

COPY



200TH DISTRICT COURT

TRAVIS COUNTY COURTHOUSE
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DISTRICT CLERK
TRAVIS COUNTY, TEXAS

RE: Cause No. D-1-GN-06-000757; *Edwin B. Kelsoe v. Texas Comm'n on Environmental Quality and Glenn Shankle*; In the 261st Judicial District Court of Travis County, Texas

Dear Counsel,

On November 9, 2006, I heard Defendant TCEQ's First Amended Plea to the Jurisdiction and Motion to Dismiss, which I took under advisement. After considering the Amended Plea, Plaintiff Kelsoe's Opposition to the Plea, Intervenor-Defendants' Reply Brief Regarding Plea to Jurisdiction, TCEQ's Bench Brief on Jurisdiction, Kelsoe's Response to TCEQ Bench Brief, TCEQ's Reply to Kelsoe's Response Brief, Intervenor-Defendants' Reply to Kelsoe's Reponse to TCEQ's Bench Brief on Jurisdiction, all relevant exhibits and all applicable Texas law, the Court finds that Defendant TCEQ's Plea to the Jurisdiction should be denied.

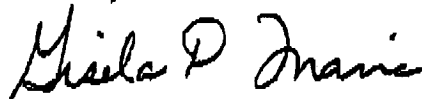
A primary contention at the hearing and much of the briefing filed on the day of the hearing and afterwards focused on the time periods by which Plaintiff Kelsoe was required to file his administrative appeals, if any, and his suit for judicial review. In this case, the issue involves the TCEQ executive director's denial of an application for a solid waste disposal permit based on finding the application administratively incomplete. See Tex. Health & Safety Code § 361.066; see also, Tex. Water Code §§ 5.552-5.556. Under Tex. Health & Safety Code § 361.321, the

right to judicial review of a ruling, order, decision, or other act of the Commission must be filed within 30 days after the date of that ruling, order, decision or other act. *See also*, Tex. Water Code § 5.351. The Court finds that the 30 day time period began on February 2, 2006, the date the Commission informed Plaintiff of the Commission's decision not to review the executive director's denial.

The regulatory provisions cited by Defendants all expressly limit their application to claims that have been already found to be "administratively complete." *See* 30 Tex. Admin. Code §§ 50.2(a), 50.31(a),(b), 50.102(a), 50.131(a),(b); *see also*, 30 Tex. Admin. Code §§ 55.1(a),(b), 55.101(a), 55.200, 55.201, 55.209. These do not apply to the action here, since there never was a finding of administrative completeness. Thus, Rule 50.139 and similar ones are inapplicable to this case. *See* 30 Tex. Admin. Code § 50.139. While the Commission could enact rules that provide reasonable restrictions on an appeal to the Commission of the executive director's finding that the application is administratively incomplete, and could provide time periods for doing so, the Court can find none that do so currently, and the parties have cited to no such rules. Because this suit was filed within 30 days of February 2, 2006, the Court finds that it is timely. The Court further denies Defendant's plea to the jurisdiction.

Ms. Riggs, please prepare an appropriate order reflecting this ruling, circulate it to all counsel for their approval as to form, and submit it to me for my signature. Thank you.

Sincerely,



Gisela D. Triana
Judge, 200th District Court
Travis County, Texas