

By: Biedermann

H.B. No. 4341

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the transfer of the regulation of aggregate production
3 operations from the Texas Commission on Environmental Quality to
4 the Railroad Commission of Texas on delegation by the United States
5 Environmental Protection Agency; authorizing a fee; providing
6 administrative penalties and other civil remedies; creating
7 criminal offenses.

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

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

11 CHAPTER 135. AGGREGATE PRODUCTION OPERATIONS

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 135.0001. DEFINITIONS. In this chapter:

14 (1) "Affected land" means:

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

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

19 (C) the haul roads and impoundment basins within
20 the aggregate production operation; and

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

24 (2) "Aggregate production operation" means the site

1 from which aggregates are being or have been removed or extracted
2 from the earth, including the entire areas of extraction, stripped
3 areas, haulage ramps, and the land on which the plant processing the
4 raw materials is located, exclusive of any land owned or leased by
5 the responsible party not being currently used in the production of
6 aggregates. For the purposes of this chapter, the term "aggregate
7 production operation" does not include:

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

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

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

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

24 (E) a site at which:

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

1 and

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

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

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

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

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

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

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

1 26.133, Water Code.

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

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

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

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

12 (4) the number of inspections conducted; and

13 (5) the results of the inspections.

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

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

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

25 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

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

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

3 (2) issue permits under this chapter;

4 (3) conduct hearings under this chapter and Chapter
5 2001, Government Code;

6 (4) issue orders requiring a person to take actions
7 necessary to comply with this chapter or rules adopted under this
8 chapter;

9 (5) issue orders modifying previous orders;

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

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

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

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

21 Sec. 135.0052. MONITORING, REPORTING, AND INSPECTIONS. (a)
22 The commission may:

23 (1) require monitoring and reporting;

24 (2) enter and inspect aggregate production
25 operations; and

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

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

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

5 (A) an aggregate production operation; or

6 (B) premises on which records required to be
7 maintained are located; and

8 (2) at reasonable times and without delay, may have
9 access to and copy records required under this chapter or rules
10 adopted under this chapter or inspect any monitoring equipment or
11 method of operation required under this chapter or rules adopted
12 under this chapter.

13 (c) The commission shall inspect each active aggregate
14 production operation in this state for compliance with any
15 applicable environmental laws and rules under the jurisdiction of
16 the commission:

17 (1) at least once every three years

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

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

1 applicable regulatory requirements include requirements related
2 to:

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

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

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

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

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

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

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

22 SUBCHAPTER C. REGISTRATION AND SURVEY

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

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

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

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

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

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

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

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

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

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

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

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

15 SUBCHAPTER D. PERMITS

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

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

1 substantially beneficial condition.

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

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

8 (1) ensure that the permit holder is capable of
9 completing a reclamation process for the permit area in a manner
10 that is compatible with the objective described by Section
11 135.0151; and

12 (2) be modeled on the reclamation requirements for
13 surface mining of uranium and uranium ore under Chapter 131 and
14 surface coal mining under Chapter 134, including the submission of
15 a reclamation plan and a performance bond.

16 Sec. 135.0153. RECLAMATION PERMIT APPLICATION AND
17 ISSUANCE. (a) The commission by rule shall establish requirements
18 for submitting a reclamation permit application.

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

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

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

27 Sec. 135.0154. RECLAMATION PERMIT REVISIONS. (a) The

1 commission by rule shall require that a reclamation permit holder:

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

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

7 (b) A reclamation permit revision application is subject to
8 the same requirements for issuance as an initial permit.

9 Sec. 135.0155. PERMITS FOR EMISSIONS AND DISCHARGES. A
10 permit issued under Section 382.069, Health and Safety Code, or
11 Section 26.133, Water Code, is considered to be a permit issued
12 under this subchapter for the purposes of Sections 135.0156 and
13 135.0157.

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

21 Sec. 135.0157. CRIMINAL PENALTY FOR WILFUL AND KNOWING
22 VIOLATION. (a) A person commits an offense if the person wilfully
23 and knowingly violates a condition of a permit issued under this
24 subchapter or does not comply with an order issued under this
25 subchapter, except an order incorporated in a decision issued by
26 the commission under Section 134.175, as applicable under Section
27 135.0156.

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

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

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

4 (3) both the fine and the imprisonment.

5 Sec. 135.0158. CRIMINAL PENALTY FOR FALSE STATEMENT,
6 REPRESENTATION, OR CERTIFICATION. (a) A person commits an offense
7 if the person knowingly makes a false statement, representation, or
8 certification, or knowingly fails to make a statement,
9 representation, or certification, in an application, record,
10 report, or other document filed or required to be maintained under
11 this subchapter or under an order of decision issued by the
12 commission under this subchapter.

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

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

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

16 (3) both the fine and the imprisonment.

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

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

27 (b) The Railroad Commission of Texas may charge a fee for a

1 permit issued under this section in the manner provided by Section
2 382.062 for the Texas Commission on Environmental Quality to charge
3 fees.

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

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

15 (b) The Railroad Commission of Texas may charge a fee for a
16 permit issued under this section in the manner provided by Section
17 5.701(c) for the Texas Commission on Environmental Quality to
18 charge fees.

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

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

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

26 (1) the commission and the Railroad Commission of
27 Texas adopt the memorandum of understanding required by this

1 section, complete the transfer of the items specified in the
2 memorandum, and publicly announce that the transfer is complete;
3 and

4 (2) as applicable, the requirements of Sections 6 and
5 7 of this Act are met.

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

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

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

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

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

25 (d) A rule, form, policy, procedure, or decision of the
26 Texas Commission on Environmental Quality related to a power or
27 duty transferred under this Act continues in effect as a rule, form,

1 policy, procedure, or decision of the Railroad Commission of Texas
2 and remains in effect until amended or replaced by that agency.

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

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

14 (1) establish a clear vision for the transfer;
15 (2) provide instructions and answers in response to
16 any questions from other staff of the Railroad Commission of Texas
17 and the Texas Commission on Environmental Quality about the
18 transfer; and

19 (3) jointly write a report that includes:
20 (A) the rationale for each aspect of the transfer
21 plan with key supporting facts and strategic objectives; and
22 (B) an in-depth review of the history of the
23 surface mining programs run by each agency, including agency
24 culture and finances.

25 (g) The report required by Subsection (f) of this section
26 must be completed and submitted to the executive directors of the
27 Railroad Commission of Texas and the Texas Commission on

1 Environmental Quality not later than November 1, 2021.

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

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

9 (2) emerging risks and issues;

10 (3) transfer progress;

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

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

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

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

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

1 Quality;

2 (9) the number of inspections conducted under Chapter
3 135, Natural Resources Code, as added by this Act;

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

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

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

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

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

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

27 (3) all property and records in the custody of the

1 Texas Commission on Environmental Quality that are related to a
2 power, duty, function, program, or activity transferred under this
3 section.

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

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

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

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

26 (1) the powers, duties, functions, programs, and
27 activities of the Texas Commission on Environmental Quality

1 relating to the regulation of discharges of a pollutant or waste
2 from aggregate production operations into water in this state;

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

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

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

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

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