates
20 this chapter is liable to the state for a civil penalty in the
21 amount of \$1,000 for each violation. Each day a violation continues
22 is a separate violation.

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

1 SECTION 3. Subsection (a), Section 5.013, Water Code, is
2 amended to read as follows:

3 (a) The commission has general jurisdiction over:

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

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

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

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

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

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

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

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

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

1 (10) the state's responsibilities relating to regional
2 waste disposal;

3 (11) the responsibilities assigned to the commission
4 by Chapters 361, 363, 382, 391, and 401, Health and Safety Code;

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

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

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

11 SECTION 4. Subchapter L, Chapter 5, Water Code, is amended
12 by adding Section 5.517 to read as follows:

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

17 (1) produces aggregates, as that term is defined by
18 Section 391.001, Health and Safety Code;

19 (2) is required to obtain a permit under Chapter 26,
20 other than a permit under Subchapter M of that chapter; and

21 (3) is operating without the necessary permit.

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

1 SECTION 5. Section 7.052, Water Code, is amended by adding
2 Subsections (b-1) and (b-2) and amending Subsection (d) to read as
3 follows:

4 (b-1) Except as provided by Subsection (b-2), the amount of
5 the penalty for operating a quarry or other facility that produces
6 aggregates, as those terms are defined by Section 391.001, Health
7 and Safety Code, that is required to obtain a permit under Chapter
8 26, and that is operating without the required permit is \$10,000.
9 Each day that a continuing violation occurs is a separate
10 violation.

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

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

23 SECTION 6. The changes in law made by Section 5.517, Water
24 Code, as added by this Act, and Section 7.052, Water Code, as
25 amended by this Act, apply only to a violation that occurs on or
26 after the effective date of this Act. A violation that occurs
27 before that date is governed by the law in effect at the time the

1 violation occurred, and the former law is continued in effect for
2 that purpose.

3 SECTION 7. (a) The Texas Commission on Environmental
4 Quality shall be prepared to accept applications for permits under
5 Chapter 391, Health and Safety Code, as added by this Act, not later
6 than March 1, 2008.

7 (b) A person is not required to hold a permit to create or
8 operate a quarry under Chapter 391, Health and Safety Code, as added
9 by this Act, before June 1, 2008.

10 SECTION 8. This Act takes effect September 1, 2007.