

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: June 26, 2024

DATE OF REQUEST: June 7, 2024

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Vanessa Onyskow-Lang, Rule/Agenda Coordinator, (512) 239-0682

CAPTION: Docket No. 2023-1301-RUL. Consideration of the adoption of amendment to 30 TAC Chapter 311, Watershed Protection Rules, Subchapter H, Regulation of Quarries in the John Graves Scenic Riverway to implement House Bill 1688, 88th Legislature.

The adopted rulemaking will amend 30 TAC Chapter 311, Subchapter H, Sections 311.71 - 311.75, 311.77, and 311.79 - 311.82 to establish the existing Pilot Program permitting and financial assurance requirements for quarries in the new Coke Stevenson Scenic Riverway, continue the Pilot Program requirements in the John Graves Scenic Riverway, and extend the expiration of the Pilot Program until September 1, 2027. In addition, the title of Subchapter H will be amended to "Regulations of Quarries in Certain Water Quality Protection Areas." The proposed rules were published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 387). (Rebecca L. Villalba, Michael Parr; Rule Project No. 2023-138-311-OW)

Cari-Michel La Caille
Director

Robert Sadlier
Division Deputy Director

Vanessa Onyskow-Lang
Agenda Coordinator

Copy to CCC Secretary? NO ☒ YES ☐

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 7, 2024

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: *CML* Cari-Michel La Caille, Director
Office of Water

Docket No.: 2023-1301-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 311, Watershed Protection Rules, Subchapter H,
Regulation of Quarries in the John Graves Scenic Riverway
Rule Project No. 2023-138-311-OW

Background and reason(s) for the rulemaking:

The rulemaking will implement House Bill (HB) 1688, 88th Regular Legislative Session, which amended Texas Water Code (TWC), Chapter 26, Subchapter M (Water Quality Protection Areas) by expanding the Pilot Program, originally established for the John Graves Scenic Riverway (Brazos River Basin) to include the new "Coke Stevenson Scenic Riverway" (Colorado River Basin). The Coke Stevenson Scenic Riverway is defined in the bill as the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

The bill establishes the same requirements for quarries in the Coke Stevenson Scenic Riverway as the existing statute requires for quarries in the John Graves Scenic Riverway; requiring permitting (individual permit or a general permit based on the proximity to any water body in the established water quality protection areas), financial responsibility, inspections, sampling, cost recovery, and enforcement programs. Finally, the bill extends the existing Pilot Program, enacted through Senate Bill (SB) 1354 during the 79th Texas Legislature by two years, to expire on September 1, 2027.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking will amend sections of 30 Texas Administrative Code (TAC) Chapter 311, Subchapter H (Regulation of Quarries in the John Graves Scenic Riverway) by expanding the applicability of requirements and protections under the subchapter to include the new Coke Stevenson Scenic Riverway. The amended rules will:

- Add a new definition for the Coke Stevenson Scenic Riverway and revise the definition of Water Quality Protection Area to encompass the two riverways.
- Retitle 30 TAC Chapter 311, Subchapter H as "Regulations of Quarries in Certain Water Quality Protection Areas".
- Expand applicability of Subchapter H to the Coke Stevenson Scenic Riverway.
 - Update references to the "water quality protection area in the John Graves Scenic Riverway" throughout the subchapter to capture and refer to both riverways.
- Extend the expiration date of the subchapter to September 1, 2027.
- Clarify application submittal deadlines for existing quarries in the John Graves Scenic Riverway and new quarries in the Coke Stevenson Scenic Riverway.

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B.) Scope required by federal regulations or state statutes:

All changes are a direct result of the passage of HB 1688 and the updates this bill made to TWC, Chapter 26, Subchapter M.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Water Quality Division staff recommends that the existing rule language related to the 180-day application deadline for existing quarries located in the John Graves Scenic Riverway be revised to ensure the original compliance deadline provided by the rule is not repeated with this rule action. The 180-day application deadline in the rule only applies to quarries in the Coke Stevenson Scenic Riverway.

Statutory authority:

- TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state;
- TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the Texas Commission of Environmental Quality (TCEQ) in the public interest, and
- TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission.

Effect on the:

A.) Regulated community:

At this time, TCEQ has not identified any existing quarries located in the Coke Stevenson Scenic Riverway which would be affected by this rulemaking. Any new quarries located in the Coke Stevenson Scenic Riverway would be required to comply with permitting requirements (individual permit or a general permit based on the proximity to any water body), financial responsibility, cost recovery, and enforcement programs. In addition, quarry operators must perform inspections and conduct sampling.

Existing quarries located in the John Graves Scenic Riverway must continue to comply with the rule for an additional two years until September 1, 2027.

B.) Public:

No impact to the public is anticipated. Increased watershed protections are expected to be met with little to no concerns from the public.

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C.) Agency programs:

At this time, TCEQ has not identified any existing quarries located in the Coke Stevenson Scenic Riverway, nor are a significant number of new quarries expected. In the event that an existing or new quarry be located in the Coke Stevenson Scenic Riverway, the Water Quality Division will be required to review and process either an individual permit or general permit application, based on the proximity of the quarry to any water body. Additionally, financial assurance requirements will need to be verified prior to issuance of a permit authorization.

Although not part of this rulemaking, the bill extends required annual visual inspections and water sampling activities to occur in the Coke Stevenson Scenic Riverway. These activities will require coordination between TCEQ, the Lower Colorado River Authority (LCRA), and the Texas Parks and Wildlife Department (TPWD).

Stakeholder meetings:

Due to the small universe of affected permittees in the John Graves Scenic Riverway, the absence of affected quarries in the Coke Stevenson Scenic Riverway, and lack of anticipation for public interest in this rulemaking, no stakeholder involvement was planned for this rulemaking. However, a rule public hearing was held in Austin on the last day of the public comment period. In addition, regular updates were provided at the quarterly Water Quality Advisory Work Group meetings hosted by Water Quality Division.

Public Involvement Plan:

A Public Involvement Plan is required for this rulemaking and has been prepared.

Alternative Language Requirements:

Alternative Language Requirements apply for this rulemaking in Spanish.

Public comment:

The proposed rule was published in the *Texas Register* on January 26, 2024. The commission held a hybrid public hearing on February 26, 2024. The 30-day public comment period closed on the same date. No public comments were received.

Significant changes from proposal:

The new term “Coke Stevenson Scenic Riverway” is revised from proposal to remove the additional “and its contributing watershed” text which ensures the definition is consistent with the definition in HB 1688.

Potential controversial concerns and legislative interest:

No outstanding or anticipated controversial issues. HB 1688 was authored by Representative Murr and sponsored by Representative Flores; it is anticipated they may be interested in this rulemaking.

Commissioners

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Will this rulemaking affect any current policies or require development of new policies?

This rulemaking does not have any effect on current policies or require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

This rulemaking is required to implement HB 1688. There are no alternatives to this rulemaking.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** January 26, 2024

Anticipated *Texas Register* adoption publication date: July 12, 2024

Anticipated effective date: July 18, 2024

Six-month *Texas Register* filing deadline: July 26, 2024

Agency contacts:

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Michael Parr, Staff Attorney, Environmental Law Division, (512) 239-0611

Vanessa Onyskow-Lang, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-0682

Attachments:

HB 1688

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Jessie Powell
Krista Kyle
Office of General Counsel
Rebecca L. Villalba
Michael Parr
Vanessa Onyskow-Lang

AN ACT

relating to water quality protection areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.551, Water Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Coke Stevenson Scenic Riverway" means the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the city of Junction.

SECTION 2. Section 26.552(b), Water Code, is amended to read as follows:

(b) For the period of September 1, 2005, to September 1, 2027 ~~[2025]~~, the commission shall apply this subchapter only as a pilot program in:

(1) the John Graves Scenic Riverway; and

(2) the Coke Stevenson Scenic Riverway.

SECTION 3. Section 26.555, Water Code, is amended to read as follows:

Sec. 26.555. INSPECTIONS OF AND SAMPLING OF WATER IN PILOT PROGRAM AREAS ~~[JOHN GRAVES SCENIC RIVERWAY]~~. (a) To detect potential violations of this subchapter in the John Graves Scenic Riverway and the Coke Stevenson Scenic Riverway, the commission, the Brazos River Authority or the Lower Colorado River Authority, as appropriate, and the Parks and Wildlife Department shall coordinate efforts to conduct each calendar year:

(1) visual inspections of the riverways [~~riverway~~];
and

(2) testing of water samples drawn from the Brazos
River, the South Llano River, and their respective [~~its~~]
tributaries [~~in the riverway~~].

(b) The visual inspections and the drawing of water samples
must be conducted at least once in a winter month and at least once
in a summer month. The visual inspections must be conducted both
from the surfaces [~~surface~~] of the John Graves Scenic Riverway and
the Coke Stevenson Scenic Riverway and from an aircraft flying over
the riverways [~~riverway~~].

SECTION 4. Section 26.559, Water Code, is reenacted to read
as follows:

Sec. 26.559. RECLAMATION AND RESTORATION FUND ACCOUNT. (a)
Penalties and other money received by the commission as a result of
an enforcement action taken under this subchapter, and any gift or
grant the commission receives for the purposes of this subchapter,
shall be deposited into the reclamation and restoration fund
account in the general revenue fund. Money in the account may be
appropriated only to the commission for the reclamation and
restoration of the beds, bottoms, and banks of water bodies
affected by the unlawful discharges subject to this subchapter.

