

SUPREME COURT OF TEXAS

Texas Commission on Environmental Quality and Dos Rep  bricas Coal Partnership v. Maverick County, City of Eagle Pass, Environmental Defense Fund, Walter Herring, Ernesto Ibarra, Gabriel De La Cerda, Mike Hernandez, Boulware and Anson Family, Ltd., and Maverick County Environmental and Public Health Association

TCEQ v. Maverick County · No. No. 19-1108 · Decided February 11, 2022

SUMMARY

The Supreme Court of Texas held that Dos Rep  bricas Coal Partnership was properly treated as both the owner and operator of a coal mine for purposes of a Texas Pollutant Discharge Elimination System permit. The court rejected the court of appeals' judicially formulated "personal performance" definition of operator and applied the definition in the Texas Commission on Environmental Quality's rules: the person responsible for the facility's overall operation. The court reversed and remanded for consideration of the parties' remaining arguments.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	James D. Blacklock
JURISDICTION	Texas
DECIDED	February 11, 2022
DOCKET	No. 19-1108
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a Texas Court of Appeals decision affirming a district-court determination that Dos Rep��bricas Coal Partnership was not the required wastewater-permit operator and vacating the district court's rulings on other permit objections.
STANDARD OF REVIEW	The meaning of the agency rule is reviewed de novo. TCEQ's operator determination is reviewed under the Administrative Procedure Act's substantial-evidence standard, under which the court asks whether a reasonable basis exists in the record for the agency's action and may

	not substitute its judgment for the agency's judgment on the weight of the evidence. Agency findings and decisions are presumed supported by substantial evidence, and the contestant bears the burden of showing otherwise.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Texas Commission on Environmental Quality, Dos Repúblicas Coal Partnership v. Maverick County, City of Eagle Pass, Environmental Defense Fund, Walter Herring, Ernesto Ibarra, Gabriel De La Cerda, Mike Hernandez, Boulware and Anson Family, Ltd., Maverick County Environmental and Public Health Association

TOPICS

environmental law administrative law judicial review of agency action statutory interpretation
appellate procedure

PRACTICE AREAS

environmental law administrative law appellate procedure statutory interpretation

QUESTIONS PRESENTED

1. Whether the TCEQ rule defining an operator as the person responsible for the overall operation of a facility permits a court to impose a judicially created personal-performance requirement.
2. Whether substantial evidence supported TCEQ's conclusion that Dos Repúblicas was the mine's operator and therefore a proper permit applicant.
3. Whether the court of appeals had jurisdiction to decide the parties' remaining objections to the permit after resolving the operator issue.
4. Whether the court of appeals was required to decide the remaining issues under the Texas Administrative Procedure Act or Texas Rule of Appellate Procedure 47.1.

HOLDINGS

1. When an agency rule defines a term, courts must apply the definition supplied by the rule and may not replace it with a judicial paraphrase that adds or subtracts substantive requirements. The definition of operator as the person responsible for the overall operation of a facility does not require personal performance of day-to-day operations.
2. Substantial evidence supported TCEQ's conclusion that Dos Repúblicas was responsible for the mine's overall operation and was therefore the correct permit applicant, even though it contracted out day-to-day operations.
3. The court of appeals had jurisdiction to decide the remaining permit issues, and the district court did not err by addressing them even after ruling on the operator issue. Deciding those issues would not have

constituted an advisory opinion.

4. The Supreme Court declined to decide whether the court of appeals was previously obligated under the Administrative Procedure Act or Texas Rule of Appellate Procedure 47.1 to reach the remaining issues, but remanded those issues for consideration on remand.

KEY QUOTATIONS

“When a statute or rule defines its terms, courts should not construct a restated definition using alternative verbiage that adds or subtracts substantive requirements or limiting factors.” (at 2)

“A judicial paraphrase of a legislatively supplied rule of decision—no matter how well-reasoned or suitable to the case then before the court—does not become the rule of decision applicable to future cases.” (at 12)

“The prudential practice of courts to decline to reach issues not necessary to the disposition of a case should not be confused with the constitutional prohibition on advisory opinions.” (at 18-19)

FACTUAL BACKGROUND

Dos Repúblicas Coal Partnership acquired a Maverick County coal mine and contracted with Camino Real Fuels, LLC, to develop, construct, operate, reclaim, and remove coal from the mine. Dos Repúblicas alone applied to renew the mine's TPDES wastewater-discharge permit, although the contractor performed day-to-day mining activities. TCEQ found that Dos Repúblicas retained responsibility for overall operations through ownership and control, approval of plans and budgets, payment of costs, permit compliance responsibilities, provision of requirements to the contractor, and daily on-site oversight.

PROCEDURAL HISTORY

Dos Repúblicas applied alone to the Texas Commission on Environmental Quality for renewal of a TPDES wastewater-discharge permit for a coal mine operated day to day by a contractor. After a contested administrative hearing, TCEQ granted the permit and concluded that Dos Repúblicas was both the owner and operator. The Travis County district court held that Dos Repúblicas was not the operator but affirmed TCEQ on the remaining issues. The court of appeals affirmed the operator ruling and vacated the district court's judgment on the remaining issues. The Supreme Court of Texas reversed and remanded to the court of appeals.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the court of appeals' judgment, reinstate the part of the district court's judgment that the court of appeals vacated without regard to the merits, and remand to the court of appeals for further proceedings, including consideration of the remaining permit issues.

CASES CITED

- *Heritage on San Gabriel Homeowners Ass'n v. Texas Commission on Environmental Quality*, 393 S.W.3d 417, 422, 426, 428-30 (Tex. App.—Austin 2012, pet. denied)
- *Railroad Commission v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 624-25 (Tex. 2011)
- *Patients Medical Center v. Facility Insurance Co.*, 623 S.W.3d 336, 341 (Tex. 2021)
- *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011)
- *PHI, Inc. v. Texas Juvenile Justice Department*, 593 S.W.3d 296, 305 (Tex. 2019)
- *RSUI Indemnity Co. v. The Lynd Co.*, 466 S.W.3d 113, 126 (Tex. 2015)
- *Texas Health Facilities Commission v. Charter Medical-Dallas, Inc.*, 665 S.W.2d 446, 452-53 (Tex. 1984)
- *Montgomery Independent School District v. Davis*, 34 S.W.3d 559, 566 (Tex. 2000)
- *Public Utility Commission v. Texas Industrial Energy Consumers*, 620 S.W.3d 418, 427 (Tex. 2021)
- *Northeast Independent School District v. Riou*, 598 S.W.3d 243, 251 (Tex. 2020)
- *Valley Baptist Medical Center v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000)
- *Texas Association of Business v. Texas Air Control Board*, 852 S.W.2d 440, 444 (Tex. 1993)
- *Cincinnati Life Insurance Co. v. Cates*, 927 S.W.2d 623, 626 (Tex. 1996)
- *RSL Funding, LLC v. Newsome*, 569 S.W.3d 116, 124 (Tex. 2018)
- *State v. Ninety Thousand Two Hundred Thirty-Five Dollars & No Cents in U.S. Currency (\$90,235)*, 390 S.W.3d 289, 294 (Tex. 2013)
- *In re Camp Lejeune, N.C. Water Contamination Litigation*, 2012 WL 12869566, at *2 (N.D. Ga. May 11, 2012)