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ADMINISTRATIVE CASE LAW UPDATE

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ADMINISTRATIVE PROCEDURES ACT:

Kensington Title-Nevada, LLC v. Tex. Dept. of State Health Servs., 710 S.W.3d 225 (Tex. 2025)

The Issue: Whether plaintiff properly sought declaratory relief on the applicability of an administrative rule under APA Section 2001.038(a).

Facts: Kensington acquired real property that contained radioactive personal property owned by USR. With Department's approval, Kensington paid a Department-licensed contractor to remove the radioactive personal property. During this time, taxing entities sued USR and Kensington for unpaid taxes on the radioactive personal property and obtained a judgment lien on the personal property.

Department sent Kensington a notice of violation of the rule requiring an entity to have a license to possess radioactive material, seeking a $8,000 penalty for failing to complete the removal of the radioactive material.

Thus, Kensington faced conflicting demands: 1) continue removal of the radioactive material and be sued by the taxing entities holding a lien on the property, or 2) stop removal of the radioactive material and face administrative fines from the Department.

Kensington sued the Department under APA Section 2001.038(a) to declare the licensing rule inapplicable. According to Kensington, the licensing rule did not apply because it was not a licensee of USR, the owner of the material, and further that Kensington did not own the material.

Agency decision: The ALJ found Kensington possessed radioactive material without a license and imposed a monetary penalty.

In the declaratory judgment action, Department filed a plea to the jurisdiction arguing that Kensington improperly challenged the application of the rule rather than the applicability of the rule.

Trial Court: Denied the plea to the jurisdiction.

COA (Third): Reversed, holding Kensington failed to plead a proper rule-applicability challenge.

Texas Sup. Ct. (J. Busby): Reversed and remanded to the trial court.

The Court addressed first whether Kensington had standing to bring a Section 2001.038(a) action. Section 2001.038(a) provides that the validity or applicability of a rule may be determined in a declaratory judgment if the rule interferes with or impairs a legal right of the plaintiff. Here, Kensington's factual allegations, if proven, would show interference or impairment that even though Kensington has never been a license holder and has never taken possession of the material, it can be fined by the Department. Thus, Kensington has standing.

The Court then addressed whether Kensington alleged a proper rule-applicability challenge. Kensington asked the trial court to declare whether the licensing rule can be applied to a non-licensee who owns real property that contains radioactive personal property abandoned by a prior owner of the land. The Court held that Kensington pled a proper rule-applicability challenge within the scope of the statute's immunity.

The Court reversed the court of appeals' judgment and remanded to the trial court.

Save Our Springs Alliance, Inc. v. TCEQ, 713 S.W.3d 308 (Tex. 2025)

The Issue: Whether TCEQ was required to make fact findings under APA Section 2001.141.

Facts: City of Dripping Springs applied for a permit to discharge treated wastewater into Onion Creek. TCEQ's executive director concluded that City's proposal would not damage the overall water quality and proposed granting the permit application.

SOS and many others challenged the permit. Settlements were reached which required the City to build infrastructure to avoid using Onion Creek in the future and to lower the proposed gallons-per-day to be discharged. According to the Court, the draft permit contained some of the most stringent effluent limits on any waterway-discharge permit issued by the State.

SOS was the sole remaining challenger. The remaining dispute concerned the construction and application of TCEQ's antidegradation rules and procedures.

Agency decision: The ALJ rejected SOS's argument and methodology and found for TCEQ. TCEQ granted the permit.

SOS sought judicial review and City intervened.

[1]The paper covers selected administrative law cases issued from late June 2024 through August 8, 2025. The cases included in the paper present administrative law issues that are relevant across agency practices.

Trial Court: The trial court held for SOS and vacated and enjoined the permit.

COA (Eighth): Reversed, upholding the permit.

Texas Sup. Ct. (J. Devine): Affirmed

TCEQ rules prohibit permitting discharges of wastewater into high-quality bodies of water that disturb existing water uses or degrade water quality. By TCEQ rule, degradation means a lowering of water quality by more than a de minimis amount. TCEQ uses both qualitative and quantitative criteria in making its determination.

The Court concluded that TCEQ's practice of assessing degradation of water quality by evaluating impacts on the water body as a whole rather than by giving weight to numeric changes in individual water-quality parameters meets the antidegradation standards.

SOS also alleged that TCEQ's final order is invalid because it lacks a statement of underlying facts as required by APA Section 2001.141. Section 2001.141 requires a final agency order to include separately stated findings of fact and conclusions of law. Further, any fact finding set forth in statutory language must be accompanied by a concise statement of the underlying facts that support the finding. A statement of underlying fact findings must enable a reviewing court to reasonably say that the basic facts support the statutorily-required criteria.

Here the final order contains more than two dozen fact findings relating to TCEQ's antidegradation review.

The Court concluded that SOS's complaint fails for two reasons. First, SOS failed to preserve its complaint for judicial review. SOS's motion for rehearing in the administrative proceeding did not raise the complaint that TCEQ omitted particular fact findings it raised on appeal. The Court noted that to preserve a complaint for judicial review, any noncompliance with the APA's fact-findings requirement must first be raised in the administrative proceeding with the requisite degree of specificity.

SOS's complaint also fails for a second reason. The Court held that the underlying fact findings are not required because TCEQ's findings of fact are not set out in statutory language. The regulatory language in TCEQ's antidegradation rules are not statutory language for which underlying findings of fact are required. Section 26.027of the Water Code, relied on by SOS, does not mandate any specific findings for issuing a discharge permit. The Court held that TCEQ was not required to provide any additional findings to comply with APA Section 2001.141.

The Court affirmed the COA judgment upholding the permit's issuance.

AGENCY AUTHORITY:

Tex. Disposal Sys. Landfill, Inc. v. Travis Cent. Appraisal Dist., 694 S.W.3d 752 (Tex. 2024)

The Issue: Whether the statutory limit on an appraisal district's ability to challenge an appraisal review board's decision limits the trial court's subject-matter jurisdiction.

Facts: TDSL protested TCAD's appraised value as not equal and uniform. The appraisal review board (ARB) agreed with TDSL and significantly reduced the appraised value. TCAD sued pursuant to Tax Code § 42.02, contending the ARB value was below market value.

TDSL filed a plea to the jurisdiction, arguing that the trial court lacked jurisdiction over TCAD's market-value challenge since TDSL's only challenge had been equal and uniform.

Trial Court: Dismissed TCAD's lawsuit.

COA (Third): Reversed, holding that review of an ARB determination is not limited to the grounds the property owner raised before the ARB.

Texas Sup. Ct. (J. Bland): Affirmed

The Tax Code limits the trial court's review to those matters challenged before the ARB. This limitation is procedural not jurisdictional.

Significantly, the Court held that market data is relevant and admissible in a property owner's equal-and-uniform lawsuit, specifically disapproving of two courts of appeals opinions that had held market data was irrelevant in equal-and-uniform litigation. The Court further observed that a property owner is entitled to the lower of the two values—the market value or the equal-and-uniform value.

Dissent (J. Boyd, joined by J. Devine): The dissent would hold that any limitation the Tax Code imposes on an appraisal district's ability to appeal is jurisdictional. Further, the dissent concluded that the statute does not limit jurisdiction to the issues a property owner protests before the ARB.

***Crowley ISD v. Stoneham*, 714 S.W.3d 867 (Tex. App.—15th District 2025, no pet.) (opin. on reh'g)**

The Issue: Whether the Commissioner properly rejected school board's decision to terminate Stoneham.

Title search: Case Law Update: Part I

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