(b) At least 60 days before spending money from the
reclamation and restoration fund account, the commission shall
publish notice of its proposed plan and conduct a hearing for the
purpose of soliciting public comment, oral or written. The
commission shall fully consider all written and oral submissions on

1 the proposed plan.

2 (c) At least 30 days before the date of the public hearing,
3 the notice must be published in the Texas Register and in a
4 newspaper of general circulation in the county where the violation
5 resulting in the payment of the penalties or other money occurred.

6 (d) Interest and other income earned on money in the account
7 shall be credited to the account. The account is exempt from the
8 application of Section 403.095, Government Code.

9 SECTION 5. Section 26.562, Water Code, is amended to read as
10 follows:

11 Sec. 26.562. EXPIRATION. This subchapter expires
12 September 1, 2027 [~~2025~~].

13 SECTION 6. This Act takes effect September 1, 2023.

H.B. No. 1688

President of the Senate

Speaker of the House

I certify that H.B. No. 1688 was passed by the House on May 2, 2023, by the following vote: Yeas 126, Nays 19, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1688 was passed by the Senate on May 23, 2023, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§311.71 - 311.75, 311.77, and 311.79 - 311.82.

Section 311.71 is adopted with changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 *TexReg* 387), and therefore will be republished. Sections 311.72 - 311.75, 311.77, and 311.79 - 311.82 are adopted without changes to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 1688, 88th Texas Regular Legislative Session, amended Texas Water Code (TWC), Chapter 26 by revising Subchapter M (Water Quality Protection Areas); specifically, §§26.551 - 26.562, by expanding the Pilot Program originally established for quarries in the John Graves Scenic Riverway (Brazos River Basin) to include the “Coke Stevenson Scenic Riverway” (Colorado River Basin). The statute addresses permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation regarding quarry operations. The Coke Stevenson Scenic Riverway is defined as the South Llano River in Kimble County, located upstream of the river’s confluence with the North Llano River at the City of Junction.

TCEQ is adopting amendments to 30 Texas Administrative Code (TAC) Chapter 311 (Watershed Protection Rules), Subchapter H (Regulation of Quarries in the John Graves Scenic Riverway), which implements TWC, §§26.551 - 26.554 and 26.562. The amendment to Subchapter H expands the permitting and financial assurance requirements for quarries to the new Coke Stevenson Scenic Riverway water quality protection area, continues the requirements in the John Graves Scenic Riverway water quality protection area, and extends the expiration date of

the pilot program to September 1, 2027.

Section by Section Discussion

The adopted amendment to Chapter 311, Subchapter H, removes reference to “the John Graves Scenic Riverway” from the subchapter title and replaces it with “Certain Water Quality Protection Areas;” the amended title is “Regulation of Quarries in Certain Water Quality Protection Areas.” This change is required to provide clarity that the applicability extends to all water quality protection areas identified in the subchapter.

Amended Chapter 311, Subchapter H removes references to “the John Graves Scenic Riverway” and replaces them with reference to “a water quality protection area” throughout the subchapter to encompass both the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway water quality protection areas.

Amended §311.71 (Definitions) defines one new term and revises one term used within the subchapter to be consistent with the definitions found in HB 1688. The new term “Coke Stevenson Scenic Riverway” means the South Llano River in Kimble County, located upstream of the river’s confluence with the North Llano River at the City of Junction. This definition is revised from proposal to remove the additional “and its contributing watershed” text which ensures the definition is consistent with the definition in HB 1688. The revised term “Water quality protection areas” means the Brazos River and its contributing watershed within Palo Pinto and Parker Counties, Texas, downstream from the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, and extending to the county line between Parker and Hood Counties, Texas; and the South Llano River and its contributing watershed in Kimble County, located upstream of the river’s confluence with the North Llano River at the City of

Junction. The terms “responsible party” and “water body” are revised for clarity and to remove unnecessary language.

Amended §311.72 (Applicability) identifies activities regulated by this subchapter and activities specifically excluded from regulation. Activities regulated by this subchapter include quarrying within a water quality protection area in the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway, as identified in subsection (a). In addition, amended §311.72 specifies September 1, 2027, as the new expiration date for Chapter 311, Subchapter H, consistent with HB 1688.

Amended §311.73 (Prohibitions) identifies areas within the newly defined water quality protection area where quarrying is prohibited, consistent with HB 1688. The amendment to §311.73(a), consistent with existing regulations for the John Graves Scenic Riverway, prohibits the construction or operation of any new quarry, or the expansion of an existing quarry, located within 200 feet of any water body within the Coke Stevenson Scenic Riverway. Consistent with similar regulations for the John Graves Scenic Riverway, the construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body in the Coke Stevenson Scenic Riverway is prohibited except where the requirements in §§311.75(2), 311.77, and 311.78(b) are met. For the purposes of this subchapter, a new quarry is any quarry that commenced operations after September 1, 2005. An existing quarry is any quarry that was in operation prior to September 1, 2005. Expansion of an existing quarry refers to any change to an existing quarry that results in additional disturbance, including the construction of additional processing areas.

Just as with the John Graves Scenic Riverway regulations, throughout this subchapter,

prohibitions, application requirements, and performance criteria are established for quarries located in the Coke Stevenson Scenic Riverway based upon the quarry's location relative to a navigable water body (as defined in §311.71). Where location is established as the distance from a water body, the distance is measured from the gradient boundary. Federal Emergency Management Agency flood hazard maps identify the 100-year floodplain relative to a water body.

Amended §311.82, Existing Quarries, requires existing quarries that are subject to the adopted rule to seek and obtain an authorization in accordance with §311.74(b), if they have not done so before the effective date of this rule. The existing quarries in the John Graves Scenic Riverway that already obtained an authorization in accordance with §311.74(b) do not need to reapply for coverage under this rulemaking. However, any new or expanding quarries within the John Graves Scenic Riverway or the Coke Stevenson Scenic Riverway must apply for permit coverage. Paragraph (c) is modified to clarify that existing quarries located 200 to 1,500 feet of a water body in the Coke Stevenson Scenic Riverway must submit an application for permit coverage within 180 days of the effective date of the subchapter.

Final Regulatory Impact Determination

TCEQ reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not meet the definition of a “Major environmental rule” as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a “Major environmental rule” adopted by a state agency, the result

of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A “Major environmental rule” is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The 88th Texas Legislature enacted HB 1688, amending TWC, Chapter 26, Subchapter M (Water Quality Protection Areas) to include the Coke Stevenson Scenic Riverway, defined by HB 1688 as the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction, in TCEQ's Pilot Program for water quality protection areas that the 79th Texas Legislature enacted through Senate Bill (SB) 1354 for a certain designated portion of the Brazos River. That designated portion of the Brazos River, defined by SB 1354 as the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas, is designated as the John Graves Scenic Riverway and is subject to specific permitting and enforcement regulations that SB 1354 established. The Pilot Program created specific regulations for individual or general permits for quarries, depending on their proximity to any water body in the area designated as the John Graves Scenic Riverway. HB 1688 postpones the Pilot Program's end, and the expiration of provisions governing the Pilot Program, from September 1, 2025, to September 1, 2027, and reenacts provisions relating to the reclamation and restoration fund account.

As the Bill Analysis from the Natural Resources Committee of the Texas House of Representatives makes clear, the 88th Texas Legislature enacted HB 1688 with the aim of protecting the beds, bottoms, and banks of a stretch of the South Llano River from mining and quarrying activities. HB 1688 seeks to address this issue by amending the TWC to include the Coke Stevenson Scenic Riverway in the same Pilot Program as the John Graves Scenic Riverway. Specifically, HB 1688 amends Chapter 26 of the TWC by revising Subchapter M to make the Pilot Program requirements for the John Graves Scenic Riverway, related to permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation regarding quarry operations, applicable to the stretch of the South Llano River defined by HB 1688 as the Coke Stevenson Scenic Riverway.

Therefore, the specific intent of the adopted rulemaking is related to extending existing protections for certain designated portions of Texas rivers to additional designated portions of Texas rivers in accordance with HB 1688.

HB 1688 amends Chapter 26 of the TWC by revising Subchapter M (specifically §§26.551 - 26.562) and the adopted rulemaking amends TCEQ Watershed Protection Rules, found at 30 TAC Chapter 311, Subchapter H, which implements TWC, §§26.551 - 26.554 and 26.562. The amendment to Subchapter H expands the permitting and financial assurance requirements for quarries to the new Coke Stevenson Scenic Riverway, continues the requirements in the John Graves Scenic Riverway, and extends the expiration date of the Pilot Program to September 1, 2027.

Certain aspects of TCEQ's Watershed Protection Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted

rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rulemaking does not fit the TGC, §2001.0225 definition of "Major environmental rule".

