

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

May 10, 2024

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Executive Director of Texas Commission on Environmental Quality

Cody Lee Rancher, Respondent VIA REGULAR MAIL  
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**RE: Docket Number 582-23-23815.TCEQ; Texas Commission on Environmental Quality No. 2023-0651-LIC; *Executive Director of the Texas Commission on Environmental Quality v. Cody Lee Rancher***

Dear Parties:

Please find attached a Proposal for Decision in this case.

Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,**

**PETITIONER**

**v.**

**CODY LEE RANCHER,**

**RESPONDENT**

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**PROPOSAL FOR DECISION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission) seeks to deny the application of Cody Lee Rancher for a water system operator license based on his criminal history. Mr. Rancher requested a formal hearing on the denial of his application. Having considered the evidence and applicable law, the Administrative Law Judge (ALJ) recommends that Mr. Rancher's application be granted.

## **I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

No party contested notice or jurisdiction and those matters are addressed solely in the findings of fact and conclusions of law.

Mr. Rancher filed an application for a public water system operator D license with the Commission on February 3, 2022.<sup>1</sup> On October 6 and November 17, 2022, the ED notified Mr. Rancher of the ED's intent to deny his application because of his criminal history.<sup>2</sup> Mr. Rancher timely requested a formal hearing on the denial of his application<sup>3</sup> and the ED referred the case to the State Office of Administrative Hearings (SOAH).<sup>4</sup> At the preliminary hearing on September 14, 2023, the ALJ admitted Exhibits ED-1 through ED-6 for the limited purpose of establishing notice and jurisdiction and approved an agreed procedural schedule.

SOAH ALJ Susan Rodriguez convened the hearing on the merits on February 13, 2024. Mr. Rancher appeared and represented himself. Attorneys Aubrey Pawelka and Alicia Ramirez represented the ED. Attorney Jessica Anderson represented the Commission's Office of Public Interest Counsel (OPIC). The hearing concluded that day. The parties had the opportunity to file closing briefs and replies to closing briefs, and the record closed on March 14, 2024.

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<sup>1</sup> ED Staff Ex. ED-7 at 0024.

<sup>2</sup> ED Staff Exs. ED-1, ED-2.

<sup>3</sup> ED Staff Ex. ED-3.

<sup>4</sup> ED Staff Ex. ED-4.

## II. APPLICABLE LAW

Pursuant to Chapter 37 of the Texas Water Code, the Commission is responsible for implementing the occupational licensing and registration programs for licenses under its purview, including water system operator licenses.<sup>5</sup> After notice and a hearing, the Commission may deny an application based on certain grounds that include the applicant's criminal history.<sup>6</sup>

Chapter 53 of the Texas Occupations Code (Code) provides the framework for licensing authorities, such as the Commission, to use in evaluating applicants and licensees who have criminal convictions. Code section 53.021(a) authorizes a licensing authority to suspend, revoke, or disqualify a person from receiving a license if that person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation, an offense that is listed in Article 42A.054 of the Texas Code of Criminal Procedure, or a "sexually violent offense" as defined by Article 62.001 of the Code of Criminal Procedure.<sup>7</sup>

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<sup>5</sup> Tex. Water Code ch. 37; 30 Tex. Admin. Code ch. 30, subchs. A, K.

<sup>6</sup> 30 Tex. Admin. Code § 30.33(h).

<sup>7</sup> The Commission's rules at 30 Texas Administrative Code section 30.33(h)(1) track section 53.021(a) of the Texas Occupations Code but cite to the former Texas Code of Criminal Procedure Article 42.12, Section 3g, which is now recodified at Texas Code of Criminal Procedure Article 42A.054.

To determine if a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority is required to consider each of these factors:

- (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;
- (4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.<sup>8</sup>

If the licensing authority determines that a person has been convicted of a crime that is directly related to the duties and responsibilities of the occupation, then it must consider the factors in Code section 53.023(a) to determine whether the person is fit to perform the duties and discharge the responsibilities of the occupation despite the person's criminal history. Those factors are:

- (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;

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<sup>8</sup> Tex. Occ. Code § 53.022; 30 Tex. Admin. Code § 30.34(a).

