



# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

November 10, 2021

Mary Smith  
General Counsel  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Bldg. F, Room 4225  
Austin Texas 78753

**RE: SOAH Docket No. 582-21-1135; TCEQ Docket No. 2020-1596-LIC; Executive Director of the Texas Commission on Environmental Quality v. Michael Gaines**

Dear Ms. Smith:

On September 22, 2021, a Proposal for Decision (PFD) was issued in this case. On October 12, 2021, the Executive Director (ED) of the Texas Commission on Environmental Quality (Commission) filed a brief in response to the PFD and the Office of Public Interest Counsel (OPIC) filed exceptions. Michael Gaines (Respondent) did not file exceptions, a response to OPIC's exceptions, or the ED's brief; and the time to do so has now passed.<sup>1</sup>

This case arises from the ED's decision to deny Respondent's application for a Landscape Irrigator license. As discussed in the PFD, the Administrative Law Judge (ALJ) agreed with the ED that several of Respondent's crimes directly relate to the duties and responsibilities of a licensed landscape irrigator and, therefore, the Commission is *authorized* to deny Respondent's application. Yet, upon evaluation of the factors required by Texas Occupations Code § 53.023 to be considered in determining *whether* to deny Respondent's license application because of his crimes, the ALJ went on to find Respondent fit to perform the duties and responsibilities of a Landscape Irrigator. As such, the ALJ recommended against denial of Respondent's license application.

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<sup>1</sup> 30 Tex. Admin. Code § 80.257(a).

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OPIC's exceptions and the ED's brief disagree with both the ALJ's assessment of Respondent as penitent and the ALJ's weighing of the Texas Occupations Code § 53.023 factors—emphasizing Respondent's lack of evidence of his rehabilitation. They recommend against several findings of fact and conclusions of law related to these points; however, they generally re-urge the same evidence and arguments presented by the ED at the hearing.

The ED's brief objects that the PFD fails to address evidence that Respondent has performed irrigation work heretofore without the requisite license. Although this argument and evidence was considered by the ALJ, it was inadvertently left out of the recitation of the evidence presented. Therefore, the ALJ's recommendations are unchanged, but the evidence should be amended to include the testimony that Respondent has been performing irrigation tasks for his current employer without a license. Although the ALJ agrees that this evidence is relevant, it does not change the ALJ's finding and conclusion that Respondent is fit to perform the duties and responsibilities of a Landscape Irrigator.

In sum, the exceptions raised do not differ substantially from the ED's closing argument. The ALJ believes that the recommendation and the underlying rationale as set out in the PFD accurately reflect the law.

Accordingly, the ALJ recommends the addition of the following language as a new paragraph in Section III. B. 1. (Testimony of Mr. Gaines) of the PFD. This paragraph should be inserted between the second and third paragraphs on page 6:

Mr. Gaines testified that, in his position as Lead Technician, he has been doing irrigation and fixing sprinklers; and he has performed such tasks as inspecting, maintaining, and repairing irrigation systems. When it was pointed out by opposing counsel that such work requires a license under Commission rules, Mr. Gaines explained that he works under his supervisor's license.

With this change, the PFD is ready for consideration.

Sincerely,



Heather Hunziker  
Administrative Law Judge

HH/tl

cc: Mailing List