

By: Williams, Carona

S.B. No. 160

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

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 28A.001. DEFINITIONS. In this chapter:

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

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

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

5           (C) an extraction area from which all raw  
6 material is extracted for use as fill or for other construction uses  
7 at the same or a contiguous site; or

8           (D) a site at which the materials that are being  
9 removed or extracted from the earth are used or processed for use in  
10 the construction, modification, or expansion of a solid waste  
11 facility at the site or another location.

12           (2) "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 clay or shale  
19 mined for use in manufacturing structural clay products.

20           (3) "Commission" means the Texas Commission on  
21 Environmental Quality.

22           (4) "Operator" means any person engaged in and  
23 responsible for the physical operation and control of the  
24 extraction of aggregates.

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

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

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

5           SUBCHAPTER B. REGISTRATION AND INSPECTION

6           Sec. 28A.051. REGISTRATION. (a) The responsible party for  
7 an aggregate production operation shall register the operation with  
8 the commission not later than the 10th business day before the  
9 beginning date of extraction activities and shall renew the  
10 registration annually as extraction activities continue.

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

16           Sec. 28A.052. SURVEY. (a) The commission annually shall  
17 conduct a physical survey of the state to:

18           (1) identify all active aggregate production  
19 operations in this state; and

20           (2) ensure that each active aggregate production  
21 operation in this state is registered with the commission.

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

26           Sec. 28A.053. INSPECTION. (a) The commission shall  
27 inspect each active aggregate production operation in this state

1 for compliance with applicable environmental laws and rules under  
2 the jurisdiction of the commission at least once every three years.

3 (b) The commission may conduct an inspection only after  
4 providing notice to the responsible party in accordance with  
5 commission policy.

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

16 (1) individual water quality permits issued under  
17 Section 26.027;

18 (2) a general water quality permit issued under  
19 Section 26.040;

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

22 (4) other regulatory requirements applicable to  
23 active aggregate production operations under the jurisdiction of  
24 the commission.

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

1 is:

2 (1) not within an area of expertise of the  
3 investigator but is referred by the investigator to the commission  
4 for further investigation; or

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

8 Sec. 28A.054. REPORT. The commission shall provide a  
9 specific section in the annual enforcement report under Section  
10 5.126 with information regarding the implementation of this  
11 chapter, including:

12 (1) the results of the survey to locate unregistered  
13 active aggregate production operations under Section 28A.052;

14 (2) the number and general location of the registered  
15 aggregate production operations;

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

18 (4) the number of inspections conducted; and

19 (5) the results of the inspections.

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

21 SUBCHAPTER C. FEES AND ENFORCEMENT

22 Sec. 28A.101. FEES. (a) A person who, under laws in the  
23 commission's jurisdiction and rules adopted under those laws, is  
24 authorized to operate an aggregate production operation shall pay  
25 annually an aggregate production operation registration fee to the  
26 commission in an amount established by commission rule.

27 (b) The commission shall set the annual registration fee in

1 an amount sufficient to maintain a registry of active aggregate  
2 production operations in this state and implement this chapter, not  
3 to exceed \$1,000.

4 (c) Registration fees collected under this section shall be  
5 deposited in the water resource management account and may be used  
6 only to implement this chapter.

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

14 SECTION 2. (a) A responsible party operating an aggregate  
15 production operation, as those terms are defined by Section  
16 28A.001, Water Code, as added by this Act, is first required to  
17 register with the Texas Commission on Environmental Quality under  
18 Section 28A.051, Water Code, as added by this Act, on September 1,  
19 2012.

20 (b) If, in conjunction with initially registering with the  
21 Texas Commission on Environmental Quality as required by Subsection  
22 (a) of this section, a responsible party operating an aggregate  
23 production operation also submits a notice of intent to conduct an  
24 audit for compliance with all applicable laws, rules, and  
25 regulations under the jurisdiction of the Texas Commission on  
26 Environmental Quality under the Texas Environmental, Health, and  
27 Safety Audit Privilege Act (Article 4447cc, Vernon's Texas Civil

1 Statutes), the three-year period to conduct an inspection of the  
2 operation under Section 28A.053, Water Code, as added by this Act,  
3 begins September 1, 2015.

4 SECTION 3. This Act takes effect September 1, 2011.