

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 30, 2016

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **GREG R. GILL**
SOAH DOCKET NO. 582-15-4545
TCEQ DOCKET NO. 2015-0875-LIC

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to the Proposal for Decision and Statement of No Exceptions in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rudy Calderon".

Rudy Calderon, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

SOAH DOCKET NO. 582-15-4545
TCEQ DOCKET NO. 2015-0875-LIC

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

V.

GREG R. GILL

§
§
§
§
§
§
§

BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO THE PROPOSAL
FOR DECISION AND STATEMENT OF NO EXCEPTIONS

To the Honorable Stephanie Frazee:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files Exceptions to the Proposal for Decision and respectfully shows the following.

I. Background

On April 17, 2014, in the United States District Court for the Western District of Missouri, Mr. Gill pleaded guilty to and was convicted of Negligent Introduction of a Pollutant or Hazardous Substance into a Public Sewer System Without a Permit, a Class A misdemeanor. The court sentenced him to three years of probation, commencing on October 1, 2014, and ordered him to pay a fine of \$1,000.

Mr. Gill's offense occurred on December 16, 2010, when a crew from Seneca Companies, Inc. (Seneca) that Mr. Gill supervised was investigating a suspected gasoline leak at a gasoline service station known as "Casey'S" located in Duenweg, Missouri. Mr. Gill was not at the site that day, but he communicated with an on-site Seneca employee by telephone. The crew was attempting to locate the source of the gasoline leak, but they could not see the suspected pipelines because the

view was obscured by water in the UST's observation well. Mr. Gill directed the employee to pump the water out of the well and into the city's sewer System.

Shortly after the water was pumped into the sewer system, employees at Casey's complained of gasoline fumes in the store. Additionally, employees of a general store downstream from Casey's smelled gasoline fumes in the store and notified the Duenweg Fire Department. The fire department subsequently confirmed gasoline vapors above the lower explosive limit in the sewer under the Duenweg Elementary School, and the school was evacuated. The Duenweg and Joplin Fire Departments pumped water into the sewer system to dilute the gasoline. According to the Joplin Fire Department chief, this incident posed a substantial likelihood that serious bodily injury or death could have occurred due to the explosive nature of the gasoline vapors within the school, businesses, and homes within the contaminated area.

In April 2015, Mr. Gill applied for UST Supervisor Licenses A and B. On May 4, 2015, the Executive Director (ED) sent a letter notifying Mr. Gill of the ED's intent to deny the application based on Mr. Gill's criminal history. The letter included a short, plain statement of facts and informed Mr. Gill of the reason for the denial of his application, including a reference to the relevant regulatory provisions. On June 4, 2015, the ED received Mr. Gill's appeal of the ED's decision. The ED referred the case to SOAH, and on July 1, 2015, the Commission issued a Notice of Hearing, which scheduled a preliminary hearing on August 5, 2015. The preliminary hearing was continued until October 6, 2015. The hearing on the merits convened on April 18, 2016, before Administrative Law Judge (ALJ) Stephanie Frazee at SOAH's hearing facility in Austin, Texas. Staff attorney Alicia Ramirez represented the ED, Mr. Gill represented himself and appeared by telephone, and attorney Rudy Calderon represented the Office of Public Interest Counsel.

A Proposal for Decision (PFD) was issued by ALJ Frazee on June 9, 2016, recommending denial of the application of Mr. Gill for UST Supervisor Licenses A and B.

II. Applicable Law

Tex. Occ. Code § 53.023 and 30 Tex. Admin. Code § 30.34(b) provide the criteria by which the Commission shall evaluate whether a criminal conviction should disqualify a person from receiving a license due to the crime being directly related to the type of license being sought. The criteria to be used in determining whether a crime is directly related to the occupation are:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Additionally, Tex. Occ. Code § 53.023 and 30 Tex. Admin. Code § 30.34(b) provide that in determining whether to deny the license application of a person because of a conviction, the Commission must determine whether that person is fit to perform the duties and discharge the responsibilities of the licensed profession. In making this determination, the Commission is required to consider the following factors:

- (1) the extent and nature of the person's past criminal activity;

- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person.

III. Discussion

After attending the hearing and reviewing the Proposal for Decision submitted by ALJ Frazee, OPIC has determined that denial of UST Supervisor Licenses A and B, as recommended by the PFD, to Mr. Gill is consistent with Commission rules. The ED correctly applied the rules and statutes in determining that Mr. Gill, due to his criminal history, is not fit to obtain UST Supervisor Licenses A and B at this time. Furthermore, OPIC files no exceptions to the Proposal for Decision as presented by ALJ Frazee.

IV. Conclusion

OPIC supports the Proposal for Decision as written and offers no exceptions.

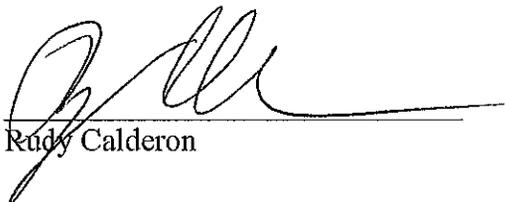
Respectfully submitted,

Vic McWherter
Public Interest Counsel

By 
Rudy Calderon
Assistant Public Interest Counsel
State Bar No. 24047209
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-3144 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2016, the original and seven copies of the Office of Public Interest Counsel's Exceptions to the Proposal for Decision were filed with the Chief Clerk of the TCEQ, a copy was filed with the Docket Clerk of the State Office of Administrative Hearings, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Rudy Calderon

MAILING LIST
GREG R. GILL
SOAH DOCKET NO. 582-15-4545
TCEQ DOCKET NO. 2015-0875-LIC

The Honorable Stephanie Frazee
Administrative Law Judge
State Office of Administrative Hearings
PO Box 13025
Austin, Texas 78711-3025
Tel: 512/475-4993 Fax: 512/322-2061

Greg R. Gill
15832 Meadow Ln.
Overland Park, Kansas 66224
Tel: 816/260-4610 Fax: 816/761-8351

Alicia Ramirez
TCEQ Environmental Law Division
MC 173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0606 Fax: 512/239-0606

Bridget Bohac
TCEQ Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311