

By: Frost

H.B. No. 4280

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain aggregate production operations by the Texas Commission on Environmental Quality; providing penalties.

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

SECTION 1. Title 4, Natural Resources Code, is amended by adding Chapter 135 to read as follows:

CHAPTER 135. REGISTRATION AND INSPECTION OF CERTAIN AGGREGATE

PRODUCTION OPERATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 135.001. DEFINITIONS. In this chapter:

(1) "Aggregates" means any commonly recognized construction material originating from an aggregate production operation from which an operator extracts dimension stone, crushed and broken limestone, crushed and broken granite, crushed and broken stone not elsewhere classified, construction sand and gravel, industrial sand, dirt, soil, or caliche. For purposes of this section, the term "aggregates" does not include shale utilized in the production of bricks, or clay.

(2) "Aggregate production operation" means the site from which aggregates are being or have been removed or extracted from the earth, including the entire areas of extraction, stripped areas, haulage ramps, and the land on which the plant processing the raw materials is located, exclusive of any land owned or leased by

1 the responsible party not being currently used in the production of
2 aggregates. For the purposes of this chapter, the term "aggregate
3 production operation" does not include:

4 (A) a site at which the materials that are being
5 removed or extracted from the earth are used or processed at the
6 same site or at a related site under the control of the same
7 responsible party for the production of cement or lightweight
8 aggregates, or in a lime kiln;

9 (B) a temporary site that is being used solely to
10 provide aggregate products for use in a public works project
11 involving the Texas Department of Transportation or a local
12 governmental entity; or

13 (C) an extraction area from which all raw
14 material is extracted for use as fill or for other construction uses
15 at the same or a contiguous site.

16 (3) "Commission" means the Texas Commission on
17 Environmental Quality.

18 (4) "Operator" means any person engaged in and
19 responsible for the physical operation and control of the
20 extraction of aggregates.

21 (5) "Owner" means any person having title, wholly or
22 partly, to the land on which an aggregate production operation
23 exists or has existed.

24 (6) "Responsible party" means the operator, lessor, or
25 owner who is responsible for the overall function and operation of
26 an aggregate production operation.

1 [Sections 135.002-135.050 reserved for expansion]

2 SUBCHAPTER B. REGISTRATION AND INSPECTION

3 Sec. 135.051. REGISTRATION. (a) The responsible party for
4 an aggregate production operation shall register the operation with
5 the commission not later than the 10th business day before the
6 beginning date of extraction activities and shall renew the
7 registration annually as extraction activities continue.

8 (b) After extraction activities at an aggregate production
9 operation have ceased and the operator has notified the commission
10 in writing that the operations have ceased, the requirements of
11 this chapter are not applicable to the aggregate production
12 operation.

13 Sec. 135.052. SURVEY. (a) The commission annually shall
14 conduct a physical survey of the state to:

15 (1) identify all aggregate production operations in
16 this state; and

17 (2) ensure that each aggregate production operation in
18 this state is registered with the commission.

19 (b) The commission may contract with or seek assistance from
20 a governmental entity or other person to conduct the annual survey
21 required by Subsection (a) to identify aggregate production
22 operations that are not registered under this chapter.

23 Sec. 135.053. INSPECTION. (a) The commission shall
24 inspect each aggregate production operation in this state for
25 compliance with applicable environmental laws and rules under the
26 jurisdiction of the commission at least once every three years.

27 (b) Notwithstanding other notice requirements required by

1 statute or commission rule, the commission may conduct an
2 inspection only after providing notice to the responsible party at
3 least five business days before the inspection.

4 (c) Except as provided by Subsection (d), an inspection must
5 be conducted by one or more inspectors trained in the regulatory
6 requirements under the jurisdiction of the commission that are
7 applicable to an aggregate production operation. If the inspection
8 is conducted by more than one inspector, each inspector is not
9 required to be trained in each of the applicable regulatory
10 requirements, but the combined training of the inspectors must
11 include each of the applicable regulatory requirements. The
12 applicable regulatory requirements include requirements related
13 to:

14 (1) individual water quality permits issued under
15 Section 26.027, Water Code;

16 (2) a general water quality permit issued under
17 Section 26.040, Water Code;

18 (3) air quality permits issued under Section 382.051,
19 Health and Safety Code; and

20 (4) other regulatory requirements applicable to
21 aggregate production operations under the jurisdiction of the
22 commission.

23 (d) An investigation in response to a complaint satisfies
24 the requirement of an inspection under this section if a potential
25 noncompliance issue not related to the complaint is observed and
26 is:

27 (1) not within an area of expertise of the

1 investigator but is referred by the investigator to the agency for
2 further investigation; or

3 (2) within an area of expertise of the inspector and is
4 appropriately investigated and appropriately addressed in the
5 investigation report.

6 Sec. 135.054. REPORT. The commission shall provide a
7 specific section in the annual enforcement report under Section
8 5.126, Water Code, with information regarding the implementation of
9 this chapter, including:

10 (1) the results of the survey to locate unregistered
11 aggregate production operations under Section 135.052;

12 (2) the number and general location of the registered
13 aggregate production operations;

14 (3) the number of inspectors trained in multiple areas
15 related to the inspection of aggregate production operations;

16 (4) the number of inspections conducted; and

17 (5) the results of the inspections.

18 [Sections 135.055-135.100 reserved for expansion]

19 SUBCHAPTER C. FEES AND ENFORCEMENT

20 Sec. 135.101. FEES. (a) A person who, under laws in the
21 commission's jurisdiction and rules adopted under those laws, is
22 authorized to operate an aggregate production operation annually
23 shall pay an aggregate production operation registration fee to the
24 commission in an amount established by commission rule.

25 (b) The commission shall set the annual registration fee in
26 an amount sufficient to maintain a registry of aggregate production
27 operations in this state and implement this chapter, not to exceed

1 \$1,000.

2 (c) Registration fees collected under this section shall be
3 deposited in the state treasury and may be used only to implement
4 this chapter.

5 Sec. 135.102. PENALTY. The commission may assess a penalty
6 of not less than \$5,000 and not more than \$10,000 for each year in
7 which an aggregate production operation operates without being
8 registered under this chapter. The total penalty under this section
9 may not exceed \$25,000 for an aggregate production operation that
10 is operated in three or more years without being registered.

11 SECTION 2. (a) A responsible party operating an aggregate
12 production operation, as those terms are defined by Section
13 135.001, Natural Resources Code, as added by this Act, is first
14 required to register with the Texas Commission on Environmental
15 Quality under Section 135.051, Natural Resources Code, as added by
16 this Act, on September 1, 2010.

17 (b) If, in conjunction with initially registering with the
18 commission as required by Subsection (a) of this section, a
19 responsible party operating an aggregate production operation also
20 submits a notice of intent to conduct an audit for compliance with
21 all applicable laws, rules, and regulations under the jurisdiction
22 of the Texas Commission on Environmental Quality under Article
23 4447cc, Revised Statutes, the three-year period to conduct an
24 inspection of the operation under Section 135.053, Natural
25 Resources Code, as added by this Act, begins September 1, 2013.

26 SECTION 3. This Act takes effect September 1, 2009.