

SUBJECT: Registration and inspection of certain aggregate production operations

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, T. King, Beck, Creighton, Hopson, Keffer, Larson, Lucio, Price

0 nays

2 absent — Martinez Fischer, Miller

WITNESSES: For — Richard Szecsy, Texas Aggregates and Concrete Association; (*Registered, but did not testify:* Yvonne Forrest, City of Houston; Max Jones, Travis County; Annie Kellough, Friends of the Brazos River; Ken Kramer, Lone Star Chapter, Sierra Club; Lee Kuhn, Republic Services, Inc.; Jennifer Lorenz, Bayou Land Conservancy; Richard Lowerre, Caddo Lake Institute; Chris Macomb, Waste Management of Texas, Inc.; Joey Park, KBDJ Quarry; Sylvia Pope, City of Austin; David Weinberg, Texas League of Conservation Voters; Matt Phillips, The Nature Conservancy; Brian Sledge, Brick Industry Association-Southwest and Solid Waste Association of North America, Lone Star Chapter)

Against — (*Registered, but did not testify:* Bob Turner, Earthmoving Contractors Association of Texas)

On — John Sadlier, Texas Commission on Environmental Quality

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) is responsible for enforcing rules related to the removal of aggregate materials such as rock, sand, gravel, dirt, and soil from the earth. TCEQ's regulatory authority includes water quality requirements for water used in the mining process, air quality requirements for emissions from rock crushers or other activities at a quarry site, and cleanup and reporting requirements for solid waste or oil spills.

DIGEST: CSHB 571 would implement new regulations for certain aggregate production operations that removed aggregate materials such as rock, sand, gravel, dirt, and soil from the earth. An aggregate production operation would be defined as a site from which aggregates were removed,

including the extraction and stripped areas, haulage ramps, and location of the processing plant, but not including any land owned or leased by the operator that was not being used to produce aggregates. An aggregate production operation would not include:

- a site where the removed or extracted materials were used or processed at the same site by the same operator for producing cement or lightweight aggregates or in a lime kiln;
- a temporary site solely used to provide aggregate products for a public works project involving the Texas Department of Transportation or a local government agency;
- an extraction area where all raw extracted material was used as fill or other construction uses at the same or a contiguous site; or
- a site where the removed or extracted materials were used or processed for constructing, modifying, or expanding a solid waste facility at the site or another location.

Registration. An aggregate production operation would have to register with TCEQ no later than 10 business days before beginning the extraction activities and renew the registration annually as the activities continued. These requirements would not be applicable after extraction activities had ceased and the operator had notified TCEQ.

Aggregate production operations would have to register on September 1, 2012. The amount of the annual registration fee would be determined by TCEQ but could not exceed \$1,000. The registration fees would be deposited into the water resource management account and could be used only to implement the Water Code chapter added by the bill.

Surveys. TCEQ would have to conduct an annual physical survey of the state to identify all active aggregate production operations and ensure that each one was registered. TCEQ could contract with or seek assistance from a governmental entity or other person to conduct the survey.

Inspections. TCEQ would have to inspect each active aggregate production operation for compliance with applicable environmental laws and rules at least once every three years. TCEQ could conduct an inspection only after providing notice to the responsible party.

An inspection would have to be conducted by one or more inspectors with combined training in individual water quality permits, general water

quality permits, air quality permits, and other applicable regulatory requirements.

An investigation of a complaint would satisfy the requirement of an inspection if a potential noncompliance issue unrelated to the complaint was observed and not within the investigator's expertise but referred to TCEQ for further investigation, or if it was within the inspector's expertise and appropriately investigated and addressed in the investigation report.

When an aggregate production operation submitted a notice of intent to conduct an audit for compliance with all applicable rules with its registration, the three-year period for TCEQ to conduct an inspection would begin until September 1, 2015.

TCEQ report. TCEQ would have to provide a section in its annual enforcement report to the governor, the lieutenant governor, and the speaker that included:

- the results of the survey to locate unregistered active aggregate production operations;
- the number and general location of the registered aggregate production operations;
- the number of inspectors trained in multiple areas related to the inspection of aggregate production operations; and
- the number of inspections conducted and their results.

Penalties. TCEQ could assess a penalty of \$5,000 to \$10,000 for each year that an aggregate production operation operated without being registered. The total penalty could not exceed \$25,000 for an aggregate production operation.

Effective date. CSHB 571 would take effect September 1, 2011.

SUPPORTERS
SAY:

Unregulated aggregate mining operations are causing land erosion along Texas' rivers. Currently, operators do not need a permit as long as sediment does not enter the water. Not requiring permits for all mining operations makes it difficult to target operators who are not following the required protocol. These operators often disappear before regulators can catch them, leaving behind damaged land and silty water. Sand and gravel dredging also has lowered fish production in Texas lakes.

Unregulated practices allow more sediment to flow into the water, clouding it and decreasing capacity for drinking water. Municipalities must filter water to make it drinkable, which is costly.

TCEQ inspection schedules can vary significantly based on the type and size of the facility. HB 571 would direct TCEQ to develop a complete list of aggregate production facilities in the state, allowing the agency to know the location and nature of all facilities. The bill would ensure that these facilities were routinely inspected for compliance with all environmental and regulatory requirements. The annual registration fee would offset any additional expenses incurred by TCEQ.

The bill would provide a level playing field for the industry by requiring all operators to meet TCEQ's environmental standards. It would help the agency identify companies that were not abiding by current environmental standards and would provide Texans with greater confidence that the industry was a good environmental steward.

HB 571 would not change the environmental standards for compliance for aggregate production operations, but the registration and inspection functions in the bill would make it easier to identify operations that were not following the current law.

**OPPONENTS
SAY:**

HB 571 unfairly would target smaller companies. Small, independent contractors across Texas would have to pay for the same TCEQ permit and be subject to the same inspections as larger commercial companies. The smaller-scale work of these independent companies does not warrant an annual permit.

Most jobs completed by smaller companies occur away from Texas lakes and rivers. The bill would penalize those working at agricultural sites and other areas nowhere near water.

The bill would require a company to register with TCEQ and pay the fee even if the company was moving only one load of aggregate material. This would be an unreasonable regulation for companies that performed smaller-scale, less consistent work.

Certain work requires companies to have small pits on the site with material hauled from larger pits. If companies no longer were able to have a small pit onsite without registering for a permit, the expense of needing

larger pits to acquire materials would cut into company profit and result in smaller companies going out of business.

NOTES:

The committee substitute differs from the original in specifying that “aggregate production operation” would not include a site at which the materials that were being removed or extracted from the earth were used or processed for use in the construction, modification, or expansion of a solid waste facility at the site or another location.

The companion bill, SB 160 by Williams, passed the Senate by 31-0 on March 17 and has been referred to the House Natural Resources Committee.