

1-1 By: Williams S.B. No. 1414
1-2 (In the Senate - Filed March 5, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 7, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 7, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1414 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of certain aggregate production
1-11 operations by the Texas Commission on Environmental Quality;
1-12 providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subtitle D, Title 2, Water Code, is amended by
1-15 adding Chapter 28A to read as follows:

1-16 CHAPTER 28A. REGISTRATION AND INSPECTION OF CERTAIN AGGREGATE
1-17 PRODUCTION OPERATIONS

1-18 SUBCHAPTER A. GENERAL PROVISIONS

1-19 Sec. 28A.001. DEFINITIONS. In this chapter:

1-20 (1) "Aggregate production operation" means the site
1-21 from which aggregates are being or have been removed or extracted
1-22 from the earth, including the entire areas of extraction, stripped
1-23 areas, haulage ramps, and the land on which the plant processing the
1-24 raw materials is located, exclusive of any land owned or leased by
1-25 the responsible party not being currently used in the production of
1-26 aggregates. For the purposes of this chapter, the term "aggregate
1-27 production operation" does not include:

1-28 (A) a site at which the materials that are being
1-29 removed or extracted from the earth are used or processed at the
1-30 same site or at a related site under the control of the same
1-31 responsible party for the production of cement or lightweight
1-32 aggregates, or in a lime kiln;

1-33 (B) a temporary site that is being used solely to
1-34 provide aggregate products for use in a public works project
1-35 involving the Texas Department of Transportation or a local
1-36 governmental entity; or

1-37 (C) an extraction area from which all raw
1-38 material is extracted for use as fill or for other construction uses
1-39 at the same or a contiguous site.

1-40 (2) "Aggregates" means any commonly recognized
1-41 construction material originating from an aggregate production
1-42 operation from which an operator extracts dimension stone, crushed
1-43 and broken limestone, crushed and broken granite, crushed and
1-44 broken stone not elsewhere classified, construction sand and
1-45 gravel, industrial sand, dirt, soil, or caliche. For purposes of
1-46 this section, the term "aggregates" does not include shale utilized
1-47 in the production of bricks or clay.

1-48 (3) "Commission" means the Texas Commission on
1-49 Environmental Quality.

1-50 (4) "Operator" means any person engaged in and
1-51 responsible for the physical operation and control of the
1-52 extraction of aggregates.

1-53 (5) "Owner" means any person having title, wholly or
1-54 partly, to the land on which an aggregate production operation
1-55 exists or has existed.

1-56 (6) "Responsible party" means the operator, lessor, or
1-57 owner who is responsible for the overall function and operation of
1-58 an aggregate production operation.

1-59 [Sections 28A.002-28A.050 reserved for expansion]

1-60 SUBCHAPTER B. REGISTRATION AND INSPECTION

1-61 Sec. 28A.051. REGISTRATION. (a) The responsible party for
1-62 an aggregate production operation shall register the operation with
1-63 the commission not later than the 10th business day before the

2-1 beginning date of extraction activities and shall renew the
 2-2 registration annually as extraction activities continue.

2-3 (b) After extraction activities at an aggregate production
 2-4 operation have ceased and the operator has notified the commission
 2-5 in writing that the operations have ceased, the requirements of
 2-6 this chapter are not applicable to the aggregate production
 2-7 operation.

2-8 Sec. 28A.052. SURVEY. (a) The commission annually shall
 2-9 conduct a physical survey of the state to:

2-10 (1) identify all active aggregate production
 2-11 operations in this state; and

2-12 (2) ensure that each active aggregate production
 2-13 operation in this state is registered with the commission.

2-14 (b) The commission may contract with or seek assistance from
 2-15 a governmental entity or other person to conduct the annual survey
 2-16 required by Subsection (a) to identify active aggregate production
 2-17 operations that are not registered under this chapter.

2-18 Sec. 28A.053. INSPECTION. (a) The commission shall
 2-19 inspect each active aggregate production operation in this state
 2-20 for compliance with applicable environmental laws and rules under
 2-21 the jurisdiction of the commission at least once every three years.

2-22 (b) The commission may conduct an inspection only after
 2-23 providing notice to the responsible party in accordance with
 2-24 commission policy.

