

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.

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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

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Attachments:

HB 1688

cc: Chief Clerk, 2 copies
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