

**SUBJECT:** Pilot program to regulate quarries along section of the Brazos River

**COMMITTEE:** Environmental Regulation — committee substitute recommended

**VOTE:** 6 ayes — Bonnen, Howard, Driver, Homer, King, Smith  
0 nays  
1 absent — Kuempel

**SENATE VOTE:** On final passage, March 28 C 31-0, on Local and Uncontested Calendar

**WITNESSES:** (*On House companion bill, HB 2886 by J. Keffer:*)  
For — Phil Ford, Brazos River Authority; Tony Goodwin, Brazos River Conservation Coalition; Ed McCarthy; Alice Walton  
  
Against — None  
  
On — Linda Brookins, Chris Linendall, Texas Commission on Environmental Quality; Randy Jones, Maurice Osborn, TXI; Michael Stewart, Texas Aggregates and Concrete Association

**BACKGROUND:** The Texas Aggregate Quarry and Pit Safety Act, Natural Resources Code, ch. 133, enacted by the 72nd Legislature in 1991, regulates quarries and pits. The act requires owners and operators of active, inactive and abandoned aggregate quarries to notify the state of all quarries on their property. In some instances, the Act requires a quarry to obtain a safety certificate or to erect a safety barrier around a quarry or pit reduce the danger to vehicles.  
  
Last year, TCEQ developed the Clear Streams Initiative to investigate dimension stone operations along the Brazos River and its tributaries in Palo Pinto and Parker Counties. As a part of the Clear Streams Initiative, 24 TCEQ field investigators visited 316 quarries around the state to check for erosion and sedimentation controls. The initiative was created in response to public concern regarding activities at sites mining cut, crushed and broken stone, and sand and gravel near waterways.

DIGEST:

**Pilot Program.** CSSB 1354 would establish a 20-year pilot program through TCEQ to regulate quarries located along the segment of the Brazos River that flows through Palo Pinto and Parker Counties. TCEQ would coordinate with all other state agencies involved with water quality issues in the implementation of the program. The bill would designate this portion of the Brazos River Basin and watershed as the "John Graves Scenic Riverway." It would not apply to municipal solid waste facilities or surface coal mines or to quarries or associated processing plants in continuous operation since on or before January 1, 1994, or their contiguous expansion, except that quarry expansion could not result in quarrying operations being closer than 200 feet from the cut bank of the Brazos River. The bill would prohibit the construction of a new quarry within 1,500 feet of a body of water inside a water quality protection area. The pilot program would expire September 1, 2025.

**Permits.** Any quarry located within a mile of a body of water in the water quality protection area would be required to obtain either a general permit or an individual permit. Quarries inside water quality protection areas that were within a 100-year floodplain or within a mile of any body of water would be required to obtain an individual permit.

A quarry would have to satisfy TCEQ performance criteria, use the best available technology, and submit plans for reclamation and drainage control in order to obtain a general permit from TCEQ. Applicants also would also have to demonstrate the financial means necessary to cover all costs associated with an unauthorized discharge. Quarries would be responsible for any costs to the state incurred as a result of an unauthorized discharge.

**Fines.** TCEQ could impose a fine of between \$2,500 and \$25,000 for unauthorized discharges. A fine of at least \$100 would be attached to other types of violations. Each day of a continued violation could be considered a separate violation. In determining the amount of a fine, TCEQ would consider factors such as:

- the nature and gravity of the violation;
- the hazard posed to public health, safety or welfare;
- the effects of the violation on water quality and habitats;
- a violator's history and extent of past violations;
- if the violation could have been easily prevented;
- the for-profit or non-profit status of the violator's operation;

- economic benefits gained from the violation; and
- the amount necessary to deter the violator.

**Other enforcement tools.** The bill would also authorize TCEQ to request a Travis County district court to close down or force corrective action on a quarry. In lieu of a fine, TCEQ could allow a quarry to contribute to a water quality improvement project in addition to cleaning up its own unauthorized discharge. CSSB 1354 also would allow TCEQ to issue an emergency order in response to an unauthorized discharge. The bill would not affect the ability of affected parties to seek compensation through legal means.

**Inspections.** The bill would require TCEQ, the Brazos River Authority, and the Texas Parks and Wildlife Department (TPWD) to conduct inspections and take samplings of water in the John Graves Scenic Riverway. Visual inspections would be conducted from both the ground level and from an aircraft view. Water samples would have to be drawn at least twice a year with at least one sample being taken during the summer and one during the winter.