2-25 (c) Except as provided by Subsection (d), an inspection must
 2-26 be conducted by one or more inspectors trained in the regulatory
 2-27 requirements under the jurisdiction of the commission that are
 2-28 applicable to an active aggregate production operation. If the
 2-29 inspection is conducted by more than one inspector, each inspector
 2-30 is not required to be trained in each of the applicable regulatory
 2-31 requirements, but the combined training of the inspectors must
 2-32 include each of the applicable regulatory requirements. The
 2-33 applicable regulatory requirements include requirements related
 2-34 to:

2-35 (1) individual water quality permits issued under
 2-36 Section 26.027;

2-37 (2) a general water quality permit issued under
 2-38 Section 26.040;

2-39 (3) air quality permits issued under Section 382.051,
 2-40 Health and Safety Code; and

2-41 (4) other regulatory requirements applicable to
 2-42 active aggregate production operations under the jurisdiction of
 2-43 the commission.

2-44 (d) An investigation in response to a complaint satisfies
 2-45 the requirement of an inspection under this section if a potential
 2-46 noncompliance issue not related to the complaint is observed and
 2-47 is:

2-48 (1) not within an area of expertise of the
 2-49 investigator but is referred by the investigator to the commission
 2-50 for further investigation; or

2-51 (2) within an area of expertise of the inspector and is
 2-52 appropriately investigated and appropriately addressed in the
 2-53 investigation report.

2-54 Sec. 28A.054. REPORT. The commission shall provide a
 2-55 specific section in the annual enforcement report under Section
 2-56 5.126 with information regarding the implementation of this
 2-57 chapter, including:

2-58 (1) the results of the survey to locate unregistered
 2-59 active aggregate production operations under Section 28A.052;

2-60 (2) the number and general location of the registered
 2-61 aggregate production operations;

2-62 (3) the number of inspectors trained in multiple areas
 2-63 related to the inspection of aggregate production operations;

2-64 (4) the number of inspections conducted; and

2-65 (5) the results of the inspections.

2-66 [Sections 28A.055-28A.100 reserved for expansion]

2-67 SUBCHAPTER C. FEES AND ENFORCEMENT

2-68 Sec. 28A.101. FEES. (a) A person who, under laws in the
 2-69 commission's jurisdiction and rules adopted under those laws, is

3-1 authorized to operate an aggregate production operation annually
3-2 shall pay an aggregate production operation registration fee to the
3-3 commission in an amount established by commission rule.

3-4 (b) The commission shall set the annual registration fee in
3-5 an amount sufficient to maintain a registry of active aggregate
3-6 production operations in this state and implement this chapter, not
3-7 to exceed \$1,000.

3-8 (c) Registration fees collected under this section shall be
3-9 deposited in the water resource management account and may be used
3-10 only to implement this chapter.

3-11 Sec. 28A.102. PENALTY. The commission may assess a penalty
3-12 of not less than \$5,000 and not more than \$10,000 for each year in
3-13 which an aggregate production operation operates without being
3-14 registered under this chapter. The total penalty under this
3-15 section may not exceed \$25,000 for an aggregate production
3-16 operation that is operated in three or more years without being
3-17 registered.

3-18 SECTION 2. (a) A responsible party operating an aggregate
3-19 production operation, as those terms are defined by Section
3-20 28A.001, Water Code, as added by this Act, is first required to
3-21 register with the Texas Commission on Environmental Quality under
3-22 Section 28A.051, Water Code, as added by this Act, on September 1,
3-23 2010.

3-24 (b) If, in conjunction with initially registering with the
3-25 Texas Commission on Environmental Quality as required by Subsection
3-26 (a) of this section, a responsible party operating an aggregate
3-27 production operation also submits a notice of intent to conduct an
3-28 audit for compliance with all applicable laws, rules, and
3-29 regulations under the jurisdiction of the Texas Commission on
3-30 Environmental Quality under the Texas Environmental, Health, and
3-31 Safety Audit Privilege Act (Article 4447cc, Vernon's Texas Civil
3-32 Statutes), the three-year period to conduct an inspection of the
3-33 operation under Section 28A.053, Water Code, as added by this Act,
3-34 begins September 1, 2013.

3-35 SECTION 3. This Act takes effect September 1, 2009.

3-36 * * * * *