

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE D. WATER QUALITY CONTROL

CHAPTER 28A. CERTAIN AGGREGATE PRODUCTION OPERATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 28A.001. DEFINITIONS. In this chapter:

(1) "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 terrazo-type stone removed or extracted exclusively for decorative or artistic uses; and

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

(2) "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 section, the term "aggregates" does not include clay or shale mined for use in manufacturing structural clay products.

(3) "Commission" means the Texas Commission on Environmental Quality.

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

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

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. [571](#)), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 167 (H.B. [2582](#)), Sec. 1, eff. May 26, 2017.

SUBCHAPTER B. REGISTRATION AND INSPECTION

Sec. 28A.051. 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 chapter are not applicable to the aggregate production operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.

Sec. 28A.052. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.

Sec. 28A.053. INSPECTION. (a) The commission shall inspect each active aggregate production operation in this state for compliance with applicable environmental laws and rules under the jurisdiction of the commission:

(1) at least once every two years during the first six years in which the operation is registered; and

(2) after the expiration of the period described by Subdivision (1), at least once every three years.

(b) Except as provided by Subsection (c), the commission may conduct an inspection only after providing notice to the responsible party in accordance with commission policy.

(c) The commission may conduct unannounced periodic inspections under this section of an aggregate production operation that in the preceding three-year period has been issued a notice of violation by the commission for a violation of an environmental law or rule under the jurisdiction of the commission. The unannounced inspections may be conducted only for a period of not more than one year.

(d) An inspection must be conducted by one or more inspectors trained in the regulatory requirements applicable to active aggregate production operations under the jurisdiction of the commission. 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 Section 26.027;

(2) a general water quality permit issued under Section 26.040;

(3) air quality permits issued under Section 382.051, Health and Safety Code; and

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

(e) 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. 571), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1050 (H.B. 907), Sec. 1, eff. September 1, 2019.

Sec. 28A.054. REPORT. The commission shall provide a specific section in the annual enforcement report under Section 5.126 with information regarding the implementation of this

chapter, including:

- (1) the results of the survey to locate unregistered active aggregate production operations under Section [28A.052](#);
- (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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. [571](#)), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. FEES AND ENFORCEMENT

Sec. 28A.101. FEES. (a) A person who, under laws in the commission's jurisdiction and rules adopted under those laws, is authorized to operate an aggregate production operation 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 \$1,500.

(c) Registration fees collected under this section shall be deposited in the water resource management account and may be used only to implement this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. [571](#)), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1050 (H.B. [907](#)), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1173 (H.B. [3317](#)), Sec. 19(a), eff. June 14, 2019.

Sec. 28A.102. 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 chapter. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 107 (H.B. [571](#)), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1050 (H.B. [907](#)), Sec. 3, eff. September 1, 2019.

SUBCHAPTER D. BEST MANAGEMENT PRACTICES

Sec. 28A.151. BEST MANAGEMENT PRACTICES. (a) The commission shall develop and make accessible on the commission's Internet website recommended best management practices for aggregate production operations that operate under the jurisdiction of the commission. The best management practices must include operational issues related to:

- (1) dust control;
- (2) water use; and
- (3) water storage.

(b) The commission may coordinate with other agencies when developing the best management practices under this section.

(c) The best management practices developed under this section are not subject to enforcement by the commission.

Added by Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. [1397](#)), Sec. 19, eff. September 1, 2023.