

By: Wilson

H.B. No. 509

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of aggregate production operations by the Railroad Commission of Texas; authorizing a fee; providing administrative penalties and other civil remedies; creating criminal offenses.

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

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

(2) "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;

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

4 (5) issue orders modifying previous orders;

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

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

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

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

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

18 (1) require monitoring and reporting;

19 (2) enter and inspect aggregate production
20 operations; and

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

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

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

27 (A) an aggregate production operation; or

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

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

8 Sec. 135.0053. COORDINATION BETWEEN AGENCIES. (a) To
9 avoid duplication, the commission shall establish a process for
10 coordinating the review and issuance of permits under this chapter
11 for aggregate production operations with the review and issuance of
12 any other federal or state authorizations required for the proposed
13 operations.

14 (b) In cooperation with the appropriate units of local
15 government and other state agencies, the commission shall
16 coordinate and streamline procedures under this chapter to the
17 extent possible.

18 (c) The commission may enter into a memorandum of
19 understanding with the Texas Commission on Environmental Quality,
20 the Texas Department of Transportation, or another state agency to
21 implement and administer this chapter or other state law applicable
22 to aggregate production operations.

23 SUBCHAPTER C. PERMIT

24 Sec. 135.0101. PERMIT REQUIRED. A person may not conduct an
25 aggregate production operation in this state without first
26 obtaining a permit for that operation from the commission under
27 this chapter.

1 Sec. 135.0102. CONTENTS OF PERMIT APPLICATION. A permit
2 application must be submitted in a manner satisfactory to the
3 commission and must contain:

4 (1) the name and address of:

5 (A) the applicant;

6 (B) each owner of record of the property from
7 which aggregates are to be produced;

8 (C) each holder of record of any leasehold
9 interest in the property;

10 (D) the purchaser of record of the property under
11 a real estate contract;

12 (E) the operator if the operator is not the
13 applicant;

14 (F) the principals, officers, and resident agent
15 of a person described by Paragraph (A), (B), (C), (D), or (E) if the
16 person is a business entity other than a sole proprietor; and

17 (G) the owners of record of the property
18 adjoining the permit area;

19 (2) additional information about ownership and
20 management of the applicant or operator if required by commission
21 rule;

22 (3) a copy of the notice required by Section 135.0106;

23 (4) a description of:

24 (A) the type and method of the existing or
25 proposed aggregate production operation;

26 (B) the engineering techniques proposed or in
27 use; and

- 1 (C) the equipment in use or proposed to be used;
2 (5) the anticipated or actual starting and termination
3 dates of each phase of the aggregate production operation and
4 number of acres of land to be affected;
5 (6) an accurate map or plan, to an appropriate scale,
6 clearly showing:
7 (A) the land to be affected as of the date of the
8 application; and
9 (B) the area of land in the permit area on which
10 the applicant has the right to enter and begin aggregate production
11 operations;
12 (7) the documents on which the applicant bases the
13 applicant's right to enter and begin aggregate production
14 operations on the affected area, including documentation of any
15 required permit, license, safety certificate, registration, or
16 other authorization issued by a federal agency, the Texas
17 Commission on Environmental Quality, another state agency, or a
18 political subdivision;
19 (8) a statement of whether the applicant's right to
20 enter and begin aggregate production operations on the affected
21 area is the subject of pending court litigation;
22 (9) a plan for constructing acceleration and
23 deceleration lanes for egress from and ingress to the aggregate
24 production operation to protect public safety;
25 (10) a description of the types of property
26 surrounding the permit area and potential impacts of the aggregate
27 production operation on any residents of the surrounding area;

1 (11) the distance of the permit area from the closest
2 residential area;

3 (12) a description of the potential impacts of the
4 aggregate production operation on the local economy near the permit
5 area; and

6 (13) other data and maps the commission requires by
7 rule.

8 Sec. 135.0103. ADDITIONAL PERMIT APPLICATION CONTENTS;
9 HYDROLOGY ASSESSMENT. (a) In addition to the content required
10 under Section 135.0102, a permit application must contain:

11 (1) the name of the watershed and location of the
12 surface streams or tributaries into which surface and pit drainage
13 will be discharged;

14 (2) a determination of the probable hydrologic
15 consequences of the aggregate production operation, if any, both on
16 and off the site, with respect to the hydrologic regime and the
17 quantity and quality of water in surface-water systems and
18 groundwater systems, including the dissolved and suspended solids
19 under seasonal flow conditions; and

20 (3) sufficient data on the site and surrounding area
21 for the commission to assess the probable cumulative impacts of all
22 anticipated aggregate production operations in the area on the
23 hydrology of the area, particularly on water availability.

