86R15856 JXC-D

By:  Biedermann H.B. No. 3798

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of and permit requirements for certain facilities that extract, produce, or process aggregates and of related facilities by the Texas Commission on Environmental Quality and the Railroad Commission of Texas; providing administrative penalties and other civil remedies; creating criminal offenses.

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

SECTION 1.  Section 382.0516, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c)  In addition to the notice required by Subsection (a), for an application that relates to a facility that is or is proposed to be part of an aggregate production operation required to be registered under Section 28A.051, Water Code, on receiving the application, the commission shall send notice of the application to each school district in which the operation is located and any other school district located less than five miles from the site of the proposed facility.

SECTION 2.  Section 382.056(r), Health and Safety Code, is amended to read as follows:

(r)  This section does not apply to:

(1)  the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years;

(2)  a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3)  a facility described by Section 382.065(c), unless that facility is in a county with a population of one [~~3.3~~] million or more or in a county adjacent to such a county.

SECTION 3.  Sections 382.065(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a)  The commission by rule shall prohibit the operation of a concrete crushing facility within one mile [~~440 yards~~] of a building in use as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the facility at a site near the residence, school, or place of worship is filed with the commission. The measurement of distance for purposes of this subsection shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place of worship that is nearest the concrete crushing facility.

(b)  Subsection (a) does not apply to a concrete crushing facility:

(1)  at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001;

(2)  at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within one mile [~~440 yards~~] of the facility; or

(3)  that:

(A)  uses a concrete crusher:

(i)  in the manufacture of products that contain recycled materials; and

(ii)  that is located in an enclosed building; and

(B)  is located:

(i)  within 25 miles of an international border; and

(ii)  in a municipality with a population of not less than 6,100 but not more than 20,000.

(d)  Notwithstanding Subsection (c), Subsection (a) applies to a concrete crushing facility in a county with a population of one [~~3.3~~] million or more or in a county adjacent to such a county.

SECTION 4.  Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.069 to read as follows:

Sec. 382.069.  AGGREGATE PRODUCTION OPERATIONS. (a) This section applies only to a permit for a facility that is or is proposed to be part of an aggregate production operation required to be registered under Section 28A.051, Water Code.

(b)  The commission may adopt a standard audit and air sampling program for permit holders.

(c)  The commission shall adopt a policy to grant a permit holder who is not subject to Chapter 1101 the privileges established in Chapter 1101 if the permit holder chooses to comply with the requirements of Chapter 1101 for the facility for which the permit is issued.

(d)  The commission may not grant a permit application that relates to a proposed facility under this chapter unless the applicant provides to the commission documentation of any required permit issued to the applicant by:

(1)  each groundwater conservation district in which the proposed facility will be located; and

(2)  the Railroad Commission of Texas under Chapter 135, Natural Resources Code.

SECTION 5.  Title 4, Natural Resources Code, is amended by adding Chapter 135 to read as follows:

CHAPTER 135. AGGREGATE PRODUCTION OPERATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 135.0001.  DEFINITIONS. In this chapter:

(1)  "Affected land" means:

(A)  the area from which any materials are to be or have been displaced in an aggregate production operation;

(B)  the area on which any materials that are displaced are to be or have been deposited;

(C)  the haul roads and impoundment basins within the aggregate production operation; and

(D)  other land whose natural state has been or will be disturbed as a result of the aggregate production operations.

(2)  "Aggregate production operation" means an extraction operation at an aggregate production operation site described by Section 28A.001(1), Water Code.

(3)  "Commission" means the Railroad Commission of Texas.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 135.0051.  GENERAL AUTHORITY OF COMMISSION. To accomplish the purposes of this chapter, the commission may:

(1)  adopt, amend, and enforce rules pertaining to aggregate production operations consistent with this chapter;

(2)  issue permits under this chapter;

(3)  conduct hearings under this chapter and Chapter 2001, Government Code;

(4)  issue orders requiring a person to take actions necessary to comply with this chapter or rules adopted under this chapter;

(5)  issue orders modifying previous orders;

(6)  issue a final order revoking the permit of a person who has not complied with a commission order to take action required by this chapter or rules adopted under this chapter;

(7)  hire employees, adopt standards for employment, and hire or authorize the hiring of outside contractors to assist in carrying out this chapter;

(8)  accept, receive, and administer grants, gifts, loans, or other money made available from any source for the purposes of this chapter; and

(9)  perform any other duty or act required by or provided for in this chapter.

Sec. 135.0052.  MONITORING, REPORTING, AND INSPECTIONS. (a) The commission may:

(1)  require monitoring and reporting;

(2)  enter and inspect aggregate production operations; and

(3)  take other actions necessary to administer, enforce, or evaluate the administration of this chapter.

(b)  For purposes of this section, the commission or its authorized representative:

(1)  without advance notice and on presentation of appropriate credentials, has the right to enter:

(A)  an aggregate production operation; or

(B)  premises on which records required to be maintained are located; and

(2)  at reasonable times and without delay, may have access to and copy records required under this chapter or rules adopted under this chapter or inspect any monitoring equipment or method of operation required under this chapter or rules adopted under this chapter.

SUBCHAPTER C. RECLAMATION PERMIT

Sec. 135.0101.  RECLAMATION OBJECTIVE. (a) The basic objective of reclamation is to reestablish on a continuing basis, where required, vegetation and other natural conditions consistent with the anticipated subsequent use of the affected land.