- (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;
- (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
- (7) other evidence of the person's fitness, including letters of recommendation.<sup>9</sup>

Code section 53.025 directs each licensing authority to issue guidelines stating the reasons a particular crime is considered to relate to a given license.<sup>10</sup> The Commission's guidelines address the consequences of criminal convictions for occupational licensing.<sup>11</sup> The guidelines state that a criminal conviction above a Class C misdemeanor, or a conviction for an offense that requires the person to register as a sex offender, may result in a denial of a new or renewal license application.<sup>12</sup> The guidelines further provide that the license sought by Mr. Rancher is a "medium risk" license because license holders would have access to individuals or private residences and deal directly with the general public, which could present opportunities to engage in sexually violent offenses.<sup>13</sup>

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<sup>9</sup> Tex. Occ. Code § 53.023(a); 30 Tex. Admin. Code § 30.34(b).

<sup>10</sup> Tex. Occ. Code § 53.025(a).

<sup>11</sup> ED Staff Ex. ED-10; Consequences of Criminal Convictions for Occupational Licensing, <https://www.tceq.texas.gov/downloads/licensing/occupational/publications/rg-521.pdf> (last visited May 9, 2024).

<sup>12</sup> ED Staff Ex. ED-10 at 0034-0035.

<sup>13</sup> ED Staff Ex. ED-10 at 0042.

Mr. Rancher, as the moving party, has the burden of proving by a preponderance of the evidence that his application should be granted.<sup>14</sup>

### **III. EVIDENCE**

Mr. Rancher did not offer any documentary evidence, but he testified on his own behalf and presented testimony from Christopher Woodard and Melanie White, long-time co-workers of Mr. Rancher. The ED offered eleven exhibits, all of which were admitted, and presented the testimony of Jaya Zyman, the Deputy Director of the Commission's Occupational Licensing and Registration Division. OPIC did not offer any evidence.

#### **A. BACKGROUND**

The criminal conviction underlying the denial of Mr. Rancher's application is largely undisputed. Mr. Rancher was arrested on one count of sexual assault, a second-degree felony, for an offense that occurred in March 2014.<sup>15</sup> He pleaded guilty and was convicted of the lesser charge of attempt to commit sexual assault, a third-degree felony.<sup>16</sup> He was sentenced to serve two years' confinement in the Texas Department of Criminal Justice (TDCJ) but was released after serving eleven months.<sup>17</sup> Mr. Rancher served the remaining thirteen months of his sentence on

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<sup>14</sup> 30 Tex. Admin. Code §§ 80.17(a), .117; *see also* 1 Tex. Admin. Code § 155.427.

<sup>15</sup> ED Staff Ex. ED-8 at 0027.

<sup>16</sup> ED Staff Ex. ED-8 at 0026-0027; *see* Tex. Penal Code §§ 15.01(a), (d); 22.011(a)(1).

<sup>17</sup> ED Staff Ex. ED-8 at 0028.

mandatory supervision, which he successfully completed in 2017.<sup>18</sup> He is required to register as a sex offender annually until October 2027, and is assigned a “moderate” risk level.<sup>19</sup>

## **B. TESTIMONY**

### **1. Mr. Rancher**

Mr. Rancher testified about the offense in detail. He explained that he and the victim had known each other for about four years, and he was living with her intermittently, about three weeks at a time, when the incident occurred. He was arrested in 2014, pleaded guilty in 2015 to attempt to commit sexual assault, and was sentenced to serve two years in prison.

While in prison, Mr. Rancher earned his GED. He was not required to undergo psychological counseling or treatment or take classes related to his offense while in prison. He was released in 2016 after serving only eleven months, and he completed the remaining thirteen months of his sentence on parole with no issues. When he was released from prison, he said, he took a lie detector test to determine whether he needed to take sex offender rehabilitation classes, but he passed so he was not required to undergo a psychological evaluation or treatment or take classes.

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<sup>18</sup> ED Staff Ex. ED-8 at 0028.

