

By: Williams

S.B. No. 800

A BILL TO BE ENTITLED

AN ACT

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

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

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

SUBCHAPTER N. SAN JACINTO RIVER WATER QUALITY PROTECTION AREA

Sec. 26.601. DEFINITIONS. In this subchapter:

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

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

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

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

(5) "Responsible party" means the owner, operator, lessor, or lessee who is responsible for the overall function and 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 Interstate Highway 45
9 downstream to its confluence with the West Fork of the San Jacinto
10 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, 2009, to September 1,
2 2029, the commission shall apply this subchapter only as a pilot
3 program in the San Jacinto water quality protection area.

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

10 (b) Except as provided by Subsection (c), the commission by
11 rule shall prohibit the construction or operation of a new quarry
12 and the expansion of an existing quarry if the new or existing
13 quarry is to be or is located 100 feet or less from a stream that is
14 in a water quality protection area designated under this
15 subchapter.

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

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

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

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

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

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

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

7 (4) closure of a quarry, after quarry activities have
8 ended, consistent with best management standards and practices
9 adopted by the commission for quarry stabilization and reuse, which
10 may include soil stabilization and compacting, grading, erosion
11 control measures, removal of waste, debris, and structures, and
12 revegetation.

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

17 (f) In addition to any other requirements established by
18 commission rule under Subsections (d) and (e), the responsible
19 party for a quarry located in a water quality protection area who is
20 required to obtain an authorization to use a general permit shall
21 include with an application filed with the commission for the
22 authorization:

23 (1) a proposed plan of action for how the responsible
24 party will restore a receiving water body to background conditions
25 in the event of an unauthorized discharge that affects the water
26 body; and

27 (2) a proposed plan of action for how the responsible

1 party will close the quarry, consistent with commission standards,
2 that includes:

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

6 (B) a schedule within which the effort to close
7 the quarry may reasonably be required to be completed after quarry
8 activities have ended.

9 Sec. 26.604. FINANCIAL RESPONSIBILITY; VIOLATION.

10 (a) The commission by rule shall adopt requirements for
11 maintaining acceptable evidence of financial responsibility for:

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

14 (2) taking corrective action for and compensating for
15 water quality effects caused by an unauthorized discharge resulting
16 from quarrying; and

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

20 (b) A responsible party may not operate a permitted quarry
21 knowing that acceptable evidence of financial responsibility has
22 not been maintained.

23 Sec. 26.605. INSPECTIONS OF AND SAMPLING OF WATER IN PILOT

24 AREA. (a) To detect potential violations of this subchapter in
25 the San Jacinto water quality protection area, the commission, the
26 San Jacinto River Authority, and the Parks and Wildlife Department
27 shall coordinate efforts to conduct:

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

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

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

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

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

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

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

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

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

27 Sec. 26.607. EMERGENCY ORDERS. The commission may issue a

1 temporary or emergency order under Section 5.509 relating to a
2 discharge of waste or pollutants from a quarry into or adjacent to
3 water in a water quality protection area designated under this
4 subchapter.

5 Sec. 26.608. RECOVERY OF COSTS FOR UNAUTHORIZED DISCHARGES
6 WITHIN WATER QUALITY PROTECTION AREA. If the commission has
7 incurred any costs in undertaking a corrective or enforcement
8 action with respect to an unauthorized discharge from a quarry
9 under this subchapter, including a reclamation or restoration
10 action, the responsible party is liable to this state for all
11 reasonable costs of the corrective or enforcement action, including
12 court costs and reasonable attorney's fees, and for any punitive
13 damages that may be assessed by the court.

14 Sec. 26.609. COOPERATION WITH OTHER STATE AGENCIES.
15 (a) The commission is the principal authority in this state on
16 matters relating to the implementation of this subchapter. All
17 other state agencies engaged in water quality or water pollution
18 control activities in a water quality protection area designated
19 under this subchapter shall coordinate those activities with the
20 commission.

21 (b) The executive director, with the consent of the
22 commission, may enter into contracts, memoranda of understanding,
23 or other agreements with other state agencies for purposes of
24 developing requirements, including requirements for financial
25 responsibility, for inclusion in any general permit required by
26 this subchapter that are adequate to protect the water resources in
27 the water quality protection area.

1 Sec. 26.610. WATER QUALITY PROTECTION AREA REPORTS.

2 (a) On or before December 1, 2010, the commission shall prepare a
3 report describing its implementation of this subchapter and provide
4 copies of the report to the governor, lieutenant governor, and
5 speaker of the house of representatives.

6 (b) Beginning December 1, 2012, and on December 1 of each
7 succeeding even-numbered year, the commission shall deliver a
8 report to the governor, lieutenant governor, and speaker of the
9 house of representatives evaluating the implementation and
10 operation of the water quality protection permitting and
11 enforcement programs developed under this subchapter.

12 (c) At the discretion of the commission, the report under
13 Subsection (b) may be consolidated with any other appropriate
14 agency biennial report, including the report required under
15 Subchapter M, except that information specific to any water quality
16 protection area designated under this subchapter must be clearly
17 identified.

18 Sec. 26.611. EXPIRATION. This subchapter expires September
19 1, 2029.

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

23 (b) A responsible party required to obtain an authorization
24 to use a general permit described by Subchapter N, Chapter 26, Water
25 Code, as added by this Act, shall submit an application for the
26 authorization on or before the 180th day after the date rules of the
27 Texas Commission on Environmental Quality adopted under that

1 subchapter take effect.

2 SECTION 3. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2009.