87R14157 TYPED

By:  Biedermann H.B. No. 4341

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of the regulation of aggregate production operations from the Texas Commission on Environmental Quality to the Railroad Commission of Texas on delegation by the United States Environmental Protection Agency; 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)  "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 the site from which aggregates are being or have been removed or extracted from the earth, including the entire areas of extraction, stripped areas, haulage ramps, and the land on which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates. For the purposes of this chapter, the term "aggregate production operation" does not include:

(A)  a site at which the materials that are being removed or extracted from the earth are used or processed at the same site or at a related site under the control of the same responsible party for the production of cement or lightweight aggregates, or in a lime kiln;

(B)  a temporary site that is being used solely to provide aggregate products for use in a public works project involving the Texas Department of Transportation or a local governmental entity;

(C)  an extraction area from which all raw material is extracted for use as fill or for other construction uses at the same or a contiguous site;

(D)  a site at which the materials that are being removed or extracted from the earth are used or processed for use in the construction, modification, or expansion of a solid waste facility at the site or another location; or

(E)  a site at which:

(i)  the materials being removed or extracted from the earth are specialty or terrazzo-type stone removed or extracted exclusively for decorative or artistic uses; and

(ii)  the portion of the specialty or terrazzo-type stone horizon that is exposed for current production for commercial sale in the site does not exceed five acres.

(3)  "Aggregates" means any commonly recognized construction material originating from an aggregate production operation from which an operator extracts dimension stone, crushed and broken limestone, crushed and broken granite, crushed and broken stone not elsewhere classified, construction sand and gravel, industrial sand, dirt, soil, or caliche. For purposes of this chapter, the term "aggregates" does not include clay or shale mined for use in manufacturing structural clay products.

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

(5)  "Operator" means any person engaged in and responsible for the physical operation and control of the extraction of aggregates.

(6)  "Owner" means any person having title, wholly or partly, to the land on which an aggregate production operation exists or has existed.

(7)  "Responsible party" means the operator, lessor, or owner who is responsible for the overall function and operation of an aggregate production operation.

Sec. 135.0002.  EFFECTIVE DATE; DELEGATION. This chapter takes effect on the date the United States Environmental Protection Agency delegates to the commission authority to issue the permits described by Section 382.069, Health and Safety Code, and Section 26.133, Water Code.

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

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

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

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

(4)  the number of inspections conducted; and

(5)  the results of the inspections.

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

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

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

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.

(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:

(1)  at least once every three years

(d)  The commission may conduct unannounced inspections in accordance with commission policy.

(e)  Except as provided by Subsection (g), an inspection must be conducted by one or more inspectors trained in the regulatory requirements under the jurisdiction of the commission that are applicable to an active aggregate production operation. If the inspection is conducted by more than one inspector, each inspector is not required to be trained in each of the applicable regulatory requirements, but the combined training of the inspectors must include each of the applicable regulatory requirements. The applicable regulatory requirements include requirements related to:

(1)  individual water quality permits issued under Chapter 26, Water Code;

(2)  a general water quality permit issued under Chapter 26, Water Code;

(3)  air quality permits issued under Chapter 382, Health and Safety Code; and

(4)  other regulatory requirements applicable to active aggregate production operations under the jurisdiction of the commission.

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

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

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

SUBCHAPTER C. REGISTRATION AND SURVEY

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

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

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

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

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

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

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

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

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

(b)  The commission shall set the annual registration fee in an amount sufficient to maintain a registry of active aggregate production operations in this state and implement this chapter, not to exceed $10,000.

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

Sec. 135.0104.  REGISTRATION PENALTY. The commission may assess a penalty of not less than $5,000 and not more than $20,000 for each year in which an aggregate production operation operates without being registered under this subchapter. The total penalty under this section may not exceed $40,000 for an aggregate production operation that is operated in three or more years without being registered.

SUBCHAPTER D. PERMITS

Sec. 135.0151.  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. 135.0152.  RECLAMATION PERMIT REQUIRED. (a) A person may not conduct an aggregate production operation without first obtaining a reclamation permit for that operation from the commission under this subchapter.

(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 135.0151; 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. 135.0153.  RECLAMATION PERMIT APPLICATION AND ISSUANCE. (a) The commission by rule shall establish requirements for submitting a reclamation permit application.