<sup>19</sup> ED Staff Ex. ED-9 at 30-31; Tex. Code Crim. Pro. Art. 62.007(c)(2) (defining moderate risk level as someone who poses a moderate danger to the community and might continue to engage in criminal sexual conduct).



His parole ended in 2017 and he said that since his release, the only trouble he has been in was a speeding ticket for going five miles per hour over the speed limit.

Mr. Rancher has worked for C&R Water Supply, Inc. (C&R), since before he was incarcerated,<sup>20</sup> and he returned to employment there after he was released. His employer is aware of his criminal history. He testified that C&R prohibits its employees from entering its customers' residences. The services provided do not extend past the water meter at the fence line; anything beyond that is the responsibility of the customer. Mr. Rancher's job duties, if granted a license, would include monitoring the plant and occasionally reading meters.

Mr. Rancher testified that his newborn son and a stepchild live with him, and he also has a daughter who lives out of state. He supports all three children, and he applied for this license so he can earn more money to give his kids a better life and a better future. He stressed that he wants to move past this incident and progress with his life.

## **2. Christopher Woodard**

Mr. Woodard works with Mr. Rancher at C&R and has known him for ten years. They have traveled out of town together for work and Mr. Woodard has never had any issues with Mr. Rancher. Mr. Woodard described Mr. Rancher's offense as out of character for him and said that he knows Mr. Rancher as a quiet and

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<sup>20</sup> ED Staff Ex. ED-7 at 0023.

hardworking person who stays to himself and stays out of trouble. According to Mr. Woodard, Mr. Rancher takes care of his family, including his mom, and Mr. Woodard sees nothing wrong with Mr. Rancher trying to better his life.

### **3. Melanie White**

Ms. White is the office manager at C&R where she has worked for fourteen years. She has worked with Mr. Rancher since before he went to prison and said that she has never had any problems with him and has never known him to be inappropriate with her or anyone else at the office. Ms. White does not believe that Mr. Rancher would ever put himself in this position again. She does not think that his criminal history would have any bearing on what he would be doing in his employment at C&R, which, she said, does not involve entering private residences.

### **4. Jaya Zyman**

Ms. Zyman explained that any applicant with a criminal history is subject to some level of review prior to the issuance of the license. Because of the nature of Mr. Rancher's criminal history, his application was automatically elevated to the Commission's Executive Review Committee (ERC), which was formed to review applicants who have "more serious criminal histories." The objective of this criminal history review process is to provide for protection of the public and to ensure that the Commission's occupational licensing decisions do not provide licensees with additional opportunities to reoffend.

After reviewing Mr. Rancher's case, the ERC denied his application on all three grounds in Code section 53.021. According to Ms. Zyman, the Commission determined that Mr. Rancher's offense is directly related to the duties and responsibilities of the license he seeks after considering the actual work the license holder would do, the type of access required for that work, and the other factors in Code section 53.022. Ms. Zyman stated that Mr. Rancher's charge appears in both applicable provisions of the Code of Criminal Procedure, "even an attempt."

Ms. Zyman explained that a water operator D license is categorized in the Commission's guidelines as a "medium risk license" because it provides license holders with access to individuals, private residences, and business facilities where they may deal with individuals and the general public, which could provide the license holder with the opportunity to engage in sexually violent offenses. The license holder could deal directly with business owners or employers which could present the same opportunity. She also testified that the license Mr. Rancher applied for would allow him to work anywhere in Texas, and there is no way for the Commission to keep track of everything he might do or limit where he works or the access he has. Ms. Zyman said that while Mr. Rancher's current job may be confined to a certain place like a water plant, the license he applied for does not confine him geographically and he could get another job with different duties using the same license.

Ms. Zyman explained that the public relies on the Commission's licensing process to screen licensees and make sure they are safe to retain for services. If Mr. Rancher were to commit a crime while licensed, Ms. Zyman said, the

Commission's reputation would be at stake. The Commission's enforcement process is complaint driven, so the agency would only be aware of an issue if someone filed a complaint, and by that point, she said, it would be too late.

