

By: Biedermann

H.B. No. 2871

A BILL TO BE ENTITLED

1 AN ACT

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

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

7 SECTION 1. Title 4, Natural Resources Code, is amended by
8 adding Chapter 135 to read as follows:

9 CHAPTER 135. AGGREGATE PRODUCTION OPERATIONS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 135.0001. DEFINITIONS. In this chapter:

12 (1) "Affected land" means:

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

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

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

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

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

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

3 (4) "Operator" and "responsible party" have the
4 meanings assigned by Section 28A.001, Water Code.

5 Sec. 135.0002. APPLICABILITY. This chapter applies only to
6 an aggregate production operation that includes a facility for
7 which a permit is required under Chapter 382, Health and Safety
8 Code.

9 Sec. 135.0003. REPORT. The commission shall provide to the
10 governor, the lieutenant governor, and the speaker of the house of
11 representatives an annual report with information regarding the
12 implementation of this chapter, including:

13 (1) the results of the survey to locate unregistered
14 active aggregate production operations under Section 135.0102;

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

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

19 (4) the number of inspections conducted; and

20 (5) the results of the inspections.

21 Sec. 135.0004. AGGREGATE PRODUCTION OPERATION REGULATION
22 ACCOUNT. (a) The aggregate production operation regulation
23 account is created as an account in the general revenue fund of the
24 state treasury.

25 (b) Money in the aggregate production operation regulation
26 account may be used only by the commission or its employees or
27 agents for the purposes of this chapter.

1 Sec. 135.0005. MEMORANDUM OF UNDERSTANDING. The commission
2 may enter into a memorandum of understanding with the Texas
3 Commission on Environmental Quality as necessary to administer and
4 enforce this chapter.

5 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

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

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

10 (2) issue permits under this chapter;

11 (3) conduct hearings under this chapter and Chapter
12 2001, Government Code;

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

16 (5) issue orders modifying previous orders;

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

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

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

26 (9) perform any other duty or act required by or
27 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.

(c) The commission shall inspect each active aggregate production operation in this state for compliance with any applicable environmental laws and rules under the jurisdiction of the commission at least once every three years.

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

(e) Except as provided by Subsection (f), an inspection must

1 be conducted by one or more inspectors trained in the regulatory
2 requirements under the jurisdiction of the commission that are
3 applicable to an active aggregate production operation. If the
4 inspection is conducted by more than one inspector, each inspector
5 is not required to be trained in each of the applicable regulatory
6 requirements, but the combined training of the inspectors must
7 include each of the applicable regulatory requirements.

8 (f) An investigation in response to a complaint satisfies
9 the requirement of an inspection under this section if a potential
10 noncompliance issue not related to the complaint is observed and
11 is:

12 (1) not within an area of expertise of the
13 investigator but is referred by the investigator to the commission
14 for further investigation; or

15 (2) within an area of expertise of the inspector and is
16 appropriately investigated and appropriately addressed in the
17 investigation report.

18 SUBCHAPTER C. REGISTRATION AND SURVEY

19 Sec. 135.0101. REGISTRATION. (a) The responsible party
20 for an aggregate production operation shall register the operation
21 with the commission not later than the 10th business day before the
22 beginning date of extraction activities and shall renew the
23 registration annually as extraction activities continue.

24 (b) After extraction activities at an aggregate production
25 operation have ceased and the operator has notified the commission
26 in writing that the operations have ceased, the requirements of
27 this subchapter are not applicable to the aggregate production

1 operation.

2 (c) The commission may not register an aggregate production
3 operation unless the commission has issued a reclamation permit for
4 the operation under Subchapter D.

5 (d) The commission may not register an aggregate production
6 operation unless the responsible party provides to the commission
7 documentation of any required permit issued for the operation by
8 each groundwater conservation district in which the operation is
9 located.

10 Sec. 135.0102. SURVEY. (a) The commission annually shall
11 conduct a physical survey of the state to:

12 (1) identify all active aggregate production
13 operations in this state; and

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

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

20 Sec. 135.0103. FEES. (a) A person who registers an
21 aggregate production operation under this subchapter shall pay
22 annually an aggregate production operation registration fee to the
23 commission in an amount established by commission rule.

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

1 (c) Registration fees collected under this section shall be
2 deposited in the aggregate production operation regulation account
3 and may be used only to implement this chapter.

4 Sec. 135.0104. REGISTRATION PENALTY. The commission may
5 assess a penalty of not less than \$5,000 and not more than \$10,000
6 for each year in which an aggregate production operation operates
7 without being registered under this subchapter. The total penalty
8 under this section may not exceed \$25,000 for an aggregate
9 production operation that is operated in three or more years
10 without being registered.