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, it does not come under a delegation agreement or contract with a federal program, and finally, is not being adopted under TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in HB 1688 of the Texas 2023 legislative session and implements existing state law found at TWC, §26.0135 that states that the commission must establish strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a

taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the adopted rulemaking is to implement the legislative amendments to the TWC in HB 1688 by amending TCEQ's Watershed Protection Rules to extend existing protections for certain designated portions of Texas rivers to additional designated portions of Texas rivers. TCEQ's Watershed Protection Rules do not regulate property but instead regulate water quality in the specific watersheds. The adopted rulemaking will substantially advance this stated purpose by adopting new rule language that includes the Coke Stevenson Scenic Riverway in TCEQ's Watershed Protection Rules.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real

property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the adopted rules is to implement HB 1688 by including the Coke Stevenson Scenic Riverway in the same TCEQ Pilot Program as the John Graves Scenic Riverway. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the Coastal Management Program.

Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking has no effect on sites subject to the Federal Operating Permits Program.

Public Comment

The commission offered a public hearing on February 26, 2024. The 30-day comment period closed on February 26, 2024. The commission did not receive any comments.

SUBCHAPTER H: REGULATIONS OF QUARRIES IN CERTAIN WATER QUALITY PROTECTION

AREAS [THE JOHN GRAVES SCENIC RIVERWAY]

§§311.71—311.75, 311.77, and 311.79 - 311.82

Statutory Authority

The Texas Commission on Environmental Quality (the commission or TCEQ) adopts these amendments to TCEQ rules under the authority of Texas Water Code (TWC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. Lastly, TWC, §26.0135 requires the commission to establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

The adopted amendments implement House Bill 1688, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.0135.

§311.71. Definitions.

The following words and terms, when used in the subchapter, have the following meanings.

- (1) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable

recurrence interval of once in 25 years, with a duration of 24 hours, as defined by the National Weather Service and Technical Paper Number 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments; or equivalent regional or state rainfall information.

(2) Aggregates--Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, granite, gravel, gypsum, marble, sand, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance. The term does not include clay or shale mined for use in manufacturing structural clay products.

(3) Aquifer--A saturated permeable geologic unit that can transmit, store, and yield to a well, the quality and quantities of groundwater sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels; permeable sedimentary rocks, such as sandstones and limestones; and/or heavily fractured volcanic and crystalline rocks. Groundwater within an aquifer can be confined, unconfined, or perched.

(4) Best management practices--Any prohibition, management practice, maintenance procedure, or schedule of activity designed to prevent or reduce the pollution of water in the state. Best management practices include treatment, specified operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

(5) Coke Stevenson Scenic Riverway -- The South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

(6) [(5)] John Graves Scenic Riverway--That portion of the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas.

(7) [(6)] Natural hazard lands--Geographic areas in which natural conditions exist that pose or, as a result of quarry operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

(8) [(7)] Navigable--Designated by the United States Geological Survey (USGS) as perennial on the most recent topographic map(s) published by the USGS, at a scale of 1:24,000.

(9) [(8)] Operator--Any person engaged in or responsible for the physical operation and control of a quarry.

(10) [(9)] Overburden--All materials displaced in an aggregates extraction operation that are not, or reasonably would not be expected to be, removed from the affected area.

(11) [(10)] Owner--Any person having title, wholly or partly, to the land on which a quarry exists or has existed.

(12) [(11)] Pit--An open excavation from which aggregates have been, or are being,

extracted with a depth of five feet or more below the adjacent and natural ground level.

(13) [(12)] Quarry--The site from which aggregates for commercial sale are being, or have been, removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which the plant processing the raw materials is located. The term does not include any land owned or leased by the responsible party not being currently used in the production of aggregates for commercial sale or an excavation to mine clay or shale for use in manufacturing structural clay products.

(14) [(13)] Quarrying--The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates for commercial sale from natural deposits occurring in the earth.

(15) [(14)] Reclamation--The land treatment processes designed to minimize degradation of water quality, damage to fish or wildlife habitat, erosion, and other adverse effects from quarries. Reclamation includes backfilling, soil stabilization and compacting, grading, erosion control measures, appropriate revegetation, or other measures, as appropriate.

(16) [(15)] Responsible party--Any owner, operator, lessor, or lessee who is primarily responsible for overall function and operation of a quarry located in a [the] water quality protection area [as defined in this section].

(17) [(16)] Restoration--Those actions necessary to change the physical, chemical, and/or biological qualities of a receiving water body in order to return the water body to its background condition. Restoration includes on- and off-site stabilization to reduce or eliminate

an unauthorized discharge, or substantial threat of an unauthorized discharge from the permitted site.

(18) [(17)] Structural controls--Physical, constructed features that prevent or reduce the discharge of pollutants. Structural controls include, but are not limited to, sedimentation/detention ponds; velocity dissipation devices such as rock berms, vegetated berms, and buffers; and silt fencing.

(19) [(18)] Tertiary containment--A containment method by which an additional wall or barrier is installed outside of the secondary storage vessel or other secondary barrier in a manner designed to prevent a release from migrating beyond the tertiary wall or barrier before the release can be detected.

(20) [(19)] Water body--Any navigable watercourse, river, stream, or lake within a [the] water quality protection area.

(21) [(20)] Water quality protection areas--

(A) The portion of the Brazos River and its contributing watershed [within Palo Pinto and Parker Counties, Texas], located downstream of [from] the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, and extending to the county line between Parker and Hood Counties, Texas; and

(B) the South Llano River and its contributing watershed in Kimble County, located upstream of the river 's confluence with the North Llano River at the City of Junction.

§311.72. Applicability

(a) This subchapter applies to a pilot program regulating quarrying [within the water quality protection area designated by this subchapter,] in the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway. This subchapter expires on September 1, 2027 [2025].

(b) This subchapter does not apply to:

(1) the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying;

(2) a quarry, or associated processing plant, located in the John Graves Scenic Riverway that since on or before January 1, 1994, has been in regular operation without cessation of operation for more than 30 consecutive days and under the same ownership;

(3) the construction or modification of associated equipment located on a quarry site or associated processing plant site in the John Graves Scenic Riverway described in paragraph (2) of this subsection;

(4) an activity, facility, or operation regulated under Natural Resources Code, Texas Surface Coal Mining and Reclamation Act, Chapter 134; or

(5) quarries mining clay and shale for use in manufacturing structural clay products.

(c) Operations or facilities to which this subchapter does not apply under subsection (b)

of this section, must maintain adequate documentation on site sufficient to demonstrate their exclusions.

(1) Documentation demonstrating ownership includes, but is not limited to: deeds, property tax receipts, leases, or insurance records.

(2) Documentation demonstrating continuous operation without cessation of operation for more than 30 consecutive days beginning on or before January 1, 1994, includes, but is not limited to: production records, sales receipts, payroll records, sales tax records, income tax records, or financial statements/reports.

(3) Documentation demonstrating the construction or operation of a municipal solid waste facility, an activity, facility, or operation regulated under Natural Resources Code, Texas Surface Coal Mining and Reclamation Act, Chapter 134; or quarries mining clay and shale for use in manufacturing structural clay products includes, but is not limited to: any permit issued by the commission, Railroad Commission of Texas, or United States Environmental Protection Agency.

§311.73. Prohibitions.

(a) The construction or operation of any new quarry, or the expansion of any existing quarry, within 200 feet of any water body located within a water quality protection area [in the John Graves Scenic Riverway] is prohibited.

(b) Unless authorized under this subchapter, the construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body located within a water quality protection area [in the John Graves Scenic Riverway] is prohibited.

§311.74. Authorization.

(a) Any responsible party shall seek and obtain a permit subject to the requirements of Chapters 205 and 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits).

(b) Based on the location of a given quarry, those quarries located within a water quality protection area, must comply with additional requirements imposed by this subchapter on its discharges. [The following additional requirements imposed through this subchapter for discharges from quarries located within water quality protection area in the John Graves Scenic Riverway are based on the location of the quarry.]

(1) In addition to the requirements of Chapters 205 and 305 of this title, a quarry located within a water quality protection area [in the John Graves Scenic Riverway] must meet the following requirements:

(A) §311.75(1) of this title (relating to Permit Application Requirements);

(B) §311.79 of this title (relating to Performance Criteria [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]); and

(C) §311.81(a) of this title (relating to Financial Responsibility [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]).

(2) In addition to the requirements of Chapters 205 and 305 of this title and paragraph (1) of this subsection, any quarry located within the 100-year floodplain or within one mile of a water body within a water quality protection area [in the John Graves Scenic Riverway] must obtain an individual permit.

(3) In addition to the requirements of Chapters 205 and 305 of this title and paragraphs (1) and (2) of this subsection, all quarries located within 200 feet to 1,500 feet of a water body within a water quality protection area [in the John Graves Scenic Riverway], and subject to the prohibition under §311.73(b) of this title (relating to Prohibitions), must meet the following requirements:

(A) §311.75(2) of this title;

(B) §311.80 of this title (relating to Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body [Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]); and

(C) §311.81(b) of this title.

(4) For any quarry subject to the provisions of paragraph (2) of this subsection, a part of which is also located outside of the 100-year floodplain of, or beyond one mile from, a water body, the requirements of paragraph (2) of this subsection are applicable to the entire quarry. The executive director may waive, modify, or otherwise adjust these requirements for that portion of the quarry located outside of the 100-year floodplain of, or beyond one mile from, a water body.