(b)  The process of reclamation may require contouring, terracing, grading, backfilling, resoiling, revegetation, compaction and stabilization and settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to minimize water diminution to existing water sources, pollution, soil and wind erosion, or flooding resulting from extraction or any other activity that may be considered necessary to accomplish the reclamation of the affected land to a substantially beneficial condition.

Sec. 135.0102.  RECLAMATION PERMIT REQUIRED. (a) A person may not conduct an aggregate production operation that includes a facility for which a permit is required under Chapter 382, Health and Safety Code, without first obtaining a reclamation permit for that operation from the commission under this chapter.

(b)  The commission by rule shall establish requirements for obtaining a permit. The requirements must:

(1)  ensure that the permit holder is capable of completing a reclamation process for the permit area in a manner that is compatible with the objective described by Section 135.0101; and

(2)  be modeled on the reclamation requirements for surface mining of uranium and uranium ore under Chapter 131 and surface coal mining under Chapter 134, including the submission of a reclamation plan and a performance bond.

Sec. 135.0103.  PERMIT APPLICATION AND ISSUANCE. (a) The commission by rule shall establish requirements for submitting a permit application.

(b)  Chapter 2001, Government Code, applies to a permit application under this chapter.

(c)  On the basis of a complete application for a permit, the commission shall approve, require modification of, or deny a permit application.

(d)  An applicant for a permit has the burden of establishing that the application complies with this chapter and rules adopted under this chapter.

Sec. 135.0104.  PERMIT REVISIONS. (a) The commission by rule shall require that a permit holder:

(1)  notify the commission of any significant changes in a condition that the commission evaluated as part of the permit application process that occur after the permit was issued; and

(2)  apply for a permit revision if the commission determines a revision is appropriate.

(b)  A permit revision application is subject to the same requirements for issuance as an initial permit.

SUBCHAPTER D. ENFORCEMENT

Sec. 135.0151.  CIVIL OR ADMINISTRATIVE ENFORCEMENT. Subchapter H, Chapter 134, applies to the civil or administrative enforcement of this chapter or a rule, order, or permit adopted or issued under this chapter in the same manner as that subchapter applies to the civil or administrative enforcement of that chapter or a rule, order, or permit adopted or issued under that chapter.

Sec. 135.0152.  CRIMINAL PENALTY FOR WILFUL AND KNOWING VIOLATION. (a) A person commits an offense if the person wilfully and knowingly violates a condition of a permit issued under this chapter or does not comply with an order issued under this chapter, except an order incorporated in a decision issued by the commission under Section 134.175, as applicable under Section 135.0151.

(b)  An offense under this section is punishable by:

(1)  a fine of not more than $10,000;

(2)  imprisonment for not more than one year; or

(3)  both the fine and the imprisonment.

Sec. 135.0153.  CRIMINAL PENALTY FOR FALSE STATEMENT, REPRESENTATION, OR CERTIFICATION. (a) A person commits an offense if the person knowingly makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification, in an application, record, report, or other document filed or required to be maintained under this chapter or under an order of decision issued by the commission under this chapter.

(b)  An offense under this section is punishable by:

(1)  a fine of not more than $10,000;

(2)  imprisonment for not more than one year; or

(3)  both the fine and the imprisonment.

SECTION 6.  (a) Notwithstanding Chapter 382, Health and Safety Code, after the effective date of this Act, the Texas Commission on Environmental Quality may not issue a permit under Chapter 382, Health and Safety Code, for a facility that is or is proposed to be part of an aggregate production operation required to be registered under Section 28A.051, Water Code, until the commission completes the assessment and, if applicable, adopts any revisions or programs described by Subsection (b) of this section.

(b)  Not later than October 1, 2020, the Texas Commission on Environmental Quality shall conduct an assessment of the effects on air quality created by the aggregate production industry in this state to determine whether air quality models used by the commission to evaluate emissions from the production of aggregates, as defined by Section 28A.001, Water Code, are contravening the intent of Chapter 382, Health and Safety Code. The commission shall:

(1)  revise the air quality models and, if necessary, any relevant permit requirements if the commission determines from the assessment that revisions are necessary to accomplish the intent of Chapter 382, Health and Safety Code; and

(2)  adopt a standard audit and air sampling program as authorized under Section 382.069(b), Health and Safety Code, as added by this Act, if the commission determines from the assessment that such a program is necessary to accomplish the intent of Chapter 382, Health and Safety Code.

(c)  The Texas Commission on Environmental Quality shall submit to the legislature a report on the results of the assessment required by Subsection (b) of this section.

SECTION 7.  (a)  Section 6(a) of this Act does not prohibit the Texas Commission on Environmental Quality from granting an application for a permit that is filed before the effective date of this Act.

(b)  Sections 382.0516(c) and 382.069(d), Health and Safety Code, as added by this Act, and Sections 382.056(r) and 382.065, Health and Safety Code, as amended by this Act, apply only to an application for a permit that is filed with the Texas Commission on Environmental Quality on or after the effective date of this Act. An application for a permit filed before the effective date of this Act is governed by the law in effect on the date of filing, and that law is continued in effect for that purpose.

SECTION 8.  This Act takes effect September 1, 2019.