

**Supreme Court of Texas**  
September 20, 2013

***Texas Commission on Environmental Quality v. Bosque River Coalition***

No. 11-0737

Case Summary written by Matt McKee, Staff Member.

Judge Divine delivered the opinion of the Court, Chief Justice Jefferson did not participate.

Gerben Leyendekker owns a dairy farm that is considered a concentrated animal feed operation (CAFO). CAFOs are defined as feed operations where poultry or livestock are confined in numbers exceeding the statutory threshold. The Texas Commission on Environmental Quality (TCEQ) regulates CAFOs in an effort to protect bodies of surface water from flowing wastewater. Leyendekker filed an application with TCEQ to amend his current permit, allowing more cattle and an extended area where his waste water was allowed to flow. TCEQ approved the application, adding several environmental requirements.

During the public comment period, the city of Waco made several complaints about the application to TCEQ. Though TCEQ added additional provisions to the permit, the city was unsatisfied. The Bosque River Coalition (BRC) then requested a contested-case hearing, stating three of its members were “affected persons.” These affected persons all owned property along Gilmore Creek and claimed the permit’s application would prevent them from enjoyment and use of their property. Finding the affected persons lacked standing, TCEQ denied the contested-case hearing, instead taking the matter up at a public meeting.

Appealing TCEQ’s holding, the trial court affirmed TCEQ. The court of appeals reversed the trial courts holding, finding TCEQ abused its discretion and evaluated BRC’s complaints arbitrarily.

On appeal to the Texas Supreme Court, the Court first found no indication that TCEQ failed to consider any of BRC’s assertions. The Court additionally found that the permit in question conformed with state statutes, and that the additional requirements furthered conservation efforts. Finally, the Court found that the permit did not significantly increase or materially change the authorized discharge of waste. Ultimately finding TCEQ did not abuse its discretion in denying BRC a public hearing, the Court reversed the court of appeals holding.