Local Approval of Landfills and Processing Facilities

Environmental Show of the South 2018

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results matter

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Overview

- Regional Approval Issues
  - What is required, when and how
  - Key judicial rulings
- Jackson Law
  - What is required, when and how
  - Key judicial rulings

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Regional Approval Under T.C.A. § 68-211-814

- 0400-11-01-.02(1)(c)
- Applies only to landfill or incinerators
- Requires submittal at or before the application is submitted to the Department.
- Region must render a decision within 90 days of a complete application to reject or accept.
- Must submit documentation within 120 days of submittal of complete application to region.
- If application is rejected department cannot issue the permit UNLESS the department finds the region's decision was arbitrary and capricious and unsupported in the record before the region.

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- Complete Application
  - Incinerator-permit by rule notification
  - Landfill-Part 1 application
  - OTHER information the region reasonably requires
- Standard of Review-Is the proposed landfill or incinerator consistent with the region's solid waste plan.
  - If rejected, region must document in writing the specific grounds that the application was inconsistent with regional plan

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Appeal of Rejection

- Davidson County Chancery Court within 30 days
- UAPA standards for review of final Administrative order
- Must be by an aggrieved party
  - Applicant
  - Persons who own property or live within a 3 mile radius of the proposed facility.
  - Cities and counties in which the facility is located.

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Consolidated Waste Systems v. Metro Solid Waste Reg. Bd.

- Regional Board held a hearing and neither approved or denied the permit (4-4 tie).
- Consolidated asked for a decision on its permit after 90 days.
- State Board ruled that the 90 days had run and commissioner could issue the permit.
- Regional and State Board cases were consolidated.
- Court held that the Regional Board had to act within 90 days.

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A-1 Waste, LLC v. Madison Cnty. Mun. Solid Waste Planning Region Bd

- 2015 Tenn. App. LEXIS 629 (2014)
- Facts
  - Application submitted to Department only for C&D facility
  - More than a year later TDEC sent application to County
  - County rejected application within 90 days
  - Appeal to Davidson County Chy within 30 days.
  - Appeal to Solid Wst. Board as arbitrary and capricious since rejection was not based properly on standard.
  - Board ordered TDEC to issue the permit which it did.

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- County appealed Board decision to Chancery
- Parties agreed to stay the county appeal until the judge ruled on the appeal of the Board.

- On appeal to Chancery:
  - Chancellor consolidated both cases.
  - Intervenors alleged in a pleading that they had standing to intervene because they lived within one mile
    - No affidavits
    - No proof of residency.
  - Chancellor ruled that the Board could not rule on the matter until the final decision of the appeal of the county decision was completed.

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- Region Board explained that there was no need for additional landfill space and existing waste management needs were already fulfilled through a partially exclusive waste contract.
- The region's 2008 waste management assessment report concluded that it had twenty years of remaining capacity with the region's existing landfill.
- Documents were submitted to the Region Board but only as a document dump. Court said that was substantial and material evidence.

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- Court of Appeals upheld the Chancery Court
  - State Board's decision was in excess of statutory authority—In essence ruled that appeals in court must be exhausted before going to the Board.
  - No basis under 4-5-322(h) to reverse regional board.
  - Association had standing.

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Wheatley v. Martineau

- EWS Landfill permit changed from a class III/IV to Class II landfill
  - Allowed secondary aluminum smelter waste onto larger footprint at the site that was already permitted.
- Did 68-211-814(b)(2)(A) require approval by Regional Board to construct the Class II landfill?
  - No. It does not cover “new construction” only construction of a “new solid waste disposal facility.”

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Jackson Law

- 0400-11-01-.02 (1)(c)2
- Applies in counties and municipalities “opt in” by 2/3 vote of legislative authority
- Application
  - New landfill
  - Lateral expansion of a landfill
  - Landfill that changes classification with higher standards
  - Processing facilities

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- Does not apply
  - Facilities owned by a county or city;
  - Facilities that existed on June 2, 1989 or expansions
  - Private landfill accepting waste only from the owner in that county
  - Permit applications receiving tentative approval prior to adoption of Jackson Law.
  - Facilities such as transfer stations that are not processing facilities.

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Jackson Law Appeals

- Method of Appeal
  - Common Law Writ of Certiorari
  - Does not have to be a verified Writ
- Standard of Review and venue
  - *De novo* review before the chancery court for the county in which the facility will be located.

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- Tucker v. Humphreys County
  - Facts
  - Proceedings
    - County Commission Vote
    - Appeal to Chancery Court
    - Appeal to Court of Appeals
  - Holdings
    - Jackson Law is constitutional
    - Decision supported by substantial and material evidence
    - Standard of Review
      - → 68-211-704(c) Judicial review shall be a de novo review before the Chancery Court in the county the landfill is proposed.
      - → Lower Court determined de novo meant new trial

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- Court of Appeals ruled that de novo review meant de novo on the record with no new proof. Limited proof to that before the county commission.

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- Tenn. Waste Movers v. Loudon County (2005)
  - De novo review under Jackson Law permits the trial court to consider any new evidence and requires the trial court to consider facts and determine the law as if no prior determination had been made.
  - Requires Chancellor's independent judgment with no deference to county.
  - Overruled *Tucker*

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QUESTIONS?

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