

By: Williams

S.B. No. 1414

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the regulation of certain aggregate production  
3 operations by the Texas Commission on Environmental Quality;  
4 providing penalties.

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

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

8 CHAPTER 135. REGISTRATION AND INSPECTION OF CERTAIN AGGREGATE

9 PRODUCTION OPERATIONS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 135.001. DEFINITIONS. In this chapter:

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

20 (2) "Aggregate production operation" means the site  
21 from which aggregates are being or have been removed or extracted  
22 from the earth, including the entire areas of extraction, stripped  
23 areas, haulage ramps, and the land on which the plant processing the  
24 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.

27 [Sections 135.002-135.050 reserved for expansion]

1           SUBCHAPTER B. REGISTRATION AND INSPECTION

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

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

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

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

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

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

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

26           (b) Notwithstanding other notice requirements required by  
27 statute or commission rule, the commission may conduct an

1 inspection only after providing notice to the responsible party at  
2 least five business days before the inspection.

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

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

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

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

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

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

26 (1) not within an area of expertise of the  
27 investigator but is referred by the investigator to the agency for

1 further investigation; or

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

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

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

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

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

15 (4) the number of inspections conducted; and

16 (5) the results of the inspections.

17 [Sections 135.055-135.100 reserved for expansion]

18 SUBCHAPTER C. FEES AND ENFORCEMENT

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

24 (b) The commission shall set the annual registration fee in  
25 an amount sufficient to maintain a registry of aggregate production  
26 operations in this state and implement this chapter, not to exceed  
27 \$1,000.

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

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