11 SUBCHAPTER D. RECLAMATION PERMIT

12 Sec. 135.0151. RECLAMATION OBJECTIVE. (a) The basic
13 objective of reclamation is to reestablish on a continuing basis,
14 where required, vegetation and other natural conditions consistent
15 with the anticipated subsequent use of the affected land.

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

25 Sec. 135.0152. RECLAMATION PERMIT REQUIRED. (a) A person
26 may not conduct an aggregate production operation without first
27 obtaining a reclamation permit for that operation from the

1 commission under this subchapter.

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

4 (1) ensure that the permit holder is capable of
5 completing a reclamation process for the permit area in a manner
6 that is compatible with the objective described by Section
7 135.0151; and

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

12 Sec. 135.0153. PERMIT APPLICATION AND ISSUANCE. (a) The
13 commission by rule shall establish requirements for submitting a
14 permit application.

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

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

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

23 Sec. 135.0154. PERMIT REVISIONS. (a) The commission by
24 rule shall require that a permit holder:

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

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

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

5 Sec. 135.0155. CIVIL OR ADMINISTRATIVE ENFORCEMENT.

6 Subchapter H, Chapter 134, applies to the civil or administrative
7 enforcement of this subchapter or a rule, order, or permit adopted
8 or issued under this subchapter in the same manner as Subchapter H,
9 Chapter 134, applies to the civil or administrative enforcement of
10 that chapter or a rule, order, or permit adopted or issued under
11 that chapter.

12 Sec. 135.0156. CRIMINAL PENALTY FOR WILFUL AND KNOWING
13 VIOLATION. (a) A person commits an offense if the person wilfully
14 and knowingly violates a condition of a permit issued under this
15 subchapter or does not comply with an order issued under this
16 subchapter, except an order incorporated in a decision issued by
17 the commission under Section 134.175, as applicable under Section
18 135.0155.

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

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

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

22 (3) both the fine and the imprisonment.

23 Sec. 135.0157. CRIMINAL PENALTY FOR FALSE STATEMENT,
24 REPRESENTATION, OR CERTIFICATION. (a) A person commits an offense
25 if the person knowingly makes a false statement, representation, or
26 certification, or knowingly fails to make a statement,
27 representation, or certification, in an application, record,

1 report, or other document filed or required to be maintained under
2 this subchapter or under an order of decision issued by the
3 commission under this subchapter.

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

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

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

7 (3) both the fine and the imprisonment.

8 SECTION 2. Subchapter A, Chapter 28A, Water Code, is
9 amended by adding Section 28A.002 to read as follows:

10 Sec. 28A.002. APPLICABILITY. This chapter applies only to
11 an aggregate production operation that does not include a facility
12 for which a permit is required under Chapter 382, Health and Safety
13 Code.

14 SECTION 3. (a) The Texas Commission on Environmental
15 Quality shall continue to carry out the commission's powers and
16 duties that are transferred by this Act until the commission and the
17 Railroad Commission of Texas adopt the memorandum of understanding
18 required by this section, complete the transfer of the items
19 specified in the memorandum, and publicly announce that the
20 transfer is complete.

21 (b) The Railroad Commission of Texas and the Texas
22 Commission on Environmental Quality shall enter into a memorandum
23 of understanding that:

24 (1) identifies in detail the applicable powers and
25 duties that are transferred by this Act;

26 (2) establishes a plan for the identification and
27 transfer of any records, personnel, property, and unspent

1 appropriations of the Texas Commission on Environmental Quality
2 that are used solely for purposes of the powers and duties that are
3 transferred by this Act; and

4 (3) establishes a plan for the transfer of any pending
5 applications, hearings, rulemaking proceedings, and orders
6 relating to the powers and duties that are transferred by this Act.

7 (c) The executive directors of the Railroad Commission of
8 Texas and the Texas Commission on Environmental Quality may agree
9 in the memorandum of understanding under this section to transfer
10 to the Railroad Commission of Texas any personnel of the Texas
11 Commission on Environmental Quality whose functions predominantly
12 involve powers and duties related to the powers and duties that are
13 transferred by this Act.

14 (d) A rule, form, policy, procedure, or decision of the
15 Texas Commission on Environmental Quality related to a power or
16 duty transferred under this Act continues in effect as a rule, form,
17 policy, procedure, or decision of the Railroad Commission of Texas
18 and remains in effect until amended or replaced by that agency.

19 SECTION 4. This Act takes effect September 1, 2019.