(5) For any quarry subject to the provisions of paragraph (3) of this subsection, a part of which is also located more than 1,500 feet from a water body, the requirements of paragraph (3) of this subsection will be applicable to the entire quarry. The executive director may waive, modify, or otherwise adjust these requirements for that portion of the quarry located more than 1,500 feet from a water body.

§311.75. Permit Application Requirements.

Any responsible party who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions in Chapters 205 and 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits). Quarries located in a water quality protection area [the John Graves Scenic Riverway] must submit additional information based on the location of the quarry.

(1) All [A] quarries [quarry] located within a water quality protection area [in the John Graves Scenic Riverway] must submit the following:

(A) a Restoration Plan as outlined in §311.76 of this title (relating to Restoration Plan); and

(B) evidence of sufficiently funded bonding or proof of financial resources to mitigate, remediate, and correct any potential future effects on a water body by an unauthorized discharge to a water body in an amount no less than that specified in §311.81(a) of this title (relating to Financial Responsibility [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]).

(2) In addition to the permit application requirements specified in paragraph (1) of this section, all applications for quarries located within 200 feet to 1,500 feet of any water body within a water quality protection area [the John Graves Scenic Riverway] must include:

(A) a Technical Demonstration as outlined in §311.77 of this title (relating to Technical Demonstration); and

(B) a Reclamation Plan as outlined in §311.78 of this title (relating to Reclamation Plan).

(3) In addition to the permit application requirements in paragraphs (1) and (2) of this section, the executive director may require any additional information deemed appropriate and necessary to demonstrate compliance with the provisions of Texas Water Code, Chapter 26, Subchapter M or this subchapter.

§311.77. Technical Demonstration.

(a) The Technical Demonstration must include, at a minimum:

(1) a time schedule for the proposed quarry from initiation to termination of operations, including reclamation;

(2) a detailed description of the type of quarrying to be conducted, including the processes/methods employed (e.g., pit mining where blasting is employed);

(3) a geological description of the quarry area, including a detailed description of the material deposit: type, geographical extent, depth, and volume; and a description of the general area geology;

(4) identification and a detailed description of any other operations on site, including raw-material processing and/or secondary products (e.g., cement) processing;

(5) identification and a detailed description of type, character, and volume of wastewater and storm water generated on site;

(6) a topographic map, at a scale appropriate to represent the quarry operation and all of the following within the boundaries of the quarry:

(A) waterbodies;

(B) existing and proposed roads including quarry access roads;

(C) existing and proposed railroads;

(D) the 100-year floodplain boundaries, if applicable;

(E) structures (e.g., office buildings);

(F) the location of all known wells including, but not limited to, water wells, oil wells, and unplugged and abandoned wells;

(G) active, post, and reclaimed quarrying areas;

(H) buffer areas;

(I) raw material, intermediate material, final product, waste product, byproduct, and/or ancillary material storage and processing areas;

(J) chemical and fuel storage areas;

(K) vehicle/equipment maintenance, cleaning, and fueling areas;

(L) vehicle/equipment loading and unloading areas;

(M) baghouses and other air treatment units exposed to precipitation; and

(N) waste disposal areas;

(7) a Surface Water Drainage and Water Accumulation Plan. The Surface Water Drainage and Water Accumulation Plan must be designed to prevent damage to fish, wildlife, and fish/wildlife habitat from erosion, siltation, and runoff from quarry operations. The Surface Water Drainage and Water Accumulation Plan must, at a minimum:

(A) describe the use and monitoring of structural controls and best management practices as identified in paragraph (8) of this subsection designed to control erosion, siltation, and runoff; and

(B) provide a topographic map, at a scale appropriate to represent the quarry operation and all of the following within the boundaries of the quarry:

(i) the location of each process wastewater and/or storm water outfall;

(ii) an outline of the drainage area that contributes storm water to each outfall;

(iii) treatment, detention, and water storage tanks and ponds;

(iv) structural controls for managing storm water and/or process wastewater; and

(v) physical features of the site that would influence storm water runoff or contribute a dry weather flow; and

(8) a Best Available Technology Evaluation. The Best Available Technology Evaluation assists staff in reviewing and determining the best available technology designed to control erosion, siltation, and runoff from the quarry to minimize disturbance and adverse effects to fish, wildlife, and related environmental resources. Where practical, the Best Available Technology Evaluation must assist staff in reviewing and determining best available technology designed to enhance fish, wildlife, and related environmental resources.

(A) The Best Available Technology Evaluation must assess the use of structural controls and best management practices.

(B) The Best Available Technology Evaluation must evaluate performance criteria outlined in §311.79 and §311.80 of this title (relating to Performance Criteria [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway] and Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body [Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]).

(C) Structural control design and construction must be certified by a licensed Texas professional engineer. Design and construction plans/specifications must be maintained on site and made available at the request of the executive director; and

(9) a procedure and schedule for reviewing the Technical Demonstration for consistency with quarry operations and site conditions and effectiveness in controlling erosion, siltation, and runoff.

(b) Certification of the Technical Demonstration must be provided, within the appropriate area or discipline, by a licensed Texas professional engineer or a licensed Texas professional geoscientist. Components of the Technical Demonstration may be independently certified, as appropriate.

§311.79. Performance Criteria [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway].

The following performance criteria are applicable to all quarries located within a water quality protection area [in the John Graves Scenic Riverway].

(1) Discharges from quarries shall meet the following effluent limitations.

Attached Graphic

(2) Discharges from quarries resulting from a rainfall event greater than the 25-year, 24-hour rainfall event are not subject to effluent limitations in paragraph (1) of this section.

(3) Discharges from quarries shall be monitored as follows.

Attached Graphic

(4) Results of analysis for monitoring conducted as specified in §311.75(3) of this title (relating to Permit Application Requirements) shall be submitted monthly on approved self-report forms. Monitoring and reporting records, including strip charts and records of calibration and maintenance, shall be retained on site, or shall be readily available for review by a commission representative for a period of three years from the date of the record or sample,

measurement, or report.

(5) The permittee shall install a permanent rain gauge at the plant site and keep daily records of rainfall and the resulting flow. Monitoring records shall be retained on site, or shall be readily available for review by a commission representative for a period of three years from the date of the record.

§311.80. Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body [Located Within a Water Quality Protection Area in the John Graves Scenic Riverway].

Authorizations to discharge from quarries located between 200 feet and 1,500 feet of a water body within a water quality protection area [in the John Graves Scenic Riverway] require the permittee to satisfy the following performance criteria. An evaluation of these performance criteria must be incorporated into the Technical Demonstration, as required in §311.77 of this title (relating to Technical Demonstration).

(1) The down-gradient perimeter of the quarry must include a final control structure to manage the discharge of wastewater and/or storm water. The final control structure must be designed and constructed as follows.

(A) Certification of the final control structure design and construction must be provided by a licensed Texas professional engineer. Design and construction plans and specifications must be maintained on site and made available at the request of the executive director.

(B) The final control structure side slopes must not exceed a gradient of

1:3 (33%).

(C) The final control structure must be designed to impound, at minimum, the volume of water resulting from a 25-year, 24-hour rainfall event for the final control structure drainage area.

(D) The final control structures must be properly stabilized (via use of vegetation, riprap, and/or other acceptable technique) to prevent the final control structure from being a source of pollution and/or to prevent structural failure.

(E) The final control structure must be inspected once every 14 calendar days and within 24 hours of any rainfall event totaling 0.5 inches or greater. Where an inspection identifies failure and/or problems with the final control structure, corrections must be made within seven calendar days of the inspection. Records of these inspections and any site stabilizations must be maintained on site for a period of three years and made available to the executive director, upon request.

(F) A minimum 200-foot vegetative buffer must be maintained between the final control structure and any water body.

(2) All treatment, detention, and water storage tanks and ponds must be operated to maintain a minimum freeboard of two feet.

(3) A permanent depth marker shall be installed and maintained on all treatment, detention, and water storage tanks and ponds. The depth marker shall identify the

volume required for the design rainfall event, as specified in paragraph (1)(c) of this section, and freeboard.

(4) The quarry operation must demonstrate compliance with all the requirements of 36 Code of Federal Regulations Part 800 (Protection of Historic Properties) and 9 Texas Natural Resources Code, Chapter 191 (Antiquities Code).

(5) The quarry operation must not have a detrimental effect on any federal endangered/threatened, aquatic/aquatic-dependent species/proposed species; or their critical habitat.

(6) Waste management units must be located a minimum horizontal distance from water wells, in accordance with 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), or where those regulations do not apply, the minimum distance to a water well must be 500 feet.

(7) Secondary containment of chemical and fuel storage is required. Where quarry operations overlay aquifer and/or aquifer recharge areas and sufficient confining layers do not exist to preclude contamination of groundwater, tertiary containment is required for all chemical and fuel storage.

(8) Quarry operations must not be located on natural hazard land, areas subject to frequent flooding, or in areas of unstable geology.

§311.81. Financial Responsibility [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway].

