By:  Cunningham H.B. No. 1093

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 at a site 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 the responsible party files to register an aggregate production operation must include the responsible party's proposed plan to restore a receiving water body affected by an unauthorized discharge from the operation. The responsible party shall update the plan as necessary with each operation registration renewal.

(c)  The restoration plan must:

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

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

(3)  provide a schedule for completing the background conditions documentation of each receiving water body and for future updating of background conditions, as appropriate;

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

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

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

(7)  identify a process for public involvement in the selection of the restoration alternative to be implemented to restore the receiving water bodies to background conditions; and

(8)  provide a detailed estimate of the maximum probable cost of completing a restoration action, given the size, location, and description of the operation and the nature of the receiving water bodies, based on the cost of conducting the action by a third party without a financial interest or ownership in the operation.

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

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

(b)  The initial application the responsible party files to register an aggregate production operation must include the responsible party's proposed plan to reclaim the area disturbed by the operation. The responsible party shall update the plan as necessary with each operation registration renewal.

(c)  The reclamation plan must:

(1)  provide a description of the proposed use of the disturbed area following reclamation;

(2)  develop site-specific reclamation standards appropriate to the proposed use that address:

(A)  removal or final stabilization of all raw material, intermediate material, final product, waste product, byproduct, and ancillary material;

(B)  removal of waste or closure of all waste disposal areas;

(C)  removal of structures, where appropriate;

(D)  removal and reclamation of all temporary roads and railroads;

(E)  backfilling, regrading, and recontouring;

(F)  slope stability for remaining highwalls and detention ponds;

(G)  revegetation of the reclaimed area, giving consideration to species diversity and the use of native species;

(H)  establishment of wildlife habitat;

(I)  establishment of drainage patterns;

(J)  establishment of permanent control structures, such as retention ponds, where necessary to address erosion, siltation, and runoff from post-aggregate production and reclaimed areas; and

(K)  removal of all equipment; and

(3)  provide a description of the manner in which the reclamation will be conducted, such as in phases, and a time for completion of reclamation activities.

(d)  The reclamation plan must include a detailed estimate of the maximum probable cost required to complete and implement the plan, including inflation costs. The maximum probable cost must be based on the cost of conducting the reclamation by a third party without a financial interest or ownership in the aggregate production operation.

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

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

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

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

(b)  The amount of financial assurance must be at least the amount the executive director of the commission determines is sufficient to meet the requirements of the:

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

(2)  reclamation plan filed for the aggregate production operation under Section 28A.154.

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

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

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

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

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

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

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

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

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

(2)  establish the evidence of financial responsibility required by that subchapter not later than the date of the first operation registration renewal that occurs after the effective date of this Act.

SECTION 4.  This Act takes effect September 1, 2023.