

By: Huberty

H.B. No. 4478

A BILL TO BE ENTITLED

AN ACT

relating to planning and financial responsibility requirements for certain aggregate production operations; providing for the imposition of an administrative penalty.

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

SECTION 1. The heading to Chapter 28A, Water Code, is amended to read as follows:

CHAPTER 28A. [~~REGISTRATION AND INSPECTION OF CERTAIN~~] AGGREGATE PRODUCTION OPERATIONS

SECTION 2. Chapter 28A, Water Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. PLANNING AND FINANCIAL RESPONSIBILITY

Sec. 28A.151. DEFINITION. In this subchapter, "water body" means a navigable watercourse, river, stream, or lake.

Sec. 28A.152. APPLICABILITY. This subchapter applies only to an aggregate production operation the site of which is located not more than 1,500 feet from the San Jacinto River.

Sec. 28A.153. RESTORATION PLAN. (a) In this section, "restore" means to change the physical, chemical, or biological qualities of a receiving water body in order to return the water body to its background condition, including on- and off-site stabilization to reduce or eliminate an unauthorized discharge or a substantial threat of an unauthorized discharge.

(b) The initial application filed by the responsible party

1 for the registration of an aggregate production operation must  
2 include a proposed plan for how the responsible party will restore a  
3 receiving water body affected by an unauthorized discharge from the  
4 operation. The responsible party shall update the plan as needed  
5 with each renewal of the registration of the operation.

6 (c) The restoration plan must:

7 (1) identify receiving water bodies at risk of an  
8 unauthorized discharge from the aggregate production operation;

9 (2) describe the process to be used in documenting the  
10 existing physical, chemical, and biological background conditions  
11 of each of the adjacent receiving water bodies;

12 (3) provide a schedule for completing the  
13 determination of background conditions of each of the receiving  
14 water bodies and for updating background conditions in the future,  
15 as appropriate;

16 (4) identify the goals and objectives of potential  
17 restoration actions;

18 (5) provide a reasonable range of restoration  
19 alternatives and the preferred restoration alternative that may be  
20 implemented to return affected receiving water bodies to background  
21 conditions in the event of an unauthorized discharge;

22 (6) describe the process for monitoring the  
23 effectiveness of the preferred restoration action, including  
24 performance criteria, that will be used to determine the success of  
25 the restoration or need for interim site stabilization;

26 (7) identify a process for public involvement in the  
27 selection of the restoration alternative to be implemented to

1 restore the receiving water bodies to background conditions; and  
2 (8) provide a detailed estimate of the maximum  
3 probable cost, based on the cost to a third party conducting the  
4 action without a financial interest or ownership in the operation,  
5 of completing a restoration action, given the size, location, and  
6 description of the operation and the nature of the receiving water  
7 bodies.

8 (d) The responsible party must submit to the commission  
9 certification of the restoration plan, within the appropriate area  
10 or discipline, issued by a licensed engineer or licensed  
11 geoscientist. Components of the restoration plan may be  
12 independently certified, as appropriate.

13 Sec. 28A.154. RECLAMATION PLAN. (a) In this section,  
14 "reclaim" means to use land treatment processes designed to  
15 minimize degradation of water quality, damage to fish or wildlife  
16 habitat, erosion, and other adverse effects from aggregate  
17 production operations and includes backfilling, soil stabilization  
18 and compacting, grading, erosion control measures, appropriate  
19 revegetation, or other measures, as appropriate.

20 (b) The initial application filed by the responsible party  
21 for the registration of an aggregate production operation must  
22 include a proposed plan for how the responsible party will reclaim  
23 the area disturbed by the operation. The responsible party shall  
24 update the plan as needed with each renewal of the registration of  
25 the operation.

26 (c) The reclamation plan must:

27 (1) provide a description of the proposed use of the

- 1 disturbed area following reclamation;  
2 (2) develop site-specific standards for reclamation  
3 appropriate to the proposed use that address the following:  
4 (A) removal or final stabilization of all raw  
5 material, intermediate material, final product, waste product,  
6 byproduct, and ancillary material;  
7 (B) removal of waste or closure of all waste  
8 disposal areas;  
9 (C) removal of structures, where appropriate;  
10 (D) removal and reclamation of all temporary  
11 roads and railroads;  
12 (E) backfilling, regrading, and recontouring;  
13 (F) slope stability for remaining highwalls and  
14 detention ponds;  
15 (G) revegetation of the reclaimed area, giving  
16 consideration to species diversity and the use of native species;  
17 (H) establishment of wildlife habitat;  
18 (I) establishment of drainage patterns;  
19 (J) establishment of permanent control  
20 structures, such as retention ponds, where necessary to address  
21 erosion, siltation, and runoff from post-aggregate production and  
22 reclaimed areas; and  
23 (K) removal of all equipment; and  
24 (3) provide a description of how reclamation will be  
25 conducted, such as in phases, and a timetable for the completion of  
26 reclamation activities.  
27 (d) The reclamation plan must include a detailed estimate of

1 the maximum probable cost required to complete and implement the  
2 plan, including inflation costs. The maximum probable cost must be  
3 based on the cost to a third party conducting the reclamation  
4 without a financial interest or ownership in the aggregate  
5 production operation.