(a) An owner or operator of a quarry located within a water quality protection area [in the John Graves Scenic Riverway] shall establish and maintain financial assurance for restoration in accordance with Chapter 37, Subchapter W of this title (relating to Financial Assurance for Quarries). The amount of financial assurance must be no less than the amount determined by the executive director as sufficient to meet the requirements of the Restoration Plan in §311.76(a)(8) of this title (relating to Restoration Plan).

(b) An owner or operator of a quarry located between 200 feet and 1,500 feet of a water body within a water quality protection area [in the John Graves Scenic Riverway] shall establish and maintain financial assurance for reclamation in accordance with Chapter 37, Subchapter W of this title. The amount of financial assurance must be no less than the amount determined by the executive director as sufficient to meet the requirements of the Reclamation Plan in §311.78(a)(2) of this title (relating to Reclamation Plan).

§311.82. Existing Quarries.

(a) Existing quarries required to seek and obtain authorization in accordance with §311.74(b)(1) of this title (relating to Authorization), must submit a Notice of Intent as required by a commission-issued general permit. Subject to the provisions of this subsection and maintaining compliance, existing quarries subject to the requirements of §311.74(b)(1) of this title that have authorization under a Texas Pollutant Discharge Elimination System Permit or Texas Land Application Permit issued under Chapters 205 or [and] 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits), may continue to operate under the terms of that permit until the commission issues or denies authorization under this

subchapter.

(b) Existing quarries located in the Coke Stevenson Scenic Riverway required to seek and obtain authorization in accordance with §311.74(b)(2) of this title must submit an individual Texas Pollutant Discharge Elimination System or Texas Land Application Permit application not later than 180 days following the effective date of this subchapter. Subject to the provisions of this subsection and maintaining compliance, existing quarries subject to the requirements of §311.74(b)(2) of this title that have authorization under a Texas Pollutant Discharge Elimination System Permit or Texas Land Application Permit issued under Chapters 205 or [and] 305 of this title, may continue to operate under the terms of that permit until the commission issues or denies authorization under this subchapter.

(c) Existing quarries located in the Coke Stevenson Scenic Riverway required to seek and obtain authorization in accordance with §311.74(b)(3) of this title must submit an individual Texas Pollutant Discharge Elimination System or Texas Land Application Permit application not later than 180 days following the effective date of this subchapter. An existing quarry may not operate until the commission issues authorization under this subchapter.

located in the definition of major modification in §116.12 of this title. Internal offsets that are generated at the source and that otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources located in a serious or severe ozone nonattainment area with a PTE of less than 100 tpy of an applicable nonattainment pollutant are not required to undergo nonattainment new source review under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources located in a serious or severe ozone nonattainment area with a PTE of greater than or equal to 100 tpy of an applicable nonattainment pollutant can substitute federal BACT (as identified in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements) for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis must demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(e) For sources located in the El Paso ozone nonattainment area under the 1979 one-hour ozone National Ambient Air Quality Standard as defined in 40 Code of Federal Regulations, Part 81, the requirements of this section do not apply to NO_x emissions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2024.

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Charmaine Backens

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678

CHAPTER 311. WATERSHED PROTECTION SUBCHAPTER H. REGULATION OF QUARRIES IN THE JOHN GRAVES SCENIC RIVERWAY

30 TAC §§311.71 - 311.75, 311.77, 311.79 - 311.82

The Texas Commission on Environmental Quality (TCEQ) proposes to amend §§311.71 - 311.75, 311.77, and 311.79 - 311.82.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 1688, 88th Texas Regular Legislative Session, amended Texas Water Code (TWC), Chapter 26 by revising Subchapter M (Water Quality Protection Areas); specifically, §§26.551 - 26.562, by expanding the pilot program originally established for quarries in the John Graves Scenic Riverway (Brazos River Basin) to include the "Coke Stevenson Scenic Riverway" (Colorado River Basin). The statute addresses

permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation regarding quarry operations. The Coke Stevenson Scenic Riverway is defined as the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

TCEQ is proposing to amend 30 Texas Administrative Code (TAC) Chapter 311 (Watershed Protection Rules), Subchapter H (Regulation of Quarries in the John Graves Scenic Riverway), which implements TWC, §§26.551 - 26.554 and 26.562. The proposed amendment to Subchapter H expands the permitting and financial assurance requirements for quarries to the new Coke Stevenson Scenic Riverway water quality protection area, continues the requirements in the John Graves Scenic Riverway water quality protection area, and extends the expiration date of the pilot program to September 1, 2027.

Section by Section Discussion

Proposed amended Chapter 311, Subchapter H, would remove reference to "the John Graves Scenic Riverway" from the subchapter title and replace it with "Certain Water Quality Protection Areas"; the amended title would be "Regulation of Quarries in Certain Water Quality Protection Areas." This change is required to provide clarity that the applicability extends to all water quality protection areas identified in the subchapter.

Proposed amended Chapter 311, Subchapter H would remove references to "the John Graves Scenic Riverway" and replace them with reference to "a water quality protection area" throughout the subchapter to encompass both the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway water quality protection areas.

Proposed amended §311.71 (Definitions) would define one new term and revise one term used within the subchapter to be consistent with the definitions found in HB 1688. The new term "Coke Stevenson Scenic Riverway" means the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction. The revised term "Water quality protection areas" means the Brazos River and its contributing watershed within Palo Pinto and Parker Counties, Texas, downstream from the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, and extending to the county line between Parker and Hood Counties, Texas; and the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction. The terms "responsible party" and "water body" were revised for clarity and to remove unnecessary language.

Proposed amended §311.72 (Applicability) would identify activities regulated by this subchapter and activities specifically excluded from regulation. Activities regulated by this subchapter include quarrying within a water quality protection area in the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway, as identified in subsection (a). In addition, proposed amended §311.72 specifies September 1, 2027, as the new expiration date for Chapter 311, Subchapter H, consistent with HB 1688.

Proposed amended §311.73 (Prohibitions) would identify areas within the newly defined water quality protection area where quarrying is prohibited, consistent with HB 1688. The proposed amendment to §311.73(a), consistent with existing regulations for the John Graves Scenic Riverway, would prohibit the construction or operation of any new quarry, or the expansion of

an existing quarry, located within 200 feet of any water body within the Coke Stevenson Scenic Riverway. Consistent with similar regulations for the John Graves Scenic Riverway, the construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body in the Coke Stevenson Scenic Riverway would be prohibited except where the requirements in §§311.75(2), 311.77, and 311.78(b) are met. For the purposes of this subchapter, a new quarry is any quarry that commenced operations after September 1, 2005. An existing quarry is any quarry that was in operation prior to September 1, 2005. Expansion of an existing quarry refers to any change to an existing quarry that results in additional disturbance, including the construction of additional processing areas.

Just as with the John Graves Scenic Riverway regulations, throughout this subchapter, prohibitions, application requirements, and performance criteria are established for quarries located in the Coke Stevenson Scenic Riverway based upon the quarry's location relative to a navigable water body (as defined in §311.71). Where location is established as the distance from a water body, the distance is measured from the gradient boundary. Federal Emergency Management Agency flood hazard maps identify the 100-year floodplain relative to a water body.

Proposed amended §311.82, Existing Quarries, would require existing quarries that are subject to the proposed rule to seek and obtain an authorization in accordance with §311.74(b), if they have not done so before the effective date of this rule. The existing quarries in the John Graves Scenic Riverway that already obtained an authorization in accordance with §311.74(b) will not need to reapply for coverage under this proposed rulemaking. However, any new or expanding quarries within the John Graves Scenic Riverway or the Coke Stevenson Scenic Riverway must apply for permit coverage. Paragraph (c) was modified to clarify that existing quarries located within 200 to 1,500 feet of a water body in the Coke Stevenson Scenic Riverway must submit an application for permit coverage within 180 days of the effective date of the subchapter.

Fiscal Note: Costs to State and Local Government

Kyle Girtten, Analyst in the Budget and Planning Division, has determined that for each year the proposed rules are in effect, no costs are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girtten determined that for each year the proposed rules are in effect, the public benefit will be compliance with state law, specifically HB 1688 from the 88th Regular Legislative Session. As a result of this rulemaking, the public in the watersheds of the Coke Stevenson Scenic Riverway and John Graves Scenic Riverway may see improved water quality, reduced environmental impact during heavy rain events, and more aesthetically pleasing waters thereby increasing desirability for recreational opportunities.

The proposed rulemaking would result in fiscal implications for quarry operations in the Coke Stevenson Scenic Riverway for each year the proposed rules are in effect and for the years by which the pilot program in the John Graves Scenic Riverway is being extended (§311.72). No fiscal implications are anticipated for businesses in the Coke Stevenson Scenic Riverway because there are no quarries in this area.

Eight existing permittees in the John Graves Scenic Riverway would be fiscally impacted by the proposed rulemaking. Four of these entities are billed an annual water quality fee of \$800 per year, so the total fees for these entities over the two years by which the pilot program is being extended would be \$1,600, or \$6,400 in total annual water quality fees over the two-year period for these four entities. One entity is within 200 to 1,500 feet of a water body in the water quality protection area and would be responsible for continuing to provide financial assurance for reclamation and restoration, and the other seven entities would be required to provide financial assurance for restoration only (§311.81). Unless these operations can meet the financial requirements through a corporate financial test, the total cost for the entity within 200 to 1,500 feet of a water body is estimated at \$22,600 per year in premiums, or \$45,200 in total for the two years in which the applicability of this rule is being extended. The total cost for premiums for the other seven entities is estimated at \$4,500 per year for each entity, which translates to \$63,000 in total for two years for these seven entities.

