

By: Buckingham

S.B. No. 2278

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain aggregate production operations by the Texas Commission on Environmental Quality; authorizing an increase in the amount of a fee.

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

SECTION 1. Chapter 28A, Water Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. RECLAMATION

Sec. 28A.151. APPLICABILITY. This subchapter applies only to an aggregate production operation:

(1) that is first required to be registered on or after January 1, 2016; and

(2) the site of which:

(A) occupies at least 10 acres; and

(B) is located inside the boundaries or extraterritorial jurisdiction of a municipality.

Sec. 28A.152. REGISTRATION. (a) The initial application filed by the responsible party for the registration of an aggregate production operation, or the first renewal application filed after September 1, 2019, in the case of an aggregate production operation that was first required to be registered before that date, must:

(1) include a reclamation plan that complies with Section 28A.154; and

(2) be accompanied by a performance bond that complies

1 with Section 28A.155.

2 (b) If the reclamation plan is amended, the first renewal
3 application for registration filed by the responsible party after
4 the date the plan is amended must include the amended plan.

5 (c) Notwithstanding Section 28A.051(b), the requirements of
6 this subchapter apply to an aggregate production operation until
7 the commission determines that the responsible party has
8 successfully complied with all reclamation requirements of this
9 subchapter and the reclamation plan.

10 Sec. 28A.153. REGISTRATION FEE. Notwithstanding Section
11 28A.101(b), the commission shall set the fee for an initial or
12 renewal application for the registration of an aggregate production
13 operation that is required to include a reclamation plan in an
14 amount not to exceed \$1,400.

15 Sec. 28A.154. RECLAMATION REQUIREMENTS. (a) A reclamation
16 plan must:

17 (1) specify which parts of the aggregate production
18 operation will be reclaimed for forest, pasture, crop,
19 horticultural, homesite, recreational, industrial, or other uses,
20 including use by wildlife for food, shelter, or ground cover;

21 (2) require any ridge or peak of overburden created by
22 surface mining to be graded to a rolling topography traversable by
23 machines and equipment customarily used in connection with the use
24 to be made of the land after reclamation, except that:

25 (A) the slope of a ridge or peak of overburden is
26 not required to be reduced to a grade less than the original grade
27 of the area before mining; and

1 (B) the slope of the ridge of overburden
2 resulting from a box cut is not required to be reduced to less than
3 25 degrees from the horizontal;

4 (3) if the extraction activities have exposed the face
5 of a mineral seam in which significant concentrations of
6 acid-forming materials are present, require the operator to cover
7 the exposed face of the seam:

8 (A) to a depth of not less than three feet with
9 earth that will support plant life; or

10 (B) with a permanent water impoundment;

11 (4) require the operator to grade down the bank of any
12 pit or depression created by the removal of aggregates by surface
13 mining to a degree of slope determined in accordance with
14 commission rules, taking into consideration:

15 (A) the natural topography of the land affected
16 by the extraction activities and of the adjacent land;

17 (B) the composition of the bank; and

18 (C) the most beneficial use of the pit or
19 depression after reclamation;

20 (5) require that all land affected by the extraction
21 activities, except land that is to be covered with water or used for
22 homesite or industrial purposes, be revegetated by the planting of
23 seeds, trees, shrubs, or other plantings that are appropriate to
24 the use to be made of the land after reclamation as determined by
25 the operator; and

26 (6) require that all mining equipment, including
27 dredges, drag lines, crushers, screens, conveyors, on-site mining

1 vehicles, haul trucks, and loaders, be removed from the site.

2 (b) Subsection (a)(2) does not apply to a surface mining
3 operation conducted in an area that is in the floodplain of a river
4 or stream and is subject to periodic flooding.

5 (c) A reclamation plan may allow an operator to construct an
6 earthen dam for the purpose of forming a lake in a pit that results
7 from surface mining operations if the formation of the lake does
8 not:

9 (1) interfere with another mining operation; or

10 (2) damage the property of another person.

11 (d) Notwithstanding Subsection (a)(4), if the pit or
12 depression created by the removal of aggregates by surface mining
13 is deeper than 10 feet, the reclamation plan may allow the operator
14 to bench the highwall as long as the benches do not exceed 10 feet in
15 height.

16 (e) The commission by rule may prescribe the required
17 density of planting for purposes of Subsection (a)(5) and, if the
18 operator elects to reclaim in stages different parts of the
19 aggregate production operation as extraction activities on those
20 parts cease, may require replanting of those parts as necessary
21 before planting of the entire operation is completed.

22 (f) Notwithstanding Subsections (a)(5) and (e), planting is
23 not required on land affected by extraction activities at an
24 aggregate production operation if the chemical and physical
25 characteristics of the soil of the land are so toxic or deficient in
26 plant nutrients, or the soil of the land is composed of sand,
27 gravel, shale, or stone to such an extent, as to seriously inhibit

1 plant growth.

2 (g) Except as otherwise provided by this subsection, an
3 operator must complete all required grading not later than six
4 months after extraction activities at the aggregate production
5 operation cease. If the operator is unable to complete the required
6 grading by the deadline because of weather conditions, the
7 commission shall grant the operator an extension of time until
8 weather conditions permit completion of the required grading.

9 (h) Except as otherwise provided by this subsection, an
10 operator must begin planting seeds, trees, shrubs, or other
11 plantings on the land affected by extraction activities at the
12 aggregate production operation at the first appropriate time after
13 completion of the required grading. If the operator is unable to
14 acquire sufficient planting stock of appropriate species from local
15 nurseries or to acquire sufficient stock from other sources at
16 comparable prices, the commission shall grant the operator an
17 extension of time until sufficient stock at such prices is
18 available to plant the land in accordance with the reclamation
19 plan.

20 Sec. 28A.155. PERFORMANCE BOND. (a) A performance bond
21 must:

22 (1) be payable to this state and conditioned on the
23 faithful performance of the requirements of this subchapter and the
24 reclamation plan;

25 (2) cover the area to be affected by the extraction
26 activities at the aggregate production operation;

27 (3) be in an amount equal to \$2,500 for each acre to be

1 affected by the extraction activities at the aggregate production
2 operation; and

3 (4) be executed by the responsible party and a
4 corporate surety licensed to do business in this state.

5 (b) Liability under a performance bond is for the duration
6 of the activities at the aggregate production operation, including
7 the activities necessary and incidental to the reclamation of the
8 land affected by the extraction activities at the operation.

9 (c) The commission may release all or part of a performance
10 bond if the commission is satisfied that the reclamation covered by
11 the bond or part of the reclamation, as applicable, has been
12 accomplished as required by this subchapter and the reclamation
13 plan.

14 (d) The commission shall declare a performance bond
15 forfeited if the operator fails to comply with the requirements of
16 this subchapter or the reclamation plan.

17 Sec. 28A.156. INSPECTION BY COMMISSION. The commission may
18 periodically inspect an aggregate production operation after
19 extraction activities at the operation have ceased to verify that
20 the operator is complying with the requirements of this subchapter
21 and the reclamation plan.

22 Sec. 28A.157. NOTICE OF COMPLETION OF RECLAMATION;
23 INSPECTION AND DETERMINATION BY COMMISSION. (a) After reclamation
24 activities at an aggregate production operation have been
25 accomplished as required by this subchapter and the reclamation
26 plan, the operator shall notify the commission in writing that the
27 activities have been completed.

1 (b) The commission shall inspect the aggregate production
2 operation to determine whether the operator has completed
3 reclamation of the operation as required by this subchapter and the
4 reclamation plan. If the commission determines that the
5 reclamation of the aggregate production operation has been
6 completed as required by this subchapter and the reclamation plan:

7 (1) the commission shall release any remaining part of
8 the performance bond; and

9 (2) the requirements of this subchapter are no longer
10 applicable to the operation.

11 Sec. 28A.158. WAIVER BY MUNICIPALITY OF RECLAMATION
12 REQUIREMENTS. (a) If the reclamation activities required by a
13 reclamation plan conflict with a potential reasonable future use of
14 the aggregate production operation on cessation of extraction
15 activities at the operation, the responsible party may submit a
16 proposal to the governing body of the municipality inside the
17 boundaries or extraterritorial jurisdiction of which the operation
18 is located to amend the plan.

19 (b) The governing body of the municipality shall approve the
20 proposed amendment to the reclamation plan if, after a public
21 meeting on the proposal, the governing body determines that the
22 proposed amendment appears to be in the best interest of the
23 municipality, the county in which the aggregate production
24 operation is located, and this state.

25 (c) If the governing body of the municipality approves the
26 proposed amendment to the reclamation plan, the governing body
27 shall notify the responsible party and the commission. The

1 commission shall give effect to the proposed amendment to the plan
2 and shall release all or part of the performance bond, as
3 applicable.

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