

BILL ANALYSIS

S.B. 1414
By: Williams
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Commission on Environmental Quality ("TCEQ") is responsible for enforcing a myriad of existing laws, rules, and regulations which apply to the removal of aggregate materials, such as rock, sand, gravel, and even dirt or soil from a pit or from the ground. TCEQ's regulatory authority includes: (i) water quality requirements for discharges storm water or other water used in the mining process, (ii) air quality requirements for emissions from rock crushers or other activities at a quarry site, and (iii) requirements for cleanup and reporting of spills of petroleum products or solid waste.

A person responsible for an operation removing aggregate materials from the earth in violation of TCEQ's regulatory requirements faces the authority of TCEQ to assess an administrative penalty for up to \$10,000 per day for each violation. According to TCEQ's Annual Enforcement Report for Fiscal Year 2008, the agency conducted 62,454 on-site investigations of more than 70,000 regulated entities in fiscal year 2008, and issued 1,624 administrative enforcement orders. Despite ample authority and an aggressive TCEQ inspection and enforcement program, unauthorized aggregate production operations oftentimes can begin to remove materials from the earth in remote locations without the knowledge of TCEQ, and without the proper TCEQ authorizations designed to protect air quality and state watercourses. The rogue operators have, at times, called into question the compliance of legitimate operators.

S.B. 1414 provides TCEQ with tools to prioritize the identification of aggregate production operations which are operating without the necessary TCEQ authorizations and establishes penalties for operating without the proper authorizations. S.B. 1414 raises industry standards by establishing requirements for aggregate production operations to annually register with TCEQ, and for TCEQ to inspect aggregate production operations no less than once every three years to ensure compliance. S.B. 1414 requires that on-site TCEQ inspections of aggregate production operations be conducted by inspectors specifically trained in the regulations that apply to an aggregate production operation under TCEQ's jurisdiction.

RULEMAKING AUTHORITY

It is the Committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 28A.101, Water Code) of this bill.

ANALYSIS

SECTION 1. Amends Subtitle, Title 2, Water Code, by adding Chapter 28A, as follows:

CHAPTER 28A. REGISTRATION AND INSPECTION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 28A.001. DEFINITIONS. Defines "aggregate production operation," "aggregates," "commission," "operator," "owner," and "responsible party."

[Reserves Sections 28A.002-28A.050 for expansion.]

SUBCHAPTER B. REGISTRATION AND INSPECTION

Sec. 28A.051. REGISTRATION. (a) Requires the responsible party for an aggregate production operation to register the operation with the Texas Commission on Environmental Quality (TCEQ) not later than the 10th business day before the beginning date of extraction activities and renew the registration annually as extraction activities continue.

(b) Provides that the requirements of this chapter are not applicable to the aggregate production operation after extraction activities at an aggregate production operation have ceased and the operator has notified TCEQ in writing that the operations have ceased.

Sec. 28A.052. SURVEY. (a) Requires TCEQ to annually conduct a physical survey of the state to identify all active aggregate production operations in this state and ensure that each active aggregate production operation in this state is registered with TCEQ.

(b) Authorizes TCEQ to contract with or seek assistance from a governmental entity or other person to conduct the annual survey required by Subsection (a) to identify aggregate production operations that are not registered under this chapter.

Sec. 28A.053. INSPECTION. (a) Requires TCEQ to inspect each active aggregate production operation in this state for compliance with applicable environmental laws and rules under the jurisdiction of TCEQ at least once every three years.

(b) Authorizes TCEQ to conduct an inspection only after providing notice to the responsible party in accordance with TCEQ policy.

(c) Requires that an inspection, except as provided by Subsection (d), be conducted by one or more inspectors trained in the regulatory requirements under the jurisdiction of TCEQ that are applicable to an active aggregate production operation. Provides that each inspector, if the inspection is conducted by more than one inspector, is not required to be trained in each of the applicable regulatory requirements but requires that the combined training of the inspectors include each of the applicable regulatory requirements. Sets forth the applicable regulatory requirements.

(d) Provides that an investigation in response to a complaint satisfies the requirement of an inspection under this section if a potential noncompliance issue not related to the complaint is observed and is not within an area of expertise of the investigator but is referred by the investigator to TCEQ for further investigation or within an area of expertise of the inspector and is appropriately investigated and appropriately addressed in the investigation report.

Sec. 28A.054. REPORT. Requires TCEQ to provide a specific section in the annual enforcement report under Section 5.126 (Report on Enforcement Actions), Water Code, with certain information regarding the implementation of this chapter.

[Reserves Sections 28A.055-28A.100 for expansion.]

SUBCHAPTER C. FEES AND ENFORCEMENT

Sec. 28A.101. FEES. (a) Provides that a person who, under laws in TCEQ's jurisdiction and rules adopted under those laws, is authorized to operate an aggregate production operation annually is required to pay an aggregate production operation registration fee to TCEQ in an amount established by TCEQ rule.

(b) Requires TCEQ to set the annual registration fee in an amount sufficient to maintain a registry of active aggregate production operations in this state and implement this chapter, not to exceed \$1,000.

(c) Provides that registration fees collected under this section are required to be deposited in the water resource management account and are authorized to be used only to implement this chapter.

Sec. 28A.102. PENALTY. Authorizes TCEQ to assess a penalty of not less than \$5,000 and not more than \$10,000 for each year in which an aggregate production operation operates without being registered under this chapter. Prohibits the total penalty under this section from exceeding \$25,000 for an aggregate production operation that is operated in three or more years without being registered.

SECTION 2. (a) Provides that a responsible party operating an aggregate production operation, as those terms are defined by Section 28A.001, Water Code, as added by this Act, is first required to register with TCEQ under Section 28A.051, Water Code, as added by this Act, on September 1, 2010.

(b) Provides that if, in conjunction with initially registering with TCEQ as required by Subsection (a) of the section, a responsible party operating an aggregate production operation also submits a notice of intent to conduct an audit for compliance with all applicable laws, rules, and regulations under the jurisdiction of TCEQ under Article 4447cc, Vernon's Texas Civil Statutes, the three-year period to conduct an inspection of the operation under Section 28A.053, Water Code, as added by this Act, begins September 1, 2013.

SECTION 3. Provides the effective date of this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2009.