In the event an entity wants to initiate quarry operations within the Coke Stevenson Scenic Riverway or John Graves Scenic Riverway within the amended period of the applicability of the rulemaking or amend, modify, or renew a permit, additional costs would apply. This rulemaking would require entities greater than one mile from a water body in the water quality protection area for either waterway to be responsible for development of a restoration plan, maintenance of financial assurance for restoration, and complying with performance criteria (§311.74(b)(1)). Entities within one mile of a water body in a water quality protection area would be responsible for these costs in addition to a fee for an individual permit (§311.74(b)(2)). Entities within 200 to 1,500 feet of a water body would additionally be responsible for costs associated with developing a technical demonstration, developing a reclamation plan, maintaining financial assurance for restoration, and complying with additional performance criteria (§311.74(b)(3)).

Individual permit application fees are \$1,250 which is \$1,150 greater than the Multi-Sector General Permit application fee, which would otherwise be required. Additionally, entities with individual permits may be responsible for attorney fees if contested case hearings are held, and these costs could range from \$5,000 to \$150,000 depending on the length of hearing and other circumstances. Professional fees are estimated between \$5,000 to \$50,000 for the development of restoration plan, reclamation plan when applicable, and technical demonstration when applicable. Costs associated with controls as necessary to be compliant could be as little as \$2,100 or cost more than \$100,000 depending on the size of the operation, topography, vegetative cover, and other factors. As noted above, costs associated with premiums for maintaining financial assurance for restoration is estimated at \$4,500 annually, and premiums for restoration and reclamation together would be \$22,600 annually.

Local Employment Impact Statement

TCEQ reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

This rulemaking applies to specific water quality protection in Palo Pinto, Parker, and Kimble counties, and these counties include rural communities. TCEQ reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect. Four micro-businesses in the John Graves Scenic Riverway are already operating under the existing rule; therefore, no new implications are anticipated due to this rulemaking. No other businesses have been identified which would be affected.

Small Business Regulatory Flexibility Analysis

TCEQ reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

TCEQ prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, extending the John Graves Scenic Riverway program by two years, and it establishes an identical program for the Coke Stevenson Scenic Riverway. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

TCEQ reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not meet the definition of a "Major environmental rule" as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The 88th Texas Legislature enacted HB 1688, amending TWC, Chapter 26, Subchapter M (Water Quality Protection Areas) to include the Coke Stevenson Scenic Riverway, defined by HB

1688 as the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction, in TCEQ's Pilot Program for water quality protection areas that the 79th Texas Legislature enacted through Senate Bill (SB) 1354 for a certain designated portion of the Brazos River. That designated portion of the Brazos River, defined by SB 1354 as the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas, is designated as the John Graves Scenic Riverway and is subject to specific permitting and enforcement regulations that SB 1354 established. The Pilot Program created specific regulations for individual or general permits for quarries, depending on their proximity to any water body in the area designated as the John Graves Scenic Riverway. HB 1688 postpones the Pilot Program's end, and the expiration of provisions governing the Pilot Program, from September 1, 2025, to September 1, 2027, and reenacts provisions relating to the reclamation and restoration fund account.

As the Bill Analysis from the Natural Resources Committee of the Texas House of Representatives makes clear, the 88th Texas Legislature enacted HB 1688 with the aim of protecting the beds, bottoms, and banks of a stretch of the South Llano River from mining and quarrying activities. HB 1688 seeks to address this issue by amending the TWC to include the Coke Stevenson Scenic Riverway in the same Pilot Program as the John Graves Scenic Riverway. Specifically, HB 1688 amends Chapter 26 of the TWC by revising Subchapter M to make the Pilot Program requirements for the John Graves Scenic Riverway, related to permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation regarding quarry operations, applicable to the stretch of the South Llano River defined by HB 1688 as the Coke Stevenson Scenic Riverway.

Therefore, the specific intent of the proposed rulemaking is related to extending existing protections for certain designated portions of Texas rivers to additional designated portions of Texas rivers in accordance with HB 1688.

HB 1688 amends Chapter 26 of the TWC by revising Subchapter M (specifically §§26.551 - 26.562) and the proposed rulemaking amends TCEQ Watershed Protection Rules, found at 30 TAC Chapter 311, Subchapter H, which implements TWC, §§26.551 - 26.554 and §26.562. The proposed amendment to Subchapter H would expand the permitting and financial assurance requirements for quarries to the new Coke Stevenson Scenic Riverway, continues the requirements in the John Graves Scenic Riverway, and extends the expiration date of the Pilot Program to September 1, 2027.

Certain aspects of TCEQ's Watershed Protection Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the TGC, §2001.0225 definition of "major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this

rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, it does not come under a delegation agreement or contract with a federal program and, finally, is not being proposed under TCEQ's general rule-making authority. This rulemaking is being proposed under a specific state statute enacted in HB 1688 of the Texas 2023 legislative session and implements existing state law found at TWC, §26.0135 that states that TCEQ must establish strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, TCEQ does not adopt the rule solely under TCEQ's general powers. TCEQ invites public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

TCEQ evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to implement the legislative amendments to the TWC in HB 1688 by amending TCEQ's Watershed Protection Rules to extend existing protections for certain designated portions of Texas rivers to additional designated portions of Texas rivers. TCEQ's Watershed Protection Rules do not regulate property but instead regulate water quality in the specific watersheds. The proposed rulemaking will substantially advance this stated purpose by adopting new rule language that includes the Coke Stevenson Scenic Riverway in TCEQ's Watershed Protection Rules.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property because, as TCEQ's analysis indicates, TGC, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the proposed rules is to implement HB

1688 by including the Coke Stevenson Scenic Riverway in the same TCEQ Pilot Program as the John Graves Scenic Riverway. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

TCEQ reviewed the proposed amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking has no effect on sites subject to the Federal Operating Permits Program.

Announcement of Hearing

TCEQ will hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 26, 2024, at 9:30 a.m. in Building F, Room 2210 at TCEQ's central office located at 12100 Park 35 Circle, Austin, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, TCEQ staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, February 22, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, February 23, 2024, to those who register for the hearing.

Persons who do not wish to provide oral comments but would like to view the hearing may do so at no cost at: https://teams.microsoft.com/join/19%3ameeting_NzU0MTIxMzQtNDc0Zi00YmZiLTg1NDEtZjdjZmZkODdjZWV5%40thread.v-2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be sub-

mitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-138-311-OW. The comment period closes on February 26, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from TCEQ's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact the Stormwater Team, Water Quality Division, (512) 239-4671.

Statutory Authority

The Texas Commission on Environmental Quality (the commission or TCEQ) proposes these amendments to TCEQ rules under the authority of Texas Water Code (TWC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. Lastly, TWC, §26.0135 requires the commission to establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

The amendments implement House Bill 1688, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.0135.

§311.71. Definitions.

The following words and terms, when used in the subchapter, have the following meanings.

(1) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours, as defined by the National Weather Service and Technical Paper Number 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments; or equivalent regional or state rainfall information.

(2) Aggregates--Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, granite, gravel, gypsum, marble, sand, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance. The term does not include clay or shale mined for use in manufacturing structural clay products.

(3) Aquifer--A saturated permeable geologic unit that can transmit, store, and yield to a well, the quality and quantities of groundwater sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels; permeable sedimentary rocks, such as sandstones and limestones; and/or heavily fractured volcanic and crystalline rocks. Groundwater within an aquifer can be confined, unconfined, or perched.

(4) Best management practices--Any prohibition, management practice, maintenance procedure, or schedule of activity designed to prevent or reduce the pollution of water in the state. Best management practices include treatment, specified operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

(5) Coke Stevenson Scenic Riverway--The South Llano River and its contributing watershed in Kimble County, located

upstream of the river's confluence with the North Llano River at the City of Junction.

(6) ~~[(5)]~~ John Graves Scenic Riverway--That portion of the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas.

(7) ~~[(6)]~~ Natural hazard lands--Geographic areas in which natural conditions exist that pose or, as a result of quarry operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

(8) ~~[(7)]~~ Navigable--Designated by the United States Geological Survey (USGS) as perennial on the most recent topographic map(s) published by the USGS, at a scale of 1:24,000.

(9) ~~[(8)]~~ Operator--Any person engaged in or responsible for the physical operation and control of a quarry.

(10) ~~[(9)]~~ Overburden--All materials displaced in an aggregates extraction operation that are not, or reasonably would not be expected to be, removed from the affected area.

(11) ~~[(10)]~~ Owner--Any person having title, wholly or partly, to the land on which a quarry exists or has existed.

(12) ~~[(11)]~~ Pit--An open excavation from which aggregates have been, or are being, extracted with a depth of five feet or more below the adjacent and natural ground level.

(13) ~~[(12)]~~ Quarry--The site from which aggregates for commercial sale are being, or have been, removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which the plant processing the raw materials is located. The term does not include any land owned or leased by the responsible party not being currently used in the production of aggregates for commercial sale or an excavation to mine clay or shale for use in manufacturing structural clay products.

