

By: Biedermann

H.B. No. 3798

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of and permit requirements for certain
3 facilities that extract, produce, or process aggregates and of
4 related facilities by the Texas Commission on Environmental Quality
5 and the Railroad Commission of Texas; providing administrative
6 penalties and other civil remedies; creating criminal offenses.

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

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

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

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

20 (r) This section does not apply to:

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

24 (2) a facility located temporarily in the

1 right-of-way, or contiguous to the right-of-way, of a public works
2 project; or

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

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

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

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

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

24 (2) at a location that satisfies the distance
25 requirements of Subsection (a) at the time the application for the
26 initial authorization for the operation of that facility at that
27 location is filed with the commission, provided that the

1 authorization is granted and maintained, regardless of whether a
2 single or multifamily residence, school, or place of worship is
3 subsequently built or put to use within one mile [~~440 yards~~] of the
4 facility; or

5 (3) that:

6 (A) uses a concrete crusher:

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

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

11 (B) is located:

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

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

16 (d) Notwithstanding Subsection (c), Subsection (a) applies
17 to a concrete crushing facility in a county with a population of one
18 [~~3.3~~] million or more or in a county adjacent to such a county.

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

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

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

27 (c) The commission shall adopt a policy to grant a permit

1 holder who is not subject to Chapter 1101 the privileges
2 established in Chapter 1101 if the permit holder chooses to comply
3 with the requirements of Chapter 1101 for the facility for which the
4 permit is issued.

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

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

11 (2) the Railroad Commission of Texas under Chapter
12 135, Natural Resources Code.

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

15 CHAPTER 135. AGGREGATE PRODUCTION OPERATIONS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 135.0001. DEFINITIONS. In this chapter:

18 (1) "Affected land" means:

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

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

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

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

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

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

6 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

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

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

11 (2) issue permits under this chapter;

12 (3) conduct hearings under this chapter and Chapter
13 2001, Government Code;

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

17 (5) issue orders modifying previous orders;

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

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

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

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

1 provided for in this chapter.

2 Sec. 135.0052. MONITORING, REPORTING, AND INSPECTIONS. (a)

3 The commission may:

4 (1) require monitoring and reporting;

5 (2) enter and inspect aggregate production
6 operations; and

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

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

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

13 (A) an aggregate production operation; or

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

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

21 SUBCHAPTER C. RECLAMATION PERMIT

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

26 (b) The process of reclamation may require contouring,
27 terracing, grading, backfilling, resoiling, revegetation,

1 compaction and stabilization and settling ponds, water
2 impoundments, diversion ditches, and other water treatment
3 facilities in order to minimize water diminution to existing water
4 sources, pollution, soil and wind erosion, or flooding resulting
5 from extraction or any other activity that may be considered
6 necessary to accomplish the reclamation of the affected land to a
7 substantially beneficial condition.

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

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

15 (1) ensure that the permit holder is capable of
16 completing a reclamation process for the permit area in a manner
17 that is compatible with the objective described by Section
18 135.0101; and

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

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

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

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

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

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

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

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

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

16 SUBCHAPTER D. ENFORCEMENT

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

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

1 under Section 134.175, as applicable under Section 135.0151.

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

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

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

5 (3) both the fine and the imprisonment.

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

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

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

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

17 (3) both the fine and the imprisonment.

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

26 (b) Not later than October 1, 2020, the Texas Commission on
27 Environmental Quality shall conduct an assessment of the effects on

1 air quality created by the aggregate production industry in this
2 state to determine whether air quality models used by the
3 commission to evaluate emissions from the production of aggregates,
4 as defined by Section 28A.001, Water Code, are contravening the
5 intent of Chapter 382, Health and Safety Code. The commission
6 shall:

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

11 (2) adopt a standard audit and air sampling program as
12 authorized under Section 382.069(b), Health and Safety Code, as
13 added by this Act, if the commission determines from the assessment
14 that such a program is necessary to accomplish the intent of Chapter
15 382, Health and Safety Code.

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

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

23 (b) Sections 382.0516(c) and 382.069(d), Health and Safety
24 Code, as added by this Act, and Sections 382.056(r) and 382.065,
25 Health and Safety Code, as amended by this Act, apply only to an
26 application for a permit that is filed with the Texas Commission on
27 Environmental Quality on or after the effective date of this Act. An

1 application for a permit filed before the effective date of this Act
2 is governed by the law in effect on the date of filing, and that law
3 is continued in effect for that purpose.

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