Ms. Zyman suggested that the ERC may have reached a different determination if Mr. Rancher had applied for a lower risk license that would not provide him as much access to the public. Mr. Rancher can reapply for his license at any time and any new information he provided with that application would be considered. She also suggested that the outcome may be different if he applies after his sex offender registration requirement ended.

#### **IV. ANALYSIS**

The ED seeks to deny Mr. Rancher's application for a water system operator D license because his conviction for attempt to commit sexual assault falls under all three provisions of Texas Occupations Code section 53.021(a).

The ALJ first finds that grounds to deny Mr. Rancher's application do not exist under either Code section 53.021(a)(2), which applies to offenses listed in article 42A.054 of the Code of Criminal Procedure, or Code section 53.021(a)(3), which applies to offenses defined as "sexually violent" in article 62.001 of the Code of Criminal Procedure. Although the offense Mr. Rancher was originally charged with—sexual assault under Penal Code section 22.011—appears in both articles, the offense he was convicted of—attempt to commit sexual assault—does not. In Texas, preparatory offenses are governed by chapter 15 of the Penal Code. Section 15.01(a),

regarding criminal attempt, provides that, “[a] person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.”<sup>21</sup> Thus, attempted offenses are separate and distinct from completed offenses under other sections of the Penal Code, and if a person is found guilty of an attempted offense, as Mr. Rancher was, his conviction is not under both section 15.01 and the underlying Penal Code provision.<sup>22</sup> Mr. Rancher’s conviction for *attempt to commit* sexual assault, therefore, was not a conviction under Penal Code section 22.011.

The ED’s evidence supports this conclusion. If Mr. Rancher had been convicted under Penal Code section 22.011, his crime would have been classified as a second-degree felony,<sup>23</sup> he would not have been eligible for early release and mandatory supervision,<sup>24</sup> and he would have been subject to lifetime sex offender registration.<sup>25</sup> However, Mr. Rancher was convicted of a third-degree felony, consistent with section 15.01(d) of the Penal Code which provides that an attempted offense is one category lower than the offense attempted;<sup>26</sup> he was released to mandatory supervision after serving less than half of his two-year sentence;<sup>27</sup> and he

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<sup>21</sup> Tex. Penal Code § 15.01(a).

<sup>22</sup> *Parfait v. State*, 120 S.W.3d 348, 351 (Tex. Crim. App. 2003).

<sup>23</sup> Tex. Penal Code § 22.011(f).

<sup>24</sup> Tex. Gov’t Code § 508.149(a)(6).

<sup>25</sup> Tex. Code Crim. Pro. Art. 62.101(a)(1).

<sup>26</sup> ED Staff Exs. ED-1 at 0001; ED-2 at 0003; ED-4 at 0010, 0012, 0015; ED-5 at 0017; ED-8 at 0027; Tex. Penal Code § 15.01(d).

<sup>27</sup> ED Staff Exs. ED-7 at 0028; ED-8 at 0031.

is only required to register as a sex offender for ten years post-release.<sup>28</sup> Therefore, the ALJ concludes that Code section 53.021(a)(2) and (3) are not bases for denying Mr. Rancher's application.

Code section 53.021(a)(1), regarding offenses that are directly related to the occupation, however, does provide grounds for the ED to deny Mr. Rancher's application. The Commission has already determined that Mr. Rancher's offense is directly related to the occupation of water system operator, considering the factors prescribed in Code section 53.022, the actual work to be performed, the access required to perform that work, and the opportunity he, as a license holder, might have to reoffend.<sup>29</sup> Before denying his application, however, the Commission must first determine whether he is fit to be licensed despite his criminal history by considering the factors set forth in Code section 53.023(a).

Mr. Rancher's crime was a serious, felony-level offense that cannot be excused, but the other Code section 53.023(a) factors weigh heavily in his favor. It was a single and isolated episode, and there is no other evidence of criminal wrongdoing by Mr. Rancher either before or after this offense other than a speeding ticket he testified about. At the time of the incident, he was only 18 years old; he was not a child, but neither was he a mature adult. He was released from prison after serving less than half of his two-year prison term and was allowed to complete the remainder of his sentence on mandatory supervision. While in prison, Mr. Rancher

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<sup>28</sup> ED Staff Ex. ED-9 at 0030.

<sup>29</sup> Tex. Occ. Code §§ 53.021(a)(1), .022; 30 Tex. Admin. Code § 30.34(a); ED Staff Ex. ED-9.

was not required to undergo psychological evaluation or treatment or take any classes related to his offense. Upon his release, he took and passed a lie detector test, so he was not required to have treatment or take classes as a condition of his release. His discharge from mandatory supervision in 2017 reasonably suggests that he complied with its conditions. Mr. Rancher is required to register as a sex offender annually until 2027, and the evidence demonstrates that he has regularly complied with that requirement.

Notably, Mr. Rancher began working at C&R before he went to prison, was re-hired when he was released, and remains employed there. He presented testimony from two character witnesses who have worked with him since before he went to prison, both of whom testified that he has never caused trouble at work, let alone engaged in criminal behavior in the workplace. Mr. Woodard testified credibly that he has known Mr. Rancher for ten years and called him a quiet, hardworking person who stays out of trouble and keeps to himself. He and Mr. Rancher have traveled together for work on numerous occasions, sometimes staying overnight out of town, and he never knew Mr. Rancher to cause problems. Similarly, Ms. White said she has known Mr. Rancher since before he went to prison and has never had any issues with him. Their appearance at the hearing additionally demonstrates that Mr. Rancher's employer, who is aware of his conviction, supports his efforts to obtain licensure.

While neither the ED nor OPIC generally disputes the evidence that goes to the section 53.023 factors, they both argue that it is outweighed by the fact that the record lacks sufficient evidence of Mr. Rancher's rehabilitation or rehabilitative

efforts. OPIC acknowledges the length of time since Mr. Rancher's arrest and last criminal activity, that he was only 18 at the time of the offense, and that he has been continuously employed since his release from prison in 2015, but still argues that the record does not sufficiently demonstrate his rehabilitation. The ED, while conceding that Mr. Rancher was not required to undergo any rehabilitation following his incarceration, is nonetheless critical that he did not have such treatment and that he has provided no documentary evidence showing his rehabilitation or rehabilitative efforts.

But documentation of rehabilitative efforts is not required under Code section 53.023, and the ALJ finds that Mr. Rancher presented strong, undisputed evidence of his rehabilitation and that any risk of reoffending he presents is lower than the ED and OPIC suggest. As an initial observation, Mr. Rancher testified that he was not required to undergo any traditional form of rehabilitation while incarcerated, or upon his release after passing the lie detector test. However, he has taken steps to change for the better. He obtained his GED in prison and, other than this incident and a speeding ticket, his criminal record is clean. In addition to the isolated nature of his crime, now ten years in the past, he is now 28 years old and supports his three children, including one stepchild. Moreover, Mr. Rancher was evaluated for his risk level by the TDCJ—the very public agency that administers the sex offender registration program—and he has been categorized as being at a moderate risk level. He struck the ALJ as genuine when he testified that he wants to move on from his past and that his motivation in applying for this license is to provide a better life for his kids. To that end, he has maintained steady employment since being released from prison nearly nine years ago. These factors demonstrate Mr. Rancher's efforts



to improve himself, stay out of trouble, provide for his family, and be a productive member of society. Therefore, the ALJ rejects arguments by the ED and OPIC that there is insufficient evidence of his rehabilitation, or that Mr. Rancher’s efforts and otherwise sincere and credible testimony is outweighed by the absence of documentation showing his rehabilitative efforts.

In Chapter 53, the Legislature has codified its “intent ... to enhance opportunities for a person to obtain gainful employment after a person has ... been convicted of an offense; and ... discharged the sentence for the offense,”<sup>30</sup> as Mr. Rancher has. In furtherance of that objective, the Legislature has directed that Chapter 53 “shall be liberally construed.”<sup>31</sup> Although Mr. Rancher’s crime presents grounds for the Commission to deny his application, the preponderant evidence—when construed liberally as directed by the Legislature—demonstrates that his application should nonetheless be granted. Ten years have elapsed since his crime and Mr. Rancher has paid his debt to society. His criminal record is otherwise clean, his work history at C&R is exemplary, and the ALJ found him to be sincere in his drive to move beyond his criminal past and provide a better life for his children. To deny his application at this time would run counter to the Legislature’s manifest intent in Chapter 53. Accordingly, the ALJ recommends that the Commission grant Mr. Rancher’s application.

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<sup>30</sup> Tex Occ. Code § 53.003(a).

<sup>31</sup> Tex. Occ. Code § 53.003(b).

## **V. FINDINGS OF FACT**

1. Cody Lee Rancher applied to the Texas Commission on Environmental Quality (Commission) for a water system operator D license in February 2022.
2. On October 6 and November 17, 2022, the Executive Director (ED) of the Commission sent Mr. Rancher notice of intent to deny his application based on his conviction in 2015 for attempt to commit sexual assault, a third-degree felony.
3. Mr. Rancher timely requested a contested case hearing on his application on November 28, 2022.
4. The ED referred the case to the State Office of Administrative Hearings (SOAH) on June 28, 2023.
5. On August 15, 2023, the Chief Clerk issued a notice of hearing that referenced the ED's denial decision and scheduled a preliminary hearing to be held on September 14, 2023.
6. The notice of hearing provided the date, time, and place of the preliminary hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
7. On September 14, 2023, Administrative Law Judge (ALJ) Susan Rodriguez convened the preliminary hearing via videoconference. The ALJ admitted ED exhibits ED1-ED6 for the limited purpose of establishing notice and jurisdiction and entered an agreed procedural schedule for a hearing to be held on February 13, 2024.
8. On February 13, 2024, the ALJ convened the hearing on the merits via videoconference. Mr. Rancher represented himself. The ED was represented by attorneys Aubrey Pawelka and Alicia Ramirez. The Commission's Office of Public Interest Counsel was represented by attorney Jessica Anderson. The

hearing concluded the same day. The parties had the opportunity to file closing briefs and replies to closing briefs, and the record closed on March 14, 2024.

9. In 2015, Mr. Rancher pleaded guilty to attempt to commit sexual assault, a third-degree felony, for an offense he committed in March 2014. He was sentenced to two years' confinement in the Texas Department of Criminal Justice.
10. Mr. Rancher was 18 years at the time of the offense.
11. Mr. Rancher was released from prison after serving eleven months and completed the remainder of his sentence on mandatory supervision.
12. Mr. Rancher was not required to undergo psychological evaluation or treatment of any kind while incarcerated.
13. At the time of his release from prison, Mr. Rancher passed a lie detector test and, as a result, was not required to undergo psychological evaluation or treatment or take sex offender classes upon his release.
14. Mr. Rancher completed and was released from his term of mandatory supervision in 2017.
15. Mr. Rancher is required to register as a sex offender until October 2027. Pursuant to his registration, he is assigned a risk level of "moderate." Mr. Rancher has been compliant with his registration requirement.
16. Mr. Rancher's offense was a single and isolated event.
17. Mr. Rancher has no other criminal history, either before or after the offense he committed in 2014.
18. While incarcerated, Mr. Rancher earned his GED.
19. Mr. Rancher was hired at C&R Water Supply, Inc. (C&R), in August 2014, before he went to prison.

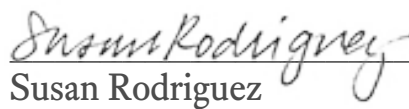
20. Upon his release, Mr. Rancher was re-hired at C&R, and he remains employed there.
21. One of Mr. Rancher's co-workers, who has known him for ten years, testified that this offense was out of character for Mr. Rancher, who he described as quiet and hardworking.
22. Another co-worker who has also known Mr. Rancher for ten years said that she has never had any issues with Mr. Rancher, and she does not believe he would ever put himself in this position again.
23. Ten years have passed since Mr. Rancher committed his crime. He is now 28 years old and supports his three children, including one stepchild.
24. Mr. Rancher expressed his desire to move beyond his offense and provide a better life for his children.
25. A water system operator D license is classified by the Commission as a "medium risk" license because it could provide the license holder with access to individuals or private residences, and the license holder could deal directly with the general public, providing the license holder with the opportunity to engage in sexually violent offenses.
26. Mr. Rancher is presently fit to hold a water system operator D license.

## **VI. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction and authority over licensing of water system operators. Tex. Water Code ch. 37; 30 Tex. Admin. Code ch. 30, subchs. A, K.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this case including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 30 Tex. Admin. Code §§ 30.38, 80.1, et seq.
3. Mr. Rancher received proper notice of the petition and of the hearing on the merits. Tex. Gov't Cde §§ 2001.051, .052.

4. Mr. Rancher had the burden of proving by a preponderance of the evidence that his application should be granted. 1 Tex. Admin. Code § 155.427; 30 Tex. Admin. Code §§ 80.17(a), .117.
5. The offense of attempt to commit sexual assault is not included in Article 42A.054 of the Texas Code of Criminal Procedure, nor is it defined as a “sexually violent offense” in Article 62.001(6) of the Texas Code of Criminal Procedure.
6. Mr. Rancher’s offense of attempt to commit sexual assault is directly related to the duties and responsibilities of a water system operator considering the factors prescribed in Texas Occupations Code section 53.022, the actual work to be performed, the access required to perform that work, and the opportunity he might have to reoffend. Tex. Occ. Code § 53.022; 30 Tex. Admin. Code § 30.34(a); *see* Commission Guidelines RG-521, *Consequences of Criminal Convictions for Occupational Licensing*, <https://www.tceq.texas.gov/downloads/licensing/occupational/publications/rg-521.pdf> (last visited May 9, 2024).
7. The Commission may deny Mr. Rancher’s application because he has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).
8. Mr. Rancher has met his burden of proving by a preponderance of the evidence that he is presently fit to hold a water system operator D license and that he should be licensed despite his criminal history. Tex. Occ. Code §§ 53.003, .023(a); 30 Tex. Admin. Code § 30.34(b).
9. Mr. Rancher’s application for a water system operator D license should be granted.

**SIGNED MAY 10, 2024**

  
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Susan Rodriguez  
Presiding Administrative Law Judge

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER  
GRANTING THE APPLICATION OF CODY LEE RANCHER  
FOR A WATER SYSTEM OPERATOR D LICENSE;  
TCEQ DOCKET NO. 2023-0651-LIC;  
SOAH DOCKET NO. 582-23-23815**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission) considered the application of Cody Lee Rancher for a water system operator D license. A Proposal for Decision (PFD) was issued by Susan Rodriguez, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. Cody Lee Rancher applied to the Texas Commission on Environmental Quality (Commission) for a water system operator D license in February 2022.
2. On October 6 and November 17, 2022, the Executive Director (ED) of the Commission sent Mr. Rancher notice of intent to deny his application based

on his conviction in 2015 for attempt to commit sexual assault, a third-degree felony.

3. Mr. Rancher timely requested a contested case hearing on his application on November 28, 2022.
4. The ED referred the case to the State Office of Administrative Hearings (SOAH) on June 28, 2023.
5. On August 15, 2023, the Chief Clerk issued a notice of hearing that referenced the ED's denial decision and scheduled a preliminary hearing to be held on September 14, 2023.
6. The notice of hearing provided the date, time, and place of the preliminary hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
7. On September 14, 2023, Administrative Law Judge (ALJ) Susan Rodriguez convened the preliminary hearing via videoconference. The ALJ admitted ED exhibits ED1-ED6 for the limited purpose of establishing notice and jurisdiction and entered an agreed procedural schedule for a hearing to be held on February 13, 2024.
8. On February 13, 2024, the ALJ convened the hearing on the merits via videoconference. Mr. Rancher represented himself. The ED was represented by attorneys Aubrey Pawelka and Alicia Ramirez. The Commission's Office of Public Interest Counsel was represented by attorney Jessica Anderson. The hearing concluded the same day. The parties had the opportunity to file closing briefs and replies to closing briefs, and the record closed on March 14, 2024.
9. In 2015, Mr. Rancher pleaded guilty to attempt to commit sexual assault, a third-degree felony, for an offense he committed in March 2014. He was sentenced to two years' confinement in the Texas Department of Criminal Justice.

10. Mr. Rancher was 18 years at the time of the offense.
11. Mr. Rancher was released from prison after serving eleven months and completed the remainder of his sentence on mandatory supervision.
12. Mr. Rancher was not required to undergo psychological evaluation or treatment of any kind while incarcerated.
13. At the time of his release from prison, Mr. Rancher passed a lie detector test and, as a result, was not required to undergo psychological evaluation or treatment or take sex offender classes upon his release.
14. Mr. Rancher completed and was released from his term of mandatory supervision in 2017.
15. Mr. Rancher is required to register as a sex offender until October 2027. Pursuant to his registration, he is assigned a risk level of “moderate.” Mr. Rancher has been compliant with his registration requirement.
16. Mr. Rancher’s offense was a single and isolated event.
17. Mr. Rancher has no other criminal history, either before or after the offense he committed in 2014.
18. While incarcerated, Mr. Rancher earned his GED.
19. Mr. Rancher was hired at C&R Water Supply, Inc. (C&R), in August 2014, before he went to prison.
20. Upon his release, Mr. Rancher was re-hired at C&R, and he remains employed there.
21. One of Mr. Rancher’s co-workers, who has known him for ten years, testified that this offense was out of character for Mr. Rancher, who he described as quiet and hardworking.
22. Another co-worker who has also known Mr. Rancher for ten years said that she has never had any issues with Mr. Rancher, and she does not believe he would ever put himself in this position again.



23. Ten years have passed since Mr. Rancher committed his crime. He is now 28 years old and supports his three children, including one stepchild.
24. Mr. Rancher expressed his desire to move beyond his offense and provide a better life for his children.
25. A water system operator D license is classified by the Commission as a “medium risk” license because it could provide the license holder with access to individuals or private residences, and the license holder could deal directly with the general public, providing the license holder with the opportunity to engage in sexually violent offenses.
26. Mr. Rancher is presently fit to hold a water system operator D license.

## **II. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction and authority over licensing of water system operators. Tex. Water Code ch. 37; 30 Tex. Admin. Code ch. 30, subchs. A, K.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this case including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov’t Code ch. 2003; 30 Tex. Admin. Code §§ 30.38, 80.1, et seq.
3. Mr. Rancher received proper notice of the petition and of the hearing on the merits. Tex. Gov’t Code §§ 2001.051, .052.
4. Mr. Rancher had the burden of proving by a preponderance of the evidence that his application should be granted. 1 Tex. Admin. Code § 155.427; 30 Tex. Admin. Code §§ 80.17(a), .117.
5. The offense of attempt to commit sexual assault is not included in Article 42A.054 of the Texas Code of Criminal Procedure, nor is it defined as a “sexually violent offense” in Article 62.001(6) of the Texas Code of Criminal Procedure.
6. Mr. Rancher’s offense of attempt to commit sexual assault is directly related to the duties and responsibilities of a water system operator considering the factors prescribed in Texas Occupations Code section 53.022, the actual work

to be performed, the access required to perform that work, and the opportunity he might have to reoffend. Tex. Occ. Code § 53.022; 30 Tex. Admin. Code § 30.34(a); *see* Commission Guidelines RG-521, *Consequences of Criminal Convictions for Occupational Licensing*, <https://www.tceq.texas.gov/downloads/licensing/occupational/publications/rg-521.pdf> (last visited May 9, 2024).

7. The Commission may deny Mr. Rancher's application because he has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).
8. Mr. Rancher has met his burden of proving by a preponderance of the evidence that he is presently fit to hold a water system operator D license and that he should be licensed despite his criminal history. Tex. Occ. Code §§ 53.003, .023(a); 30 Tex. Admin. Code § 30.34(b).
9. Mr. Rancher's application for a water system operator D license should be granted.

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. The application by Cody Lee Rancher for a water system operator D license is granted.
2. All other motions, any requests for specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are denied.
3. The effective date of this Order is the date the Order is final as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.
4. The Commission's Chief Clerk shall forward a copy of this Order to all parties.

5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Jon Niermann, Chairman for the Commission**