24 (b) An applicant may submit the information and
25 determination required to be included with a permit application
26 under Subsection (a) separately from the other components of the
27 application if information on the hydrology of the area is not

1 available from the appropriate state agencies or political
2 subdivisions at the time the other components are submitted. A
3 permit may not be approved until the information and determination
4 required to be included with a permit application under Subsection
5 (a) have been submitted to the commission.

6 (c) After receiving a complete permit application, the
7 commission, in collaboration with the Texas Commission on
8 Environmental Quality and any political subdivisions with relevant
9 jurisdiction, shall:

10 (1) assess the applicant's hydrologic determination
11 made under Subsection (a)(2);

12 (2) assess the probable cumulative impact that all
13 anticipated aggregate production operations in the area will have
14 on the hydrologic balance, using the information provided by the
15 applicant under this section and any other information; and

16 (3) determine whether the operation proposed in the
17 application has been designed to prevent material damage to the
18 hydrologic balance outside the permit area.

19 Sec. 135.0104. APPLICATION FEES. (a) An application for an
20 aggregate production operation permit or for revision of a permit
21 must be accompanied by an application fee determined by the
22 commission in accordance with a published fee schedule. The
23 commission shall base the application fee as nearly as possible on
24 the actual or anticipated cost of reviewing the application.

25 (b) The application fee may not be less than:

26 (1) \$5,000 for an initial permit; or

27 (2) \$500 for revision of a permit.

1 Sec. 135.0105. PUBLIC INSPECTION OF APPLICATION. (a) An
2 applicant for an aggregate production operation permit shall file a
3 copy of the application for public inspection with the county clerk
4 of the county in which the production is proposed to occur.

5 (b) Copies of any records, reports, inspection materials,
6 or information obtained under this chapter by the commission shall
7 be made immediately available to the public at central and
8 sufficient locations in the area of aggregate production so that
9 they are conveniently available to residents in that area.

10 Sec. 135.0106. PUBLIC NOTICE BY APPLICANT. At the time the
11 applicant submits a complete application for an aggregate
12 production operation permit, the applicant shall publish an
13 advertisement in a newspaper of general circulation in the locality
14 of the proposed aggregate production operation at least once a week
15 for four consecutive weeks that:

16 (1) shows the ownership and describes the location and
17 boundaries of the proposed site sufficiently so that the proposed
18 operation can be readily located; and

19 (2) states that the application is available for
20 public inspection at the county courthouse of the county in which
21 the property lies.

22 Sec. 135.0107. NOTIFICATION OF POLITICAL SUBDIVISIONS. (a)
23 The commission shall send notice of a permit application to
24 planning agencies, sewage and water treatment authorities, special
25 districts with jurisdiction over water, municipalities, and any
26 other political subdivisions with relevant jurisdiction in the
27 locality of the proposed site.

1 (b) The notice must indicate the application number and the
2 county courthouse in which a copy of the application can be
3 inspected.

4 (c) To facilitate the commission's evaluation of the permit
5 application content required under Section 135.0102(7), the
6 commission shall include with the notice a request for the
7 recipient of the notice to provide to the commission in a timely
8 manner information on any authorizations or other documents that
9 the applicant is required to obtain from the recipient before
10 beginning the aggregate production operation.

11 Sec. 135.0108. COMMENTS ON LOCAL EFFECTS; OBJECTIONS. (a)
12 During a period established by the commission, a federal or state
13 agency, a political subdivision, or any other affected person may
14 submit to the commission written comments on the potential effects
15 of the proposed aggregate production operation on the environment
16 or economy of the locality of the operation.

17 (b) Not later than the 30th day after the date of the last
18 publication of notice under Section 135.0106, a federal or state
19 agency, a political subdivision, or any other affected person may
20 submit to the commission written objections to the proposed
21 aggregate production operation.

22 (c) The commission shall:

23 (1) immediately send the comments and objections to
24 the applicant; and

25 (2) make the comments and objections available to the
26 public at the same location as the aggregate production operation
27 permit application.

1 Sec. 135.0109. REQUEST FOR PUBLIC HEARING; NOTICE. (a) Not
2 later than the 45th day after the date of the last publication of
3 notice under Section 135.0106, the applicant or an affected person
4 may request a hearing on the application. The hearing shall be held
5 not later than the 30th day after the date the commission receives
6 the request.

7 (b) The commission shall publish notice of the date, time,
8 and location of the public hearing in a local newspaper of general
9 circulation in the locality of the proposed aggregate production
10 operation at least once a week for three consecutive weeks before
11 the scheduled hearing date.

12 Sec. 135.0110. PROCEDURE. Chapter 2001, Government Code,
13 applies to a permit application under this chapter. Notice of
14 hearing and appeal is governed by that chapter, except as provided
15 by Section 135.0109.