**Reclamation and restoration fund.** This fund would consist of money obtained from fines and other enforcement actions and would be used for costs of reclamation and restoration of water bodies affected by unauthorized discharges. The bill would require TCEQ to create opportunities for public input into plans for the use of money in the fund.

**TCEQ reports.** CSSB 1354 would require TCEQ to provide a preliminary report on the program's implementation by December 1, 2006. TCEQ would provide a report on the progress of the program to the governor, the lieutenant governor, and the speaker of the House every two years beginning December 1, 2008.

The bill would take immediate effect if finally passed by a two-thirds majority of the members of each house. Otherwise, it would take effect 90 days after the end of the legislative session (August 29, 2005).

**SUPPORTERS  
SAY:**

Storm water runoff from unpermitted surface mines has spread huge amounts of silt into the Brazos River, which has lost much of its flow and become shallow and muddy in many places. The most egregious violations have occurred along the 100-mile long segment of the Brazos River in Palo Pinto and Parker counties. CSSB 1354 would address the

most serious instances of environmental violations along the river rather than imposing regulations on the entire surface mining industry in Texas.

Given the hazardous consequences of unauthorized discharge to the surrounding community, it is important to regulate closely the surface mining industry in environmentally sensitive areas. Serious damage can occur when limestone, sandstone, and other aggregates are mined from the hills and bluffs along the river, thus exposing the earth beneath. During heavy rains, uncontrolled runoff washes the exposed soil into the river, resulting in unnatural islands, excessive sedimentation, bank erosion, and damage to fish and game habitat.

CSSB 1354 would ensure that violators faced appropriate consequences for their actions. The bill would establish penalties that reduced the economic benefit of non-compliance, thereby taking away an important incentive for non-compliance. Additionally, CSSB 1354 would link a facility's compliancy history with the amount of their fine. Also, the bill would provide for more frequent inspections and samplings of water in the Brazos River.

The Brazos River serves as an outdoor recreational destination for many Texans to engage in activities such as fishing, hunting, and camping. There are better places for rock miners to carry out their operations than near the Brazos River, which is considered by many to be a state treasure. The aggregate and dimension stone industries have caused aesthetic degradation in rural and suburban communities by destroying the natural beauty of the landscape, displacing wildlife and subjecting residential communities to an industrial environment.

The findings of TCEQ's Clear Streams Initiative prove that existing policies are not sufficient to prevent wide scale violations by quarries. During the month-long Clear Streams Initiative, TCEQ issued to rock quarry operators 128 notices of violation, 38 notices of enforcement, and six referrals to the Office of the Attorney General. These results show that it is necessary for TCEQ to enhance enforcement, especially with a facility operating adjacent to a state waterway. The permitting process proposed in CSSB 1354 would ensure that these facilities were operating in compliance with existing state and federal laws.

CSSB 1354 also would reduce the incidence of landowners falsely claiming agricultural exemptions on their taxes when their land is not

being used for agricultural purposes. A review of Palo Pinto County tax records revealed that several landowners with rock mining operations on their property claim the agricultural exemption, making them eligible for property tax breaks intended for farming. In Palo Pinto, land used for rock mining operations is taxed at around \$600 per acre, while land used for agricultural purposes is taxed at about only \$70 per acre.

OPPONENTS  
SAY:

Rock quarrying operations are part of a major industry that plays a vital role in the continued growth of the Texas economy. Materials produced by rock quarries are a key ingredient in highway construction and are necessary for the state to carry out its future transportation plans to ease congestion. The stringent regulations in CSSB 1354 along the Brazos River could shut down or prevent development of quarries that provide steady jobs.

NOTES:

The committee substitute amended the definition of quarry to specify that it involved aggregates extracted for commercial sale. It also indicated various entities to whom the provisions of the bill would not apply and provided an expiration date of Sept. 1, 2025.

The companion bill, HB 2886 by J. Keffer, was left pending after a public hearing by the Environmental Regulation Committee on April 19. A related bill, SB 785 by Fraser, which would increase regulation of quarries and rock crushing operations, passed the Senate by 28-2 (Jackson, Lindsay) on April 25 and was scheduled for a May 18 public hearing by the House Environmental Regulation Committee.