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 <u>with</u> §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 <u>or</u> [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.