

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 2, 2024

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

RE: William Bowling
SOAH Docket No. 582-23-19677
TCEQ Docket No. 2023-0512-LIC

Dear Ms. Gharis:

Enclosed please find a copy of the Executive Director's Exceptions To The Administrative Law Judge's Proposal For Decision, Findings Of Facts, Conclusions Of Law, And Order listed above.

If you have any questions, please do not hesitate to call me at (512) 239-0133 or email at alicia.ramirez@tceq.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Alicia Ramirez", with a long horizontal line extending to the right.

Alicia Ramirez
Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division

Enclosures

SOAH DOCKET NO. 582-23-19677
TCEQ DOCKET NO. 2023-0512-LIC

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
Petitioner

V

WILLIAM BOWLING
Respondent

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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
PROPOSAL FOR DECISION, FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND
ORDER**

TO THE HONORABLE COMMISSION:

COMES NOW the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) and files these Exceptions to the Administrative Law Judge's (ALJ) Proposal for Decision, Findings of Facts, Conclusions of Law, and Order (PFD) filed in this Matter. The ED asks that the Commission disregard the ALJ's PFD and deny the Respondent's application for a new landscape irrigation technician license.

I. The ALJ erred in shifting the burden of proof

The ALJ improperly shifted the burden to the ED, despite Commission rules that squarely place the burden of proof on applicants. The Commission's rules at 30 Texas Administrative Code (TAC) Section (§) 30.38 specifically set out that *all* hearings regarding occupational licenses issued by the TCEQ are to be conducted according to 30 TAC, Chapters 70 and 80 (relating to Enforcement and Contested Case Hearings, respectively).¹ TCEQ rules further state that the *applicant* shall present evidence to meet its burden of proof on the application.² The ALJ seemed to invalidate the

¹ 30 TAC § 30.38, emphasis added.

² 30 TAC § 80.117(b).

Commission's rules without pointing to any specific law that requires their invalidation. Indeed, there is nothing in Texas Occupations Code Chapter 53 that specifically requires the invalidation of these Commission rules. The Commission's rules require that applicants prove ultimately that they are fit to obtain the license for which they applied, regardless of what evidence the ED may introduce at hearing. The Commission has already decided this issue in several cases. In *TCEQ v. Michael Gaines* SOAH Docket Number 582-21-1135, TCEQ Docket Number 2020-1596-LIC, February 9, 2022, and in *TCEQ v. Damien Valencia*, SOAH Docket Number 582-22-09398, TCEQ Docket Number 2022-0733-LIC, October 16, 2023, The Commission decided that the individual has the burden of proof by a preponderance of the evidence to prove that she meets the requirements for the license. The ED objects to Conclusions of Law Numbers 11 and 16 to the extent that they imply any burden for the ED.

II. The Respondent Failed to Meet His Burden of Proof on the Application

The Respondent did not offer any credible evidence from any source with the expertise to speak on the issue that he would be unlikely to commit another sexually violent offense in the future. Respondent essentially submitted letters of recommendations from his friends and possible future business partner³ that the ALJ is using to justify granting him this high-risk license. Respondent must register for life as a sex offender and though the Texas Department of Criminal Justice rated him as having a low risk of reoffending, *there is still some risk*. In order to ensure the public's protection, the Commission should require some independent, objective evidence that Respondent is sufficiently rehabilitated such that he would not repeat his offenses.

³ Donald Kressler and Bill Kressler were his long-time friends, PFD p. 29. Neal Schirato is the president of Outdoor Creations whom Respondent testified at the hearing that he was trying to go into business with and eventually take over the business from. See also PFD p. 24-25.

III. The ED Objects to Findings of Fact Numbers 23, 38, 39, and 40

Further, the ED objects to Findings of Fact (FOF) Numbers 23, 38, 39, and 40. There was absolutely no evidence presented at the hearing to show that Respondent would be unlikely to repeat his crimes with members of the general public or that the context of his crimes related in any way to their likelihood to be repeated while in the performance of the duties as a landscape irrigation technician as stated in FOF 23.

Similarly, the ED objects to FOF 38 for the same reason. There was no evidence produced at the hearing regarding what the “low risk” designation given by TDCJ means or the level of risk that someone with a “low risk” designation might pose to the community, or how likely such a person would be to reoffend.

The ED objects to FOF 39 for the same reason: that no evidence was produced at hearing to support it. No evidence was produced to show how likely Respondent would be to reoffend or that the context of his past crimes would have any bearing on how likely he would be to repeat such offenses in the future, or how likely he would be to commit them while in the performance of duties as a landscape irrigation technician.

Finally, the ED objects to FOF 40. Considering all of the foregoing, Respondent has not shown that he is fit to be licensed as a landscape irrigation technician.

IV. Conclusion

For the foregoing reasons, the ED recommends that the Commission disregard the recommendation of the ALJ and deny Respondent’s application for a landscape irrigation technician license.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Kelly Keel, Executive Director

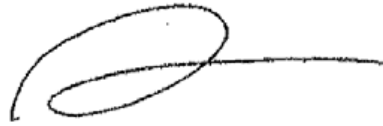
Charmaine Backens, Deputy Director
Environmental Law Division

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By: _____
Alicia Ramirez, Staff Attorney
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CERTIFICATE OF SERVICE

I certify that on May 2, 2024, the foregoing “Executive Director’s Exceptions To The Administrative Law Judge’s Proposal For Decision, Findings Of Facts, Conclusions Of Law, And Order” was filed with the TCEQ’s Office of the Chief Clerk and mailed electronically to the persons listed below.



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