16 Sec. 135.0111. NOTICE OF APPROVAL OR DENIAL. (a) The
17 commission shall notify the applicant and each person who submitted
18 an objection under Section 135.0108 that the permit application has
19 been approved or denied:

20 (1) within the time provided by Chapter 2001,
21 Government Code, if a public hearing is held under Section
22 135.0109; or

23 (2) not later than the 45th day after the date of the
24 last publication of notice of application if a public hearing is not
25 held.

26 (b) The notice provided to the applicant under this section
27 must be written.

1 Sec. 135.0112. PERMIT APPROVAL OR DENIAL. (a) On the basis
2 of a complete application for an aggregate production operation
3 permit or a revision of a permit, as required by this chapter, the
4 commission shall approve, require modification of, or deny a permit
5 application.

6 (b) An applicant for a permit or a permit revision has the
7 burden of establishing that the application complies with this
8 chapter.

9 (c) Not later than the 10th day after the date the
10 commission issues a permit, the commission shall notify the county
11 judge in each county in which the land to be affected is located
12 that a permit has been issued and shall describe the location of the
13 land.

14 (d) The commission may deny a permit based on:

15 (1) a violation by the applicant of a provision of this
16 chapter or a commission rule adopted under this chapter;

17 (2) a finding by another state agency that the
18 applicant has violated a law or rule administered by that agency
19 related to the proposed aggregate production operation;

20 (3) the failure of the applicant to obtain an
21 authorization or document that the applicant is required to obtain
22 from a federal or state agency or a political subdivision before
23 beginning the aggregate production operation;

24 (4) a determination made under Section 135.0103(c)
25 that the operation has not been designed to prevent material damage
26 to the hydrologic balance outside the permit area;

27 (5) a comment or objection submitted under Section

1 135.0108; or

2 (6) testimony given in a public hearing held under
3 Section 135.0109.

4 Sec. 135.0113. WRITTEN FINDINGS REQUIRED. The commission
5 may not approve an application for a permit or a permit revision
6 unless it finds, in writing, using the information in the
7 application or information otherwise available that will be
8 documented in the approval and made available to the applicant,
9 that:

10 (1) the application is accurate and complete and
11 complies with this chapter; and

12 (2) the commission has determined under Section
13 135.0103(c) that the proposed operation has been designed to
14 prevent material damage to the hydrologic balance outside the
15 permit area.

16 Sec. 135.0114. PERMIT REVISIONS. (a) The commission by
17 rule shall require that a permit holder:

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

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

23 (b) The rules must require that, except for incidental
24 boundary changes, a permit revision that involves extending the
25 aggregate production operation beyond the boundaries authorized in
26 the permit meet all standards applicable to a new permit
27 application under this chapter.

1 Sec. 135.0115. WAIVER FOR CERTAIN OPERATIONS. (a) Except
2 as provided by Subsection (b), the requirements of this chapter are
3 waived for an aggregate production operation that, on August 31,
4 2019:

5 (1) is registered with the Texas Commission on
6 Environmental Quality under Chapter 28A, Water Code; and

7 (2) has all permits, licenses, safety certificates,
8 registrations, or other authorizations required by law for the
9 operation of an aggregate production operation, including permits
10 issued by the Texas Commission on Environmental Quality under
11 Chapter 382, Health and Safety Code.

12 (b) The commission by rule shall require that a person
13 operating an aggregate production operation described by
14 Subsection (a):

15 (1) notify the commission of any significant changes
16 in a condition that would have been evaluated as part of a permit
17 application process if the operation had been required to obtain a
18 permit under this chapter; and

19 (2) obtain a permit under this chapter if the
20 commission determines that it is appropriate to require a permit.

21 (c) The commission, in consultation with the Texas
22 Commission on Environmental Quality, shall publish a list of
23 aggregate production operations that qualify for a waiver under
24 this section and update the publication as necessary to provide
25 information on permits issued under Subsection (b).

26 SUBCHAPTER D. ENFORCEMENT

27 Sec. 135.0151. CIVIL OR ADMINISTRATIVE ENFORCEMENT.

1 Subchapter H, Chapter 134, applies to the civil or administrative
2 enforcement of this chapter or a rule, order, or permit adopted or
3 issued under this chapter in the same manner as that subchapter
4 applies to the civil or administrative enforcement of that chapter
5 or a rule, order, or permit adopted or issued under that chapter.

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

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

13 (1) a fine of not more than \$10,000;

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

15 (3) both the fine and the imprisonment.

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

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

25 (1) a fine of not more than \$10,000;

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

27 (3) both the fine and the imprisonment.

1 SECTION 2. This Act takes effect September 1, 2019.