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Natural Resources, Regulation and Licensing

New rule addresses sand mining near San Jacinto River

[April 20](#)— A Texas Commission on Environmental Quality (TCEQ) [rule](#) went into effect earlier this year requiring registered sand mining operations within the San Jacinto River Watershed to adopt best management practices (BMPs) based on TCEQ recommendations.

TCEQ received petitions for the rulemaking in 2020. The rule was adopted after the 87th Legislature in 2021 considered but did not enact legislation that would have tightened regulations for the sand mining industry in the San Jacinto River Watershed and elsewhere in Texas.

Under current law, sand mining operations that meet the [definition](#) in statute of an aggregate production operation (APO) must annually register with TCEQ as long as excavation continues. The term “APO” refers to sites where aggregates like sand are extracted from the earth for use in construction or industrial operations. Mined construction sand in the United States is often used to make cement or stabilize roads, and most mined industrial sand is used for fracking. Sand often is mined near water sources, such as riverbeds, and either dredged from the bottom of a water source or excavated from an open pit in the ground. Texas is one of the top U.S. producers of sand and gravel for both construction and industrial purposes, according to a U.S. Geological Survey report, *Mineral Commodity Summaries 2022*. Sand mining operations in Texas that are registered as APOs must undergo inspection by TCEQ once every two years for the first six years of operation and every three years afterward, under [Water Code sec. 28A.053](#).

Recent proposals. According to a 2021 House interim [report](#) on APOs, nearby sand mining operations have contributed to excess sedimentation in the San Jacinto River, exacerbating flooding issues in the watershed following Hurricane Harvey. The report recommended legislation to

require sand mining operations in Texas to adopt BMPs like those recommended by other states, such as the Louisiana Department of Environmental Quality (LDEQ), to prevent negative environmental impacts. According to [LDEQ](#), sedimentation carried downstream from sand mining operations could harm fish habitats, limit boat navigability, increase flood risks, complicate water treatment, and disrupt photosynthesis of river vegetation.

Bills that would have further regulated sand mining operations both regionally and statewide came before the 87th Legislature during the regular session in 2021. [HB 4478](#) by Huberty would have required operators seeking permits for APOs within 1,500 feet of the San Jacinto River to submit a restoration plan and reclamation plan to TCEQ for approval. It would have allowed TCEQ to assess financial penalties when APOs failed to maintain financial assurance for the restoration and reclamation of mining sites. The bill was referred to the Natural Resources Committee but did not receive a hearing. [HB 291](#) by Murr and Wilson would have required certain APOs operating within the boundaries or the extraterritorial jurisdiction of a municipality to submit to TCEQ for approval a performance bond and a post-mining reclamation plan in accordance with specified BMPs. The bill would have allowed municipalities under certain circumstances to review and approve alternate reclamation plans submitted by APO responsible parties. The bill was left pending after a hearing in the Environmental Regulation Committee.

The fiscal 2022-23 Texas state budget [appropriated](#) \$50 million to the Texas Water Development Board (TWDB) for removing excess sediment throughout the San Jacinto River and its tributaries, as well as in Lake Houston. The TWDB in November [approved](#) granting all \$50 million to the City of Houston, and both entities are working to finalize the grant.

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Uses for the grant money could include removing sediment from multiple canals providing access to Lake Houston and dredging Lake Houston.

Rule guidelines and response. Effective January 6, the TCEQ San Jacinto River Watershed rule applies to the area of land where water drains to the San Jacinto River and its tributaries, spanning portions of seven counties: Grimes, Harris, Liberty, Montgomery, San Jacinto, Walker, and Waller (see figure below). TCEQ estimates that currently about 114 APO facilities occupy the San Jacinto River Watershed.

In accordance with [BMP](#) guidance from TCEQ, sand mining operators registered as APOs within the watershed must:

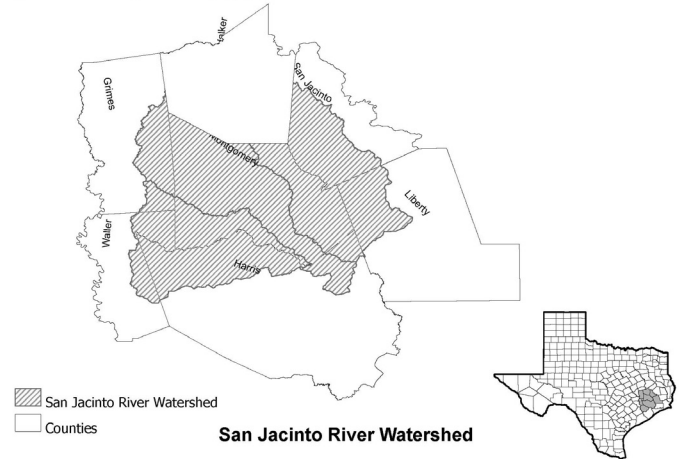
- develop a Mine Plan outlining pre-mining and mining activities and maintain the Mine Plan on site;
- submit a Final Stabilization Report, including area cleanup efforts, for approval by the TCEQ executive director before ceasing mining activities; and
- have a licensed Texas professional engineer or geologist certify all BMPs, the Mine Plan, and the Final Stabilization Report to be implemented.

Under certain criteria, an operator may determine that a BMP is economically or financially unachievable and adopt an alternative BMP of equal or greater water quality protection. Applicable sand mining operators must implement

BMP and Mine Plan guidance within 180 days from January 6.

Some stakeholders in 2020 proposed that TCEQ require sand mining operations to submit reclamation and restoration plans with financial assurance bonds. TCEQ [responded](#) that it could not require financial assurance bonds without direction from the Legislature.

Figure: 30 TAC §311.101(a)(7)



For information on policy proposals related to aggregate production operations and air quality, see the House Research Organization Focus Report No. 86-6, [Aggregate industry regulations could come before Texas Legislature](#).

— Sarah Van Hoose

General Government, Taxation

Proposed constitutional amendments on ballot in May election

[April 29](#) — Voters will consider two propositions to amend the Texas Constitution in the election on May 7. The propositions were approved for the ballot by the 87th Legislature last year. Voters will consider proposals to:

- reduce the limitation on property taxes for people who are elderly or disabled; and
- increase the residence homestead exemption from \$25,000 to \$40,000.

The Texas Legislature proposes amendments to the state constitution in joint resolutions, which must be approved by at least a two-thirds vote of the membership of each house. A joint resolution includes the ballot wording of the proposed amendment and a specific election date. The Texas [secretary of state](#) conducted a random drawing to assign a number

to each proposition for the May [election](#). Constitutional amendments take effect when the official vote canvass confirms statewide majority approval unless a later date is specified. Some amendments are self-enacting, and others required the Legislature to enact “enabling” legislation. If voters reject an amendment, the enabling legislation dependent on it does not take effect.

More information about the proposed amendments for the upcoming election, including ballot language and an analysis of each measure, can be found in the HRO’s focus report, [Proposed constitutional amendments for the May 2022 ballot](#).

— Matt Lowe