(14) ~~[(13)]~~ Quarrying--The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates for commercial sale from natural deposits occurring in the earth.

(15) ~~[(14)]~~ Reclamation--The land treatment processes designed to minimize degradation of water quality, damage to fish or wildlife habitat, erosion, and other adverse effects from quarries. Reclamation includes backfilling, soil stabilization and compacting, grading, erosion control measures, appropriate revegetation, or other measures, as appropriate.

(16) ~~[(15)]~~ Responsible party--Any owner, operator, lessor, or lessee who is primarily responsible for overall function and operation of a quarry located in a [the] water quality protection area [as defined in this section].

(17) ~~[(16)]~~ Restoration--Those actions necessary to change the physical, chemical, and/or biological qualities of a receiving water body in order to return the water body to its background condition. Restoration includes on- and off-site stabilization to reduce or eliminate an unauthorized discharge, or substantial threat of an unauthorized discharge from the permitted site.

(18) ~~[(17)]~~ Structural controls--Physical, constructed features that prevent or reduce the discharge of pollutants. Structural controls include, but are not limited to, sedimentation/detention ponds; ve-

locity dissipation devices such as rock berms, vegetated berms, and buffers; and silt fencing.

(19) [(48)] Tertiary containment--A containment method by which an additional wall or barrier is installed outside of the secondary storage vessel or other secondary barrier in a manner designed to prevent a release from migrating beyond the tertiary wall or barrier before the release can be detected.

(20) [(19)] Water body--Any navigable watercourse, river, stream, or lake within a [the] water quality protection area.

(21) [(20)] Water quality protection areas [area]--

(A) The portion of the Brazos River and its contributing watershed [within Palo Pinto and Parker Counties, Texas], located downstream of [from] the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, and extending to the county line between Parker and Hood Counties, Texas; and

(B) the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

§311.72. *Applicability.*

(a) This subchapter applies to a pilot program regulating quarrying [within the water quality protection area designated by this subchapter,] in the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway. This subchapter expires on September 1, 2027 [2025].

(b) This subchapter does not apply to:

(1) the construction or operation of a municipal solid waste facility regardless of whether the facility includes a pit or quarry that is associated with past quarrying;

(2) a quarry, or associated processing plant, located in the John Graves Scenic Riverway that since on or before January 1, 1994, has been in regular operation without cessation of operation for more than 30 consecutive days and under the same ownership;

(3) the construction or modification of associated equipment located on a quarry site or associated processing plant site in the John Graves Scenic Riverway described in paragraph (2) of this subsection;

(4) an activity, facility, or operation regulated under Natural Resources Code, Texas Surface Coal Mining and Reclamation Act, Chapter 134; or

(5) quarries mining clay and shale for use in manufacturing structural clay products.

(c) Operations or facilities to which this subchapter does not apply under subsection (b) of this section, must maintain adequate documentation on site sufficient to demonstrate their exclusions.

(1) Documentation demonstrating ownership includes, but is not limited to: deeds, property tax receipts, leases, or insurance records.

(2) Documentation demonstrating continuous operation without cessation of operation for more than 30 consecutive days beginning on or before January 1, 1994, includes, but is not limited to: production records, sales receipts, payroll records, sales tax records, income tax records, or financial statements/reports.

(3) Documentation demonstrating the construction or operation of a municipal solid waste facility, an activity, facility, or operation regulated under Natural Resources Code, Texas Surface Coal Mining and Reclamation Act, Chapter 134; or quarries mining clay and

shale for use in manufacturing structural clay products includes, but is not limited to: any permit issued by the commission, Railroad Commission of Texas, or United States Environmental Protection Agency.

§311.73. *Prohibitions.*

(a) The construction or operation of any new quarry, or the expansion of any existing quarry, within 200 feet of any water body located within a water quality protection area [in the John Graves Scenic Riverway] is prohibited.

(b) Unless authorized under this subchapter, the construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body located within a water quality protection area [in the John Graves Scenic Riverway] is prohibited.

§311.74. *Authorization.*

(a) Any responsible party shall seek and obtain a permit subject to the requirements of Chapters 205 and 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits).

(b) Based on the location of a given quarry, those quarries located within a water quality protection area, must comply with additional requirements imposed by this subchapter on its discharges. [The following additional requirements imposed through this subchapter for discharges from quarries located within water quality protection area in the John Graves Scenic Riverway are based on the location of the quarry.]

(1) In addition to the requirements of Chapters 205 and 305 of this title, a quarry located within a water quality protection area [in the John Graves Scenic Riverway] must meet the following requirements:

(A) §311.75(1) of this title (relating to Permit Application Requirements);

(B) §311.79 of this title (relating to Performance Criteria [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]); and

(C) §311.81(a) of this title (relating to Financial Responsibility [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]).

(2) In addition to the requirements of Chapters 205 and 305 of this title and paragraph (1) of this subsection, any quarry located within the 100-year floodplain or within one mile of a water body within a water quality protection area [in the John Graves Scenic Riverway] must obtain an individual permit.

(3) In addition to the requirements of Chapters 205 and 305 of this title and paragraphs (1) and (2) of this subsection, all quarries located within 200 feet to 1,500 feet of a water body within a water quality protection area [in the John Graves Scenic Riverway], and subject to the prohibition under §311.73(b) of this title (relating to Prohibitions), must meet the following requirements:

(A) §311.75(2) of this title;

(B) §311.80 of this title (relating to Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body [Located Within a Water Quality Protection Area in the John Graves Scenic Riverway]); and

(C) §311.81(b) of this title.

(4) For any quarry subject to the provisions of paragraph (2) of this subsection, a part of which is also located outside of the 100-year floodplain of, or beyond one mile from, a water body, the

requirements of paragraph (2) of this subsection are applicable to the entire quarry. The executive director may waive, modify, or otherwise adjust these requirements for that portion of the quarry located outside of the 100-year floodplain of, or beyond one mile from, a water body.

(5) For any quarry subject to the provisions of paragraph (3) of this subsection, a part of which is also located more than 1,500 feet from a water body, the requirements of paragraph (3) of this subsection will be applicable to the entire quarry. The executive director may waive, modify, or otherwise adjust these requirements for that portion of the quarry located more than 1,500 feet from a water body.

§311.75. Permit Application Requirements.

Any responsible party who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions in Chapters 205 and 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits). Quarries located in a water quality protection area [~~the John Graves Seenie Riverway~~] must submit additional information based on the location of the quarry.

(1) All quarries [~~A quarry~~] located within a water quality protection area [~~in the John Graves Seenie Riverway~~] must submit the following:

(A) a Restoration Plan as outlined in §311.76 of this title (relating to Restoration Plan); and

(B) evidence of sufficiently funded bonding or proof of financial resources to mitigate, remediate, and correct any potential future effects on a water body by an unauthorized discharge to a water body in an amount no less than that specified in §311.81(a) of this title (relating to Financial Responsibility [~~for Quarries Located Within a Water Quality Protection Area in the John Graves Seenie Riverway~~]).

(2) In addition to the permit application requirements specified in paragraph (1) of this section, all applications for quarries located within 200 feet to 1,500 feet of any water body within a water quality protection area [~~the John Graves Seenie Riverway~~] must include:

(A) a Technical Demonstration as outlined in §311.77 of this title (relating to Technical Demonstration); and

(B) a Reclamation Plan as outlined in §311.78 of this title (relating to Reclamation Plan).

(3) In addition to the permit application requirements in paragraphs (1) and (2) of this section, the executive director may require any additional information deemed appropriate and necessary to demonstrate compliance with the provisions of Texas Water Code, Chapter 26, Subchapter M or this subchapter.

§311.77. Technical Demonstration.

(a) The Technical Demonstration must include, at a minimum:

(1) a time schedule for the proposed quarry from initiation to termination of operations, including reclamation;

(2) a detailed description of the type of quarrying to be conducted, including the processes/methods employed (e.g., pit mining where blasting is employed);

(3) a geological description of the quarry area, including a detailed description of the material deposit: type, geographical extent, depth, and volume; and a description of the general area geology;

(4) identification and a detailed description of any other operations on site, including raw-material processing and/or secondary products (e.g., cement) processing;

(5) identification and a detailed description of type, character, and volume of wastewater and storm water generated on site;

(6) a topographic map, at a scale appropriate to represent the quarry operation and all of the following within the boundaries of the quarry:

(A) waterbodies;

(B) existing and proposed roads including quarry access roads;

(C) existing and proposed railroads;

(D) the 100-year floodplain boundaries, if applicable;

(E) structures (e.g., office buildings);

(F) the location of all known wells including, but not limited to, water wells, oil wells, and unplugged and abandoned wells;

(G) active, post, and reclaimed quarrying areas;

(H) buffer areas;

(I) raw material, intermediate material, final product, waste product, byproduct, and/or ancillary material storage and processing areas;

(J) chemical and fuel storage areas;

(K) vehicle/equipment maintenance, cleaning, and fueling areas;

(L) vehicle/equipment loading and unloading areas;

(M) baghouses and other air treatment units exposed to precipitation; and

(N) waste disposal areas;

(7) a Surface Water Drainage and Water Accumulation Plan. The Surface Water Drainage and Water Accumulation Plan must be designed to prevent damage to fish, wildlife, and fish/wildlife habitat from erosion, siltation, and runoff from quarry operations. The Surface Water Drainage and Water Accumulation Plan must, at a minimum:

(A) describe the use and monitoring of structural controls and best management practices as identified in paragraph (8) of this subsection designed to control erosion, siltation, and runoff; and

(B) provide a topographic map, at a scale appropriate to represent the quarry operation and all of the following within the boundaries of the quarry:

(i) the location of each process wastewater and/or storm water outfall;

(ii) an outline of the drainage area that contributes storm water to each outfall;

(iii) treatment, detention, and water storage tanks and ponds;

(iv) structural controls for managing storm water and/or process wastewater; and

(v) physical features of the site that would influence storm water runoff or contribute a dry weather flow; and

(8) a Best Available Technology Evaluation. The Best Available Technology Evaluation assists staff in reviewing and determining the best available technology designed to control erosion, siltation, and runoff from the quarry to minimize disturbance and adverse effects to fish, wildlife, and related environmental resources.

