

# Advanced Administrative Law Case Law Update

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## *GS Texas Ventures, LLC v. Pub. Util. of Tex.*, No. 03-18-00533-CV, 2020 WL 217179 (Tex. App.–Austin Jan. 15, 2020)

- Agency: Public Utility Commission of Texas
- Statutes/Regulations:
  - Public Utility Regulatory Act, TEX. UTIL. CODE §§ 56.021–.033
  - 16 TEX. ADMIN. CODE §§ 26.401–.424
- Issue:
  - Did the PUC have valid grounds, and state them adequately, to overturn a SOAH Proposal for Decision granting an ETC/ETP application?
- Holding:
  - Under the substantial evidence standard a court may not substitute their judgement and must uphold the PUC's decision if there is a "valid factual or legal basis" for it. The Court affirmed the final order because the PUC had some reason to find that the applicant did not meet its burden of proof to demonstrate that it could provide the required services for an ETC or ETP.
  - The PUC is not required to provide a line-by-line explanation of its reasons for divergences from PFDs and broad explanations are sufficient.

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## *Bush v. Lone Oak Club, LLC*, 601 S.W.3d 639 (Tex. 2020)

- Agency: General Land Office
- Statutes:
  - Small Bill, TEX. REV. CIV. STAT. art. 5414a(1) (1929)
  - Navigable Stream Statute, Act of Dec. 14, 1837, 2d Cong., R.S., §§ 21,42, 1837 Repub. Tex. Laws 62, 70
- Issue: Does the Small Bill validate “patents of land submerged under tidally influenced water courses and navigable streams”?
- Holding: Yes, the Small Bill’s use of the term “navigable streams” in the same manner as it was used by the Republic of Texas in the Navigable Stream Statute indicates that the Legislature intended to permit the conveyance to private owners of the submerged beds of navigable streams both above and below the tideline.

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## *North East Indep. School District v. Riou*, 598 S.W.3d 243 (Tex. 2020)

- Agency: Texas Education Agency
- Statute: TEX. EDUC. CODE § 21.156(a)
- Issue: Does TEC § 21.156(a) support a “good cause per se” exception to terminate a teacher’s continuing contract?
- Holding: No, the plain language of the statute does not allow for the creation of a good cause per se standard.
  - Additionally, the statute does not require evidence from a similarly situated school district if the “generally recognized and applied” standard is a law applicable to all school districts.

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*Dyer v. Tex. Comm'n on Env'tl. Quality*, No. 03-17-00499-CV, 2019 WL 5090568 (Tex. App.—Austin Oct. 11, 2019)

- Agencies:
  - Texas Commission on Environmental Quality
  - Railroad Commission of Texas
- Statutes:
  - TEX. WATER CODE § 27.015
  - Administrative Procedure Act, TEX. GOV'T CODE §§ 2001.058(e)
  - TEX. GOV'T CODE § 2003.047(m)
- Issues:
  - Does RRC's subsequent revocation of a no-harm letter invalidate an existing TCEQ injection well permit?
  - Is TCEQ's decision not to reopen the record in light of such revocation arbitrary and capricious?
- Holdings:
  - No, to find that injection well permits are invalid if the no-harm letter is subsequently revoked would engraft a condition onto the TWC that was not placed there by the Legislature.
  - No, TCEQ did not act arbitrarily and capriciously by refusing to reopen the record because TCEQ could have weighed the evidence before it and determined that appellant's requests to reopen the record would have caused undue delay and that denying the request would not result in an injustice. The record contained evidence that the injection well would not prevent appellant from proceeding with operations, even if costs would increase.

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*Tex. Comm'n on Env'tl. Quality v. Maverick Cty.*, No. 03-17-00785-CV, 2019 WL 6042276, at \*1 (Tex. App.—Austin Nov. 15, 2019)

- Agency: Texas Commission on Environmental Quality
- Statutes/Regulations:
  - TEX. WATER CODE § 26.027(b)
  - 30 TEX. ADMIN. CODE §§ 305.43(a), 305.1(b), 305.2(24)
- Issue: Does the financial responsibility of an owner make them an “operator” for the purposes of applying for a TPDES permit under 30 TAC § 305.43(a)?
- Holding: No, overall financial responsibility alone is insufficient to qualify as an “operator” under the plain language of the definition in Chapter 305. The Court looked for evidence of the entity responsible for personal performance in causing the facility to function.

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