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

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

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

Sec. 135.0154.  RECLAMATION PERMIT REVISIONS. (a) The commission by rule shall require that a reclamation 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 reclamation permit revision application is subject to the same requirements for issuance as an initial permit.

Sec. 135.0155.  PERMITS FOR EMISSIONS AND DISCHARGES. A permit issued under Section 382.069, Health and Safety Code, or Section 26.133, Water Code, is considered to be a permit issued under this subchapter for the purposes of Sections 135.0156 and 135.0157.

Sec. 135.0156.  CIVIL OR ADMINISTRATIVE ENFORCEMENT. Subchapter H, Chapter 134, applies to the civil or administrative enforcement of this subchapter or a rule, order, or permit adopted or issued under this subchapter in the same manner as Subchapter H, Chapter 134, applies to the civil or administrative enforcement of that chapter or a rule, order, or permit adopted or issued under that chapter.

Sec. 135.0157.  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 subchapter or does not comply with an order issued under this subchapter, except an order incorporated in a decision issued by the commission under Section 134.175, as applicable under Section 135.0156.

(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. 135.0158.  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 subchapter or under an order of decision issued by the commission under this subchapter.

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

Sec. 382.069.  DUTIES OF RAILROAD COMMISSION REGARDING AGGREGATE PRODUCTION OPERATIONS. (a) The Railroad Commission of Texas may issue a permit for emissions of air contaminants from an aggregate production operation on delegation to the railroad commission of authority for regulating those emissions. Any emissions from an aggregate production operation under this section must meet the standards established by the Texas Commission on Environmental Quality under this chapter.

(b)  The Railroad Commission of Texas may charge a fee for a permit issued under this section in the manner provided by Section 382.062 for the Texas Commission on Environmental Quality to charge fees.

SECTION 3.  Subchapter D, Chapter 26, Water Code, is amended by adding Section 26.133 to read as follows:

Sec. 26.133.  DUTIES OF RAILROAD COMMISSION REGARDING AGGREGATE PRODUCTION OPERATIONS. (a) The Railroad Commission of Texas may issue a permit for the discharge of a pollutant or waste into water in this state from an aggregate production operation on delegation to the railroad commission of NPDES authority for those discharges. Any discharge of a pollutant or waste from an aggregate production operation into water in this state under this section must meet the water quality standards established by the Texas Commission on Environmental Quality under this chapter.

(b)  The Railroad Commission of Texas may charge a fee for a permit issued under this section in the manner provided by Section 5.701(c) for the Texas Commission on Environmental Quality to charge fees.

SECTION 4.  Subchapter A, Chapter 28A, Water Code, is amended by adding Section 28A.002 to read as follows:

Sec. 28A.002.  EXPIRATION. This chapter expires on the date Chapter 135, Natural Resources Code, becomes effective.

SECTION 5.  (a) The Texas Commission on Environmental Quality shall continue to carry out the commission's powers and duties that are transferred by this Act until:

(1)  the commission and the Railroad Commission of Texas adopt the memorandum of understanding required by this section, complete the transfer of the items specified in the memorandum, and publicly announce that the transfer is complete; and

(2)  as applicable, the requirements of Sections 6 and 7 of this Act are met.

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

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

(2)  establishes a plan for the identification and transfer of any records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used solely for purposes of the powers and duties that are transferred by this Act; and

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

(c)  The executive director of the Railroad Commission of Texas may in the memorandum of understanding under this section transfer to the Railroad Commission of Texas any personnel of the Texas Commission on Environmental Quality whose functions predominantly involve powers and duties related to the powers and duties that are transferred by this Act.

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

(e)  The Railroad Commission of Texas and the Texas Commission on Environmental Quality shall use project management principles developed by the Project Management Institute as the framework to create the transfer plan for the memorandum of understanding required by this Act and, if the requirements of Sections 6 and 7 of this Act have been met, execute the transfer not later than September 1, 2023.

(f)  The Railroad Commission of Texas and the Texas Commission on Environmental Quality shall each create an internal team of employees to create the transfer plan for the memorandum of understanding required by this Act. The teams shall:

(1)  establish a clear vision for the transfer;

(2)  provide instructions and answers in response to any questions from other staff of the Railroad Commission of Texas and the Texas Commission on Environmental Quality about the transfer; and

(3)  jointly write a report that includes:

(A)  the rationale for each aspect of the transfer plan with key supporting facts and strategic objectives; and

(B)  an in-depth review of the history of the surface mining programs run by each agency, including agency culture and finances.

