

## CHAPTER 693

H.B. No. 1968

## AN ACT

relating to the regulation of aggregate quarries and pits.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Sections 133.003(13), (24), (25), and (26), Natural Resources Code, are amended to read as follows:

(13) "In hazardous proximity to a public road" means that distance beginning 200 feet from the *nearest roadway edge* [~~outer right-of-way line~~] of a public road or highway to the pit perimeter.

(24) "*Roadway*" means the part of the public road intended for vehicular traffic that consists of an improved driving surface constructed of concrete, asphalt, compacted soil, rock, or other material.

(25) "Setback distance" means from the outer right-of-way line of a public road or highway up to a distance of 25 feet.

(26) [(25)] "Site" means the tract of land on which is located a pit and includes the immediate area on which the plant used in the extraction of aggregates is located.

(27) [(26)] "Unacceptable unsafe location" means a condition where the edge of a pit is located within 200 feet of a *public roadway* [~~right-of-way~~] intersection [~~with a public road~~] in a manner which, in the judgment of the commission:

(A) presents a significant risk of harm to public motorists by reason of the proximity of the pit to the roadway intersection; and,

(B) has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from accidentally entering the pit as the result of a motor vehicle collision at or near the intersection; or which,

(C) in the opinion of the commission, is also at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as prescribed by this code.

SECTION 2. Sections 133.041(b) and (d), Natural Resources Code, are amended to read as follows:

(b) A person responsible for an abandoned or inactive pit must construct a barrier or other device required by this code between a public road adjoining the site and the pit, provided that the pit is in hazardous proximity to a public road and in an unacceptable unsafe location. *The commission may grant a waiver from the barrier requirement if the person responsible for the abandoned or inactive pit submits an application to the commission showing that:*

(1) *a governmental entity obtained a right-of-way and constructed a public road within 200 feet of the abandoned or inactive pit before August 26, 1991; and*

(2) *the pit has remained abandoned or inactive since the road was constructed.*

(d) The barrier or other device must be completed not later than the 90th day after the day on which the person responsible for the quarry or pit receives a notice of approval under Section 133.048(b) of this code. ~~And, although an~~ additional time of not more than 60 days may be granted by the commission for good cause shown. *If the responsible person must obtain an easement before constructing the barrier or other device, the commission may grant additional reasonable time to complete the barrier or other device.*

SECTION 3. Sections 133.042(a) and (b), Natural Resources Code, are amended to read as follows:

(a) A barrier constructed under Section 133.041 of this code must:

(1) reach a height *that the commission determines that under the circumstances will obstruct, restrain, and prevent the normal passage of vehicular traffic [at least twice the mid-axle height of the largest motor vehicle that usually travels the public road adjacent to the site];*

(2) be of substantial construction suitable for impact under normal driving conditions; *and*

(3) have openings to the extent necessary for travel on the premises and for public road drainage, although such drainage paths must be covered with protective material, substantial enough to turn away motor vehicular traffic that normally travels the adjacent public road.

(b) The commission may not adopt construction standards for barriers *under Subsection (a) that are more stringent than the Texas [State] Department of [Highways and Public] Transportation standards [for barriers in comparable locations].*

SECTION 4. Section 133.045, Natural Resources Code, is amended to read as follows:

Sec. 133.045. SAFETY CERTIFICATE REQUIRED. (a) *A safety certificate is required for an active, inactive, or abandoned quarry or pit that is located in hazardous proximity to a public road or is in an unacceptable unsafe location, excluding an inactive or abandoned quarry or pit that receives a written waiver from the commission.*

(b) From and after November 1, 1991, unless a person responsible for a quarry or pit has obtained from the commission a certificate that a quarry or pit complies with this subchapter and rules or orders adopted under this subchapter, and subject to Subsection (c) [(b)] of this section, the person responsible may not:

(1) open a new pit in hazardous proximity to a public road; and

(2) locate a pit in an area wherein it is in an unacceptable unsafe location; or

(3) reopen, operate, or abandon a quarry or pit that is in hazardous proximity to a public road and in an unacceptable unsafe location; and

(4) provided, however, that the person responsible must have received a notice from the commission that the quarry or pit requires the operator to obtain a safety certificate, before

that person is prohibited from operating or maintaining the quarry or pit without a safety certificate.

(c) [(b)] Any person responsible who, on November 1, 1991, is utilizing a portion of a site for quarrying operations, including the stockpiling, sale, or processing of aggregates or a combination thereof, or who has a current, valid, or outstanding agreement or legal right to develop, utilize, or quarry the property, shall be responsible for obtaining a safety certificate limited to that specific pit area he is using or excavating or intends to use or excavate.

(d) [(e)] A person responsible for a quarry or pit may operate the pit during a period that is described by Subsection (a) or (c) of Section 133.052 of this code.

(e) [(d)] In the event a quarry or pit previously not within the proscribed distance in the definition of "in hazardous proximity to a public road" and not initially within the purview of "unacceptable unsafe location" later becomes subject to regulation as the result of an expansion or relocation of an existing public road or construction of a new public road, the person or entity responsible for the expansion or relocation of the existing public road or construction of a new public road shall be liable to report the same to the commission within 90 days of the date the expansion, relocation, or construction is finally accomplished.

(f) [(e)] The commission shall provide such rules and regulations to require the person or entity responsible for the expansion or relocation to erect berms or barriers.

(g) [(f)] For the purposes of this subsection, the person or entity responsible for the erection of berms or barriers is that person or entity having the original and initial legal authority and responsibility for the initiation and contracting of the expansion or relocation.

SECTION 5. Section 133.046(b), Natural Resources Code, is amended to read as follows:

(b) An application for a safety certificate must contain not more than:

(1) the name, address, and telephone number of the person responsible for the quarry or pit;

(2) the name, address, and telephone number of the owner or owners if different from the person responsible for the quarry or pit;

(3) the type of quarrying activities, if any, occurring on the site;

(4) a brief description of the site, including the acreage outside and inside the pit;

(5) the distance of each pit perimeter from the nearest *roadway edge* [right-of-way line] of each public road that the site adjoins and the nearest intersection of any public or private road or driveway;

(6) the depth in feet, below the *top of the pit highwall located between the pit and the roadway* [right-of-way line], of the deepest excavation in the pit;

(7) a description of and a construction plan for any barrier or other device allowed in this code to be constructed, specifying the material to be used and the expected date of completion; and

(8) any other information or condition that, in the opinion of the operator or owner, constitutes an unacceptable unsafe location, as defined or required by this Act that is absolutely essential to the purposes of this Act.

SECTION 6. Section 133.047(b), Natural Resources Code, is amended to read as follows:

(b) The commission shall set the fee in an amount reasonably necessary to cover the commission's cost of carrying out this chapter, but not more than:

(1) \$500 for an active aggregate quarry or pit;

(2) \$500 for an inactive or abandoned aggregate quarry or pit unless the responsible party is a governmental entity in which case the fee shall be no more than \$350 [\$500].

SECTION 7. Section 133.051(a), Natural Resources Code, is amended to read as follows:

(a) A person holding a safety certificate has the full right, power, and authority to transfer the certificate upon the sale, lease, or other transfer of title to the site, provided the new owner, operator, lessor or lessee, or party in interest files a written affidavit that:

(1) all barriers between a pit and the nearest *roadway edge* [~~right-of-way line~~] of any public road comply with this subchapter, and rules and orders adopted by this subchapter; and

(2) there will be no change, on or after the day of the transfer of title or operation, in:

(A) the condition or location of a barrier; and

(B) the distance of a pit perimeter from:

(i) *the nearest public road; and*

(ii) *the nearest intersection of a public road and a private road or driveway* [~~the nearest right-of-way line of a public road or public or private intersection of a public road or driveway that adjoins the site~~].

SECTION 8. Section 133.088, Natural Resources Code, is amended to read as follows:

Sec. 133.088. *GOVERNMENTAL* [~~COUNTY~~] *LIABILITY*. The provisions of this act shall not be construed to impose any liability upon a *state governmental entity* or county, or *their* [~~its~~] officers[, ] or employees.

SECTION 9. Chapter 133, Natural Resources Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. AUTHORITY TO REGULATE QUARRIES AND PITS IN CERTAIN COUNTIES

*Sec. 133.091. COUNTY AUTHORITY TO REGULATE. A county with a population of 2.4 million or more may adopt regulations requiring the placement of signs or barriers on aggregate quarries and pits.*

*Sec. 133.092. AREA SUBJECT TO REGULATION. A regulation adopted under this subchapter applies only in the unincorporated area of the county.*

*Sec. 133.093. CONFLICT WITH COMMISSION RULE. A county may not adopt regulations for aggregate quarries and pits which are regulated by the commission.*

SECTION 10. This Act takes effect September 1, 1993.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 4, 1993, by a non-record vote; the House refused to concur in Senate amendments to H.B. No. 1968 on May 28, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 1968 on May 30, 1993, by a non-record vote; the House adopted H.C.R. No. 189 authorizing certain corrections in H.B. No. 1968 on May 31, 1993, by a non-record vote; passed by the Senate, with amendments, on May 26, 1993, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 1968 on May 30, 1993, by a viva-voce vote; the Senate adopted H.C.R. No. 189 authorizing certain corrections in H.B. No. 1968 on May 31, 1993.

Filed without signature June 17, 1993.

Effective Sept. 1, 1993.