6 (e) The responsible party must submit to the commission  
7 certification of the reclamation plan, within the appropriate area  
8 or discipline, issued by a licensed engineer or licensed  
9 geoscientist. Components of the reclamation plan may be  
10 independently certified, as appropriate.

11 Sec. 28A.155. FINANCIAL RESPONSIBILITY. (a) The  
12 commission by rule shall require the responsible party for an  
13 aggregate production operation to establish and maintain, until the  
14 commission determines that the responsible party has successfully  
15 complied with all restoration and reclamation requirements of this  
16 subchapter and the restoration and reclamation plans, evidence of  
17 financial responsibility for:

18 (1) restoration of a water body affected by an  
19 unauthorized discharge from the operation; and

20 (2) reclamation of the area disturbed by the  
21 operation.

22 (b) The amount of financial assurance must be at least the  
23 amount determined by the executive director of the commission as  
24 sufficient to meet the requirements of the:

25 (1) restoration plan filed for the aggregate  
26 production operation under Section 28A.153; and

27 (2) reclamation plan filed for the aggregate

1 production operation under Section 28A.154.

2 Sec. 28A.156. PENALTY. The commission may assess a penalty  
3 of not less than \$5,000 and not more than \$20,000 for each year in  
4 which an aggregate production operation operates without  
5 maintaining the evidence of financial responsibility required by  
6 Section 28A.155. The total penalty under this section may not  
7 exceed \$40,000 for an aggregate production operation that is  
8 operated in three or more years without maintaining the evidence of  
9 financial responsibility.

10 Sec. 28A.157. RECOVERY OF COSTS FOR UNAUTHORIZED  
11 DISCHARGES. If the commission incurs any costs in undertaking a  
12 corrective or enforcement action with respect to an unauthorized  
13 discharge from an aggregate production operation to which this  
14 subchapter applies, including a reclamation or restoration action,  
15 the responsible party is liable to the state for all reasonable  
16 costs of the corrective or enforcement action, including court  
17 costs and reasonable attorney's fees, and for any punitive damages  
18 that may be assessed by the court.

19 Sec. 28A.158. AGGREGATE PRODUCTION OPERATION RECLAMATION  
20 AND RESTORATION FUND ACCOUNT. (a) Penalties and other money  
21 received by the commission as a result of an enforcement action  
22 taken under this subchapter, and any gift or grant the commission  
23 receives for the purposes of this subchapter, shall be deposited in  
24 the aggregate production operation reclamation and restoration  
25 fund account in the general revenue fund. Money in the account may  
26 be appropriated only to the commission for the reclamation and  
27 restoration of the beds, bottoms, and banks of water bodies

1 affected by the unlawful discharges subject to this subchapter.

2 (b) At least 60 days before spending money from the  
3 reclamation and restoration fund account, the commission shall  
4 publish notice of its proposed plan and conduct a hearing for the  
5 purpose of soliciting public comment, oral or written. The  
6 commission shall fully consider all written and oral submissions on  
7 the proposed plan.

8 (c) At least 30 days before the date of the public hearing,  
9 the notice must be published in the Texas Register and in a  
10 newspaper of general circulation in the county where the violation  
11 resulting in the payment of the penalties or other money occurred.

12 (d) Interest and other income earned on money in the account  
13 shall be credited to the account. The account is exempt from the  
14 application of Section 403.095, Government Code.

15 SECTION 3. (a) This section applies only to an aggregate  
16 production operation, as defined by Section 28A.001, Water Code,  
17 that is registered under Chapter 28A, Water Code, before the  
18 effective date of this Act.

19 (b) The responsible party for an aggregate production  
20 operation to which Subchapter D, Chapter 28A, Water Code, as added  
21 by this Act, applies shall:

22 (1) file the restoration and reclamation plans  
23 required by that subchapter with the Texas Commission on  
24 Environmental Quality with the first renewal of the registration of  
25 the operation that occurs after the effective date of this Act; and

26 (2) establish the evidence of financial  
27 responsibility required by that subchapter not later than the date

H.B. No. 4478

1 of the first renewal of the registration of the operation that  
2 occurs after the effective date of this Act.

3 SECTION 4. This Act takes effect September 1, 2021.