(g)  The report required by Subsection (f) of this section must be completed and submitted to the executive directors of the Railroad Commission of Texas and the Texas Commission on Environmental Quality not later than November 1, 2021.

(h)  Between November 1, 2021, and September 1, 2023, the Railroad Commission of Texas team described by Subsection (f) of this section shall provide to the commissioners of the Railroad Commission of Texas and the Texas Commission on Environmental Quality monthly reports that include:

(1)  lessons learned during the planning and execution of the transfer, if any;

(2)  emerging risks and issues;

(3)  transfer progress;

(4)  the number of permit applications received by the Railroad Commission of Texas under Chapter 382, Health and Safety Code, as amended by this Act, Chapter 135, Natural Resources Code, as added by this Act, and Chapter 26, Water Code, as amended by this Act, and reviewed as part of a contested case hearing;

(5)  the amount of time needed for and cost of each contested case hearing described by Subdivision (4) of this subsection;

(6)  a list of issues that were resolved or not resolved in each contested case hearing described by Subdivision (4) of this subsection;

(7)  the number of permits issued by the Railroad Commission of Texas under Chapter 382, Health and Safety Code, as amended by this Act, Chapter 135, Natural Resources Code, as added by this Act, and Chapter 26, Water Code, as amended by this Act;

(8)  any changes in rules proposed by the Railroad Commission of Texas or the Texas Commission on Environmental Quality;

(9)  the number of inspections conducted under Chapter 135, Natural Resources Code, as added by this Act;

(10)  the number of enforcement actions initiated under Chapter 135, Natural Resources Code, as added by this Act; and

(11)  a description of all public outreach measures taken by the Railroad Commission of Texas to communicate with the public about scientific issues and program risks, such as educational meetings with the public and other stakeholders.

SECTION 6.  (a) In this section, "Clean Air Act permit" means a permit issued under Chapter 382, Health and Safety Code.

(b)  On delegation of Clean Air Act permit authority for emissions of air contaminants from aggregate production operations to the Railroad Commission of Texas by the United States Environmental Protection Agency under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661 et seq.), the following are transferred from the Texas Commission on Environmental Quality to the Railroad Commission of Texas:

(1)  the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the regulation of emissions of air contaminants from aggregate production operations;

(2)  any obligations and contracts of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this section; and

(3)  all property and records in the custody of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this section.

(c)  Not later than December 1, 2021, the Railroad Commission of Texas shall submit to the United States Environmental Protection Agency for approval a request to supplement or amend the Clean Air Act program to include delegation of permit authority for emissions of air contaminants from aggregate production operations.

(d)  Section 382.069, Health and Safety Code, as added by this Act, applies to an application for an authorization for emission of air contaminants that is pending on the effective date of delegation of Clean Air Act permit authority for emissions of air contaminants from aggregate production operations to the Railroad Commission of Texas by the United States Environmental Protection Agency under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661 et seq.).

SECTION 7.  (a) In this section, "NPDES" means National Pollutant Discharge Elimination System.

(b)  On delegation of NPDES permit authority for discharges from aggregate production operations to the Railroad Commission of Texas by the United States Environmental Protection Agency under Section 402(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1342(b)), the following are transferred from the Texas Commission on Environmental Quality to the Railroad Commission of Texas:

(1)  the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the regulation of discharges of a pollutant or waste from aggregate production operations into water in this state;

(2)  any obligations and contracts of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this section; and

(3)  all property and records in the custody of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this section.

(c)  Not later than December 1, 2022, the Railroad Commission of Texas shall submit to the United States Environmental Protection Agency for approval a request to supplement or amend the Texas Pollutant Discharge Elimination System program to include delegation of NPDES permit authority for discharges of a pollutant or waste from aggregate production operations.

(d)  Section 26.133, Water Code, as added by this Act, applies to an application for an authorization for a discharge of a pollutant or waste into water in this state that is pending on the effective date of delegation of National Pollutant Discharge Elimination System permit authority for discharges of a pollutant or waste from aggregate production operations to the Railroad Commission of Texas by the United States Environmental Protection Agency under Section 402(b) of the Federal Water Pollution Control Act (33 U.S.C. Section 1342(b)).

SECTION 8.  This Act takes effect September 1, 2021.