

1-1 By: Williams S.B. No. 160
1-2 (In the Senate - Filed November 8, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Natural Resources;
1-4 March 14, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 11, Nays 0; March 14, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 160 By: Nichols

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;

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; or

1-40 (D) a site at which the materials that are being
1-41 removed or extracted from the earth are used or processed for use in
1-42 the construction, modification, or expansion of a solid waste
1-43 facility at the site or another location.

1-44 (2) "Aggregates" means any commonly recognized
1-45 construction material originating from an aggregate production
1-46 operation from which an operator extracts dimension stone, crushed
1-47 and broken limestone, crushed and broken granite, crushed and
1-48 broken stone not elsewhere classified, construction sand and
1-49 gravel, industrial sand, dirt, soil, or caliche. For purposes of
1-50 this section, the term "aggregates" does not include clay or shale
1-51 mined for use in manufacturing structural clay products.

1-52 (3) "Commission" means the Texas Commission on
1-53 Environmental Quality.

1-54 (4) "Operator" means any person engaged in and
1-55 responsible for the physical operation and control of the
1-56 extraction of aggregates.

1-57 (5) "Owner" means any person having title, wholly or
1-58 partly, to the land on which an aggregate production operation
1-59 exists or has existed.

1-60 (6) "Responsible party" means the operator, lessor, or
1-61 owner who is responsible for the overall function and operation of
1-62 an aggregate production operation.

1-63 [Sections 28A.002-28A.050 reserved for expansion]

2-1 SUBCHAPTER B. REGISTRATION AND INSPECTION

2-2 Sec. 28A.051. REGISTRATION. (a) The responsible party for
 2-3 an aggregate production operation shall register the operation with
 2-4 the commission not later than the 10th business day before the
 2-5 beginning date of extraction activities and shall renew the
 2-6 registration annually as extraction activities continue.

2-7 (b) After extraction activities at an aggregate production
 2-8 operation have ceased and the operator has notified the commission
 2-9 in writing that the operations have ceased, the requirements of
 2-10 this chapter are not applicable to the aggregate production
 2-11 operation.

2-12 Sec. 28A.052. SURVEY. (a) The commission annually shall
 2-13 conduct a physical survey of the state to:

2-14 (1) identify all active aggregate production
 2-15 operations in this state; and

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

2-18 (b) The commission may contract with or seek assistance from
 2-19 a governmental entity or other person to conduct the annual survey
 2-20 required by Subsection (a) to identify active aggregate production
 2-21 operations that are not registered under this chapter.

2-22 Sec. 28A.053. INSPECTION. (a) The commission shall
 2-23 inspect each active aggregate production operation in this state
 2-24 for compliance with applicable environmental laws and rules under
 2-25 the jurisdiction of the commission at least once every three years.

2-26 (b) The commission may conduct an inspection only after
 2-27 providing notice to the responsible party in accordance with
 2-28 commission policy.

2-29 (c) Except as provided by Subsection (d), an inspection must
 2-30 be conducted by one or more inspectors trained in the regulatory
 2-31 requirements under the jurisdiction of the commission that are
 2-32 applicable to an active aggregate production operation. If the
 2-33 inspection is conducted by more than one inspector, each inspector
 2-34 is not required to be trained in each of the applicable regulatory
 2-35 requirements, but the combined training of the inspectors must
 2-36 include each of the applicable regulatory requirements. The
 2-37 applicable regulatory requirements include requirements related
 2-38 to:

2-39 (1) individual water quality permits issued under
 2-40 Section 26.027;

2-41 (2) a general water quality permit issued under
 2-42 Section 26.040;

2-43 (3) air quality permits issued under Section 382.051,
 2-44 Health and Safety Code; and

2-45 (4) other regulatory requirements applicable to
 2-46 active aggregate production operations under the jurisdiction of
 2-47 the commission.

2-48 (d) An investigation in response to a complaint satisfies
 2-49 the requirement of an inspection under this section if a potential
 2-50 noncompliance issue not related to the complaint is observed and
 2-51 is:

2-52 (1) not within an area of expertise of the
 2-53 investigator but is referred by the investigator to the commission
 2-54 for further investigation; or

2-55 (2) within an area of expertise of the inspector and is
 2-56 appropriately investigated and appropriately addressed in the
 2-57 investigation report.

2-58 Sec. 28A.054. REPORT. The commission shall provide a
 2-59 specific section in the annual enforcement report under Section
 2-60 5.126 with information regarding the implementation of this
 2-61 chapter, including:

2-62 (1) the results of the survey to locate unregistered
 2-63 active aggregate production operations under Section 28A.052;

2-64 (2) the number and general location of the registered
 2-65 aggregate production operations;

2-66 (3) the number of inspectors trained in multiple areas
 2-67 related to the inspection of aggregate production operations;

2-68 (4) the number of inspections conducted; and

2-69 (5) the results of the inspections.

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

SUBCHAPTER C. FEES AND ENFORCEMENT

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

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

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

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

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

(b) If, in conjunction with initially registering with the Texas Commission on Environmental Quality as required by Subsection (a) of this section, a responsible party operating an aggregate production operation also submits a notice of intent to conduct an audit for compliance with all applicable laws, rules, and regulations under the jurisdiction of the Texas Commission on Environmental Quality under the Texas Environmental, Health, and Safety Audit Privilege Act (Article 4447cc, Vernon's Texas Civil Statutes), the three-year period to conduct an inspection of the operation under Section 28A.053, Water Code, as added by this Act, begins September 1, 2015.

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

* * * * *