

**COPY**

CAUSE NO. D-1-GN-09-004062

TJFA, L.P.,

Plaintiff,

v.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,

Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

353<sup>rd</sup> JUDICIAL DISTRICT

Filed in The District Court of Travis County, Texas  
SEP 09 2010 BP  
At Amalia Rodriguez-Mendoza, Clerk

**Final Judgment Granting TCEQ's Plea to the Jurisdiction and Final Judgment in Favor of BFI [Proposed by TFJA, L.P.]**

On the 18th day of May, 2010, the Court considered Defendant Texas Commission on Environmental Quality's Plea to the Jurisdiction. The Court has considered the plea to the jurisdiction, the pleadings in this cause, evidence, arguments of counsel, and relevant statutes and caselaw, and finds as follows:

This suit was brought against the Texas Commission on Environmental Quality (TCEQ) pursuant to Tex. Health & Safety Code § 361.321. The Court finds that, under applicable law, Section 361.321 is a limited waiver of sovereign immunity. Subsection (c) of that provision provides, in pertinent part, that "[s]ervice of citation must be accomplished not later than the 30<sup>th</sup> day after the date on which the petition is filed." The Court finds that, under applicable law, this requirement is jurisdictional and mandatory, not directory, and is a statutory prerequisite to a suit.

The TCEQ was provided with notice of the suit by Plaintiff TJFA, L.P. on the date it was filed, but the TCEQ was not served with citation until 41 days after the suit was filed. The Court finds that the TCEQ was not prejudiced by the 11-day delay in service

of process. However, Tex. Gov't Code § 311.034 states that “[s]tatutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.” The Court finds that, under applicable law, strict compliance with statutes waiving sovereign immunity is required. Therefore, the Court is of the opinion that the Plea to the Jurisdiction should be granted.

Intervenor BFI Waste Systems of North America, Inc (“BFI”) has filed a counterclaim against TJFA for the collection of \$6,564.42 in transcript costs that the TCEQ ordered TJFA to pay in the final order that is the subject of TJFA’s appeal. The parties have stipulated to the following facts:

1. The TCEQ ordered BFI and TJFA each to pay 50% of the administrative hearing transcript fee.
2. BFI did, in fact, pay the entire fee.
3. TJFA has not paid any portion of the fee or otherwise reimbursed BFI, pending the appeal of the TCEQ’s order.

Therefore, the Court grants BFI’s counterclaim and orders TJFA to pay BFI \$6,564.42, which is 50% of the administrative hearing transcript fee.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that, with regard to BFI’s counterclaim against TJFA, BFI recover from TJFA the sum of \$6,564.42 for all of which let execution issue if not timely paid.

IT IS FURTHER ORDERED that with regard to TJFA’s suit against the TCEQ, the suit be, and is, hereby dismissed.

All parties to bear their own costs of court.

This is a final judgment disposing of all issues before the Court.

Signed on the 9 day of September, 2010.

  
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Hon. John Dietz, Judge Presiding

PROPOSED BY, AND AGREED AS TO FORM ONLY:

\_\_\_\_\_  
Attorney for TJFA, L.P.

**COPY**

CAUSE NO. D-1-GN-09-004113

NORTHEAST NEIGHBORS  
COALITION,

Plaintiff,

v.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,

Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

126<sup>th</sup> JUDICIAL DISTRICT

Filed in the District Court  
of Travis County, Texas  
SEP 09 2010  
AM  
Amalia Rodriguez-Mendoza, Clerk

**Order Granting Motion to Strike Intervention**

On the 18th day of May, 2010, the Court considered Defendant-Intervenor's Motion to Strike the intervention of TJFA, L.P. (TJFA). The Court has considered the motion, the pleadings in this cause, evidence, arguments of counsel, and relevant statutes and caselaw, and finds as follows:

This suit was brought by Northeast Neighbors Coalition (NNC) against the Texas Commission on Environmental Quality (TCEQ) pursuant to Tex. Health & Safety Code § 361.321. TJFA brought a separate suit challenging this same order, Cause No. D-1-GN-09-004062. The TJFA suit was dismissed due to TJFA's failure to comply with the requirement in Section 361.321(c) that service of citation on the TCEQ be accomplished not later than the 30<sup>th</sup> day after the date on which the petition is filed. This Court found that, under applicable law, this requirement was jurisdictional and mandatory, not directory, and, therefore is a statutory prerequisite to a suit.

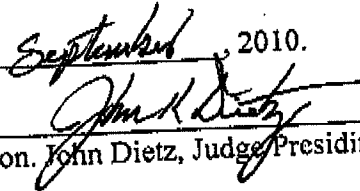
Since TJFA's suit was dismissed because of TJFA's failure to comply with the statutory prerequisite to suit, TJFA cannot now challenge the TCEQ order by intervening

in this lawsuit and TJFA does not otherwise meet the test for intervention..

Therefore, the Court grants BFI's motion to strike TJFA's intervention.

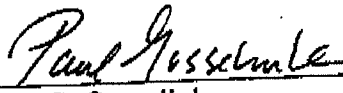
IT IS THEREFORE ORDERED that TJFA's intervention in this lawsuit is stricken.


Signed on the 9 day of September, 2010.

  
Hon. John Dietz, Judge Presiding

AGREED AS TO FORM ONLY:

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