Where practical, the Best Available Technology Evaluation must assist staff in reviewing and determining best available technology designed to enhance fish, wildlife, and related environmental resources.

(A) The Best Available Technology Evaluation must assess the use of structural controls and best management practices.

(B) The Best Available Technology Evaluation must evaluate performance criteria outlined in §311.79 and §311.80 of this title (relating to Performance Criteria [~~for Quarries Located Within a Water Quality Protection Area in the John Graves Seenie Riverway~~] and Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body [~~Located Within a Water Quality Protection Area in the John Graves Seenie Riverway~~]).

(C) Structural control design and construction must be certified by a licensed Texas professional engineer. Design and construction plans/specifications must be maintained on site and made available at the request of the executive director; and

(9) a procedure and schedule for reviewing the Technical Demonstration for consistency with quarry operations and site conditions and effectiveness in controlling erosion, siltation, and runoff.

(b) Certification of the Technical Demonstration must be provided, within the appropriate area or discipline, by a licensed Texas professional engineer or a licensed Texas professional geoscientist. Components of the Technical Demonstration may be independently certified, as appropriate.

§311.79. Performance Criteria [~~for Quarries Located Within a Water Quality Protection Area in the John Graves Seenie Riverway~~].

The following performance criteria are applicable to all quarries located within a water quality protection area [~~in the John Graves Seenie Riverway~~].

(1) Discharges from quarries shall meet the following effluent limitations.

Figure: 30 TAC §311.79(1) (No change.)

(2) Discharges from quarries resulting from a rainfall event greater than the 25-year, 24-hour rainfall event are not subject to effluent limitations in paragraph (1) of this section.

(3) Discharges from quarries shall be monitored as follows.

Figure: 30 TAC §311.79(3) (No change.)

(4) Results of analysis for monitoring conducted as specified in §311.75(3) of this title (relating to Permit Application Requirements) shall be submitted monthly on approved self-report forms. Monitoring and reporting records, including strip charts and records of calibration and maintenance, shall be retained on site, or shall be readily available for review by a commission representative for a period of three years from the date of the record or sample, measurement, or report.

(5) The permittee shall install a permanent rain gauge at the plant site and keep daily records of rainfall and the resulting flow. Monitoring records shall be retained on site, or shall be readily available for review by a commission representative for a period of three years from the date of the record.

§311.80. Additional Performance Criteria for Quarries Located Between 200 Feet and 1,500 Feet of a Water Body [~~Located Within a Water Quality Protection Area in the John Graves Seenie Riverway~~].

Authorizations to discharge from quarries located between 200 feet and 1,500 feet of a water body within a water quality protection area [~~in the John Graves Seenie Riverway~~] require the permittee to satisfy the following performance criteria. An evaluation of these performance criteria

must be incorporated into the Technical Demonstration, as required in §311.77 of this title (relating to Technical Demonstration).

(1) The down-gradient perimeter of the quarry must include a final control structure to manage the discharge of wastewater and/or storm water. The final control structure must be designed and constructed as follows.

(A) Certification of the final control structure design and construction must be provided by a licensed Texas professional engineer. Design and construction plans and specifications must be maintained on site and made available at the request of the executive director.

(B) The final control structure side slopes must not exceed a gradient of 1:3 (33%).

(C) The final control structure must be designed to impound, at minimum, the volume of water resulting from a 25-year, 24-hour rainfall event for the final control structure drainage area.

(D) The final control structures must be properly stabilized (via use of vegetation, riprap, and/or other acceptable technique) to prevent the final control structure from being a source of pollution and/or to prevent structural failure.

(E) The final control structure must be inspected once every 14 calendar days and within 24 hours of any rainfall event totaling 0.5 inches or greater. Where an inspection identifies failure and/or problems with the final control structure, corrections must be made within seven calendar days of the inspection. Records of these inspections and any site stabilizations must be maintained on site for a period of three years and made available to the executive director, upon request.

(F) A minimum 200-foot vegetative buffer must be maintained between the final control structure and any water body.

(2) All treatment, detention, and water storage tanks and ponds must be operated to maintain a minimum freeboard of two feet.

(3) A permanent depth marker shall be installed and maintained on all treatment, detention, and water storage tanks and ponds. The depth marker shall identify the volume required for the design rainfall event, as specified in paragraph (1)(C) of this section, and freeboard.

(4) The quarry operation must demonstrate compliance with all the requirements of 36 Code of Federal Regulations Part 800 (Protection of Historic Properties) and 9 Texas Natural Resources Code, Chapter 191 (Antiquities Code).

(5) The quarry operation must not have a detrimental effect on any federal endangered/threatened, aquatic/aquatic-dependent species/proposed species; or their critical habitat.

(6) Waste management units must be located a minimum horizontal distance from water wells, in accordance with 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), or where those regulations do not apply, the minimum distance to a water well must be 500 feet.

(7) Secondary containment of chemical and fuel storage is required. Where quarry operations overlay aquifer and/or aquifer recharge areas and sufficient confining layers do not exist to preclude contamination of groundwater, tertiary containment is required for all chemical and fuel storage.

(8) Quarry operations must not be located on natural hazard land, areas subject to frequent flooding, or in areas of unstable geology.

§311.81. Financial Responsibility [for Quarries Located Within a Water Quality Protection Area in the John Graves Scenic Riverway].

(a) An owner or operator of a quarry located within a water quality protection area [in the John Graves Scenic Riverway] shall establish and maintain financial assurance for restoration in accordance with Chapter 37, Subchapter W of this title (relating to Financial Assurance for Quarries). The amount of financial assurance must be no less than the amount determined by the executive director as sufficient to meet the requirements of the Restoration Plan in §311.76(a)(8) of this title (relating to Restoration Plan).

(b) An owner or operator of a quarry located between 200 feet and 1,500 feet of a water body within a water quality protection area [in the John Graves Scenic Riverway] shall establish and maintain financial assurance for reclamation in accordance with Chapter 37, Subchapter W of this title. The amount of financial assurance must be no less than the amount determined by the executive director as sufficient to meet the requirements of the Reclamation Plan in §311.78(a)(2) of this title (relating to Reclamation Plan).

§311.82. Existing Quarries.

(a) Existing quarries required to seek and obtain authorization in accordance with §311.74(b)(1) of this title (relating to Authorization), must submit a Notice of Intent as required by a commission-issued general permit. Subject to the provisions of this subsection and maintaining compliance, existing quarries subject to the requirements of §311.74(b)(1) of this title that have authorization under a Texas Pollutant Discharge Elimination System Permit or Texas Land Application Permit issued under Chapters 205 or [and] 305 of this title (relating to General Permits for Waste Discharges and Consolidated Permits), may continue to operate under the terms of that permit until the commission issues or denies authorization under this subchapter.

(b) Existing quarries located in the Coke Stevenson Scenic Riverway required to seek and obtain authorization in accordance with

§311.74(b)(2) of this title must submit an individual Texas Pollutant Discharge Elimination System or Texas Land Application Permit application not later than 180 days following the effective date of this subchapter. Subject to the provisions of this subsection and maintaining compliance, existing quarries subject to the requirements of §311.74(b)(2) of this title that have authorization under a Texas Pollutant Discharge Elimination System Permit or Texas Land Application Permit issued under Chapters 205 or [and] 305 of this title, may continue to operate under the terms of that permit until the commission issues or denies authorization under this subchapter.

(c) Existing quarries located in the Coke Stevenson Scenic Riverway required to seek and obtain authorization in accordance with §311.74(b)(3) of this title must submit an individual Texas Pollutant Discharge Elimination System or Texas Land Application Permit application not later than 180 days following the effective date of this subchapter. An existing quarry may not operate until the commission issues authorization under this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 12, 2024.

TRD-202400116

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 25, 2024

For further information, please call: (512) 239-2678

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Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES

Docket No. 2023-1301-RUL

Rule Project No. 2023-138-311-OW

On June 26, 2024, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter 311, concerning Watershed Protection Rules. The proposed rules were published for comment in the January 26, 2024, issue of the *Texas Register* (49 TexReg 387).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed