

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 3, 2012

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-11-7315; TCEQ Docket No. 2011-0912-OSS; In Re: In the Matter of the Class C Water Distribution License Application of Eli Espinoza, Customer Number CN601958408

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **February 23, 2012**. Any replies to exceptions or briefs must be filed in the same manner no later than **March 5, 2012**.

This matter has been designated **TCEQ Docket No. 2011-0912-OSS ; SOAH Docket No. 582-11-7315**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> 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.

Sincerely,

A handwritten signature in black ink that reads "Thomas H. Walston".

Thomas H. Walston
Administrative Law Judge

THW:nl
Enclosures
cc: Mailing List

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STYLE/CASE: ELI ESPINOZA
SOAH DOCKET NUMBER: 582-11-7315
REFERRING AGENCY CASE: 2011-0912-OSS

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

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ELI ESPINOZA

**SOAH DOCKET NO. 582-11-7315
TCEQ DOCKET NO. 2011-0912-OSS**

IN THE MATTER OF THE CLASS C	§	BEFORE THE STATE OFFICE
WATER DISTRIBUTION LICENSE	§	
APPLICATION OF ELI ESPINOZA,	§	OF
CUSTOMER NUMBER: CN601958408	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to deny Eli Espinoza (Applicant) from receiving a Class C Water Distribution Operator License. The ED asserted that the license should be denied for cause under Tex. Water Code § 37.005(c)(2) and 30 Tex. Admin. Code (TAC) § 30.33(a)(2) because Mr. Espinoza engaged in deceit or fraud in applying for the license. Specifically, the ED stated that Mr. Espinoza used a “cheat sheet” during the examination for his license. Mr. Espinoza denied that he cheated and requested that he be issued a license. Based on the evidence presented, this Proposal for Decision recommends that the Commission deny Mr. Espinoza’s application.

I. JURISDICITON, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter pursuant to Tex. Water Code ch. 37. The State Office of Administrative hearings (SOAH) has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov’t Code ch. 2003.

On April 13, 2011, the ED issued and served on Mr. Espinoza written notice of its intent to deny his application for a Class C Water Distribution Operator License. The notice included a short, plain statement of facts and informed Mr. Espinoza of the reason for the denial of his application, including a reference to the relevant regulatory provisions. On May 10, 2011, Mr. Espinoza appealed the ED’s decision. On July 15, 2011, the Commission issued a Notice of

Hearing, which scheduled a preliminary hearing on August 1, 2011. Thereafter, a procedural schedule was established that led to a hearing on the merits.

The hearing on the merits convened on December 14, 2011, before ALJ Thomas H. Walston at SOAH's hearing facility in San Antonio, Texas. Staff attorney Kathy Humphreys represented the ED; attorney Crystal Wright represented Mr. Espinoza; and attorney Eli Martinez represented the Office of Public Interest Counsel. The record closed the same day.

II. APPLICABLE LAW AND BURDEN OF PROOF

The ED and the Commission may deny for cause an application for an occupational license by an applicant who has engaged in fraud or deceit in obtaining or applying for the license. Tex. Water Code § 37.005(c)(2) and 30 TAC § 30.33(a)(2)(B).

The parties disagreed on who had the burden of proof. The Commission's rule at 30 TAC § 30.38 provides that that for occupational licenses, hearings will be conducted according to chapters 70 and 80 of the rules (related to enforcement and contested case hearings, respectively). Then, 30 TAC § 80.17 provides: "The burden of proof is on the moving party by a preponderance of the evidence" Therefore, Mr. Espinoza had the initial burden of proof to establish that he met the requirements for the requested license: 60 hours of training, a high school education or GED, submission of an application and fee, and passing the examination. There was no dispute that Mr. Espinoza met these requirements, except passing the examination. As will be discussed in detail below, there also was no dispute that Mr. Espinoza made a passing score of 75 on the last test he took, on March 4, 2011. However, the ED alleged that Mr. Espinoza cheated on that test. Thus, the ED requested that Mr. Espinoza be denied a license due to fraud or deceit in applying for his license. The ED is the moving party on the issue of denying Mr. Espinoza's license based on fraud or deceit. Therefore, pursuant to 30 TAC § 80.17, the ED had the burden of proof on that issue.

III. DISCUSSION

A. Background/Overview

Mr. Espinoza worked for Bexar Metropolitan Water District (Bexar Metro) for more than 16 years. His last position was in leak detection. In February 2010, Bexar Metro told its employees that by June 30, 2011, they had to obtain appropriate licenses from the Commission. Mr. Espinoza took classes, studied, and took the test several times for a Class C Water Distribution Operator License, but he did not make a passing score of 70. Mr. Espinoza scored a near-passing grade of 69 on the test he took December 3, 2010, and he made a passing score of 75 on the test he took March 4, 2011. Mr. Espinoza was not caught cheating while taking any of the tests.

However, on March 9, 2011, a TCEQ employee received an anonymous telephone call, stating that several employees of Bexar Metro had cheated on the Class C Water Distribution Operator License examination. The person called back on March 11, 2011, and faxed to the TCEQ a copy of an alleged cheat sheet. The TCEQ administered two versions of the test. Both versions contained the same questions, but the questions were arranged in a different order on each version. The cheat sheet provided answers for both versions of the test. For version C0401, the cheat sheet contained 45 correct answers and 15 incorrect answers, which would produce a score of 75. For version C0402, the cheat sheet provided 43 correct answers and 17 incorrect answers, which would produce a score of 72.

TCEQ staff analyzed test scores and answers for several prior tests taken by Bexar Metro employees, and Staff concluded that many of these employees had used the cheat sheet, including Mr. Espinoza. In the analysis, TCEQ staff compared the coincidence of wrong answers by the test takers to the wrong answers on the cheat sheet. On the test Mr. Espinoza took December 3, 2010, his answers matched 16 of the 17 wrong answers on the cheat sheet for test version C0402; and on the test he took March 4, 2011, Mr. Espinoza's answers matched 15 of 15 wrong answers on the cheat sheet for test version C0401. From this analysis, Staff

concluded that Mr. Espinoza engaged in deceit or fraud on these two tests by using the cheat sheet.

In April 2011, as a result of Staff's allegations, Bexar Metro terminated the employment of Mr. Espinoza and several other employees. However, Mr. Espinoza has consistently denied that he used the cheat sheet or otherwise cheated on the tests, and he requested that the Commission issue him a license.

B. Testimony

Eli Espinoza: Mr. Espinoza stated that he worked for Bexar Metro for over 16 years, and his last position was in leak detection. In February 2010, Bexar Metro informed him and many other employees that they had to obtain a license from the TCEQ. Mr. Espinoza said he took courses and worked on study materials to prepare for the licensure test. He met with a Bexar Metro study group and studied at home alone. He explained that the test is offered each month, but a person had to wait three months before retaking the test. Mr. Espinoza took the test multiple times at different locations, including at the offices of Bexar Metro, the San Antonio Water System, and the TCEQ. The test contained 60 multiple choice questions and required a score of 70 to pass.

Mr. Espinoza said he made progress on taking the test. His last three scores improved from 59 to 69 and finally to 75 on March 4, 2011. Concerning the March 4th test, Mr. Espinoza said he took it at the TCEQ office in San Antonio. He recalled there were four proctors in the test room, and the only materials he had were a calculator provided by Bexar Metro and the test and answer sheet provided by TCEQ. Mr. Espinoza stated that he took about two hours to complete the test, and he never left the room during the test.

Mr. Espinoza was called into the Bexar Metro office on April 22, 2011, and was told he had passed the test. He felt happy, but then a TCEQ investigator in the meeting accused him of cheating. The investigator told Mr. Espinoza that his answers matched a cheat sheet, but Mr. Espinoza denied that he had ever seen the cheat sheet. He added that he was never shown

his answer sheet to compare with the cheat sheet, either at that meeting or since. Mr. Espinoza was sent back to work after the meeting, but he was fired the next day. He understood that 15 or 16 other Bexar Metro employees were also fired for cheating.

At some point after April 22nd, the TCEQ investigator called Mr. Espinoza and requested an interview. Mr. Espinoza said he went to the TCEQ voluntarily for the interview. He complained that he was treated like a criminal and was threatened with jail. At the interview, he denied that he had ever seen the cheat sheet, and he did not know of other employees who had the cheat sheet. After the meeting, Mr. Espinoza decided that he needed legal representation. Mr. Espinoza stated that he is 44 years old and has not been able to find other work, and he has been damaged by the accusations against him. In Mr. Espinoza's view, he earned his license and he requested that it be issued to him.

On cross-examination, Mr. Espinoza said he had never been disciplined before this incident, and he recalled that Bexar Metro gave employees until June 30, 2011, to pass the test. He acknowledged that cheating is dishonest, but he believed it was impossible to cheat on this test without a proctor catching it. Mr. Espinoza agreed that in providing water to the public, it was important to be competent and have a license. If he had time to study, Mr. Espinoza thought he could pass the test again, but he said it is not fair to require him to take the test again because he has already passed it.

Malcolm A. Ferris: Mr. Ferris is a Special Investigator for the TCEQ. He began his work as an inspector in 1993 and has worked in his current position since June 2003. He primarily investigates environmental crimes and other matters. Mr. Ferris interviewed Mr. Espinoza on April 28, 2011. He recorded the interview and prepared a written report.¹ Mr. Ferris was suspicious of Mr. Espinoza because of his body language and because he did not expressly answer "No" when first asked if he cheated, although Mr. Espinoza did later deny cheating. Mr. Ferris was also suspect of Mr. Espinoza's statement that four proctors monitored the test, because normally the tests are monitored by only one proctor.

¹ Ex. ED-21.

Mr. Ferris' report summarized the statements made by Mr. Espinoza, and those statements were consistent with Mr. Espinoza's testimony at the hearing. In addition, Mr. Espinoza told Mr. Ferris there was some type of vendetta against Bexar Metro, but Mr. Espinoza had no explanation about why his wrong answers matched the wrong answers on the cheat sheet for the test he took on March 4, 2011.²

On cross-examination Mr. Ferris acknowledged that he was not present for the test and did not know how many proctors were there. He also agreed that this case involving cheating was not a typical investigation for him.

Terry Thompson: Mr. Thompson has worked for TCEQ for 21 years and currently is a Special Assistant in the Occupation and Licensing Division. He noted that the division issues over 30 licenses, including the Class C Water Distribution Operator License. The requirements for this license are 60 hours of training, a high school education or GED, submission of an application and fee, and passing the examination. Currently, there are about 3,200 licensees statewide.

Mr. Thompson explained that there are two versions of the exam for this license: C0401 and C0402. The questions are the same on both versions, but they are arranged in a different order. The same test has been used for more than 10 years. Tests are given at the TCEQ central office and regional offices. Different tests for different licenses might be given at the same time in the same room. Usually, each test session is monitored by one proctor, who is a TCEQ employee. Mr. Thompson said it is not possible to detect all methods or instances of cheating. He added that a proctor who detected cheating would immediately stop the test for that person.

On March 9, 2011, Mr. Thompson received an anonymous telephone call, informing him that Bexar Metro employees had cheated on the recent licensing test. On March 11, the same person called again and faxed the alleged cheat sheet.³ After investigating, Mr. Thompson

² *Id.*

³ Ex. ED-9.

determined that the cheat sheet contained 45 correct answers for test version C0401, which produced a score of 75; and contained 43 correct answers for test version C0402, which produced a score of 72.

Mr. Thompson first evaluated the test administered at the Bexar Metro facility on January 20, 2011 (Mr. Espinoza did not take the test that date). He determined that several persons used the cheat sheet on version C0401 and version C0402 during that test session. He also evaluated results for other test sessions and determined that the tests given on December 3, 2010, and March 4, 2011, were also compromised by the cheat sheet.⁴ Further, a computer check was made of about 7,000 test results statewide. Only Bexar Metro employees were found positive for using the cheat sheet.

Mr. Thompson determined that Mr. Espinoza's answers for the tests he took on December 3, 2010, and March 4, 2011, were matches for cheating. On test version C0402 taken on December 3rd, Mr. Espinoza's answers matched the cheat sheet on 42 of 43 of the correct answers and 16 of 17 of the wrong answers. When Mr. Espinoza took version C0402 before December 3, 2010, he had many fewer matches with the cheat sheet. On June 19, 2009, Mr. Espinoza's answers matched the cheat sheet for only 23 of 43 correct answers and for only 3 of 17 wrong answers. On July 8, 2010, Mr. Espinoza's answers matched the cheat sheet for only 27 of 43 correct answers and for only 1 of 17 wrong answers.⁵

On test version C0401 taken by Mr. Espinoza on March 4, 2011, his answers matched the cheat sheet on 45 of 45 of the correct answers and 15 of 15 of the wrong answers. When Mr. Espinoza took version C0401 previously on September 10, 2009, December 9, 2009, and May 7, 2010, his results matched the cheat sheet for only 26, 27, and 25 of 45 correct answers and for only 2, 1, and 2 of 15 wrong answers, respectively.⁶

⁴ Exs. ED-10 and ED-11.

⁵ Ex. ED-13.

⁶ Ex. ED-16.

Mr. Thompson explained that he put more emphasis on the wrong answers that matched the cheat sheet than the correct answers. He also noted that some of Mr. Espinoza's wrong answers on his last two tests were answered by him correctly on his prior tests.

With these results, Mr. Thompson concluded that Mr. Espinoza cheated on the December 3, 2010, and the March 4, 2011, tests, but not on the tests he took before these two. Further, the TCEQ voided the results of the January 20, 2011, exam session, in which all test takers were Bexar Metro employees. Licenses were also denied to other applicants who cheated on other tests. Based on his investigation, Mr. Thompson had no doubts that Mr. Espinoza cheated on his last two tests and should be denied a license.

On cross examination, Mr. Thompson agreed that not all test takers or all Bexar Metro employees used the cheat sheet. In fact, he added, there was no correlation between non-Bexar Metro employees and the cheat sheet. He acknowledged that it was not "impossible" that Mr. Espinoza's wrong answers matched the cheat sheet by chance. He also agreed that he had no personal knowledge that Mr. Espinoza used the cheat sheet; instead, he relied on the statistical analysis of the test answers compared to the cheat sheet.

Russell W. Gardener: Mr. Gardener works for TCEQ, and he has taught at Austin Community College since 1994. As a teacher, he gives multiple-choice and essay examinations and he proctors his examinations to prevent cheating. While he has only caught one student cheating during an exam, Mr. Gardener said that cheating can also be detected by analyzing test results, especially patterns related to wrong answers. He currently supervises Mr. Thompson, and he agreed with Mr. Thompson's conclusion that Bexar Metro employees cheated on the TCEQ licensing exam.

Mr. Gardener performed a binominal distribution statistical analysis of Mr. Espinoza's test answers and concluded that Mr. Espinoza used the cheat sheet that was sent to Mr. Thompson. He explained that the multiple choice test had five possible answers for each question, and his analysis focused on Mr. Espinoza's wrong answers matching the wrong answers on the cheat sheet. He performed his statistical analysis using two assumptions: first,

assuming that the answer selection was completely random (one chance out of five for guessing the correct answer); and second, assuming that Mr. Espinoza narrowed the choice down to two possible answers (one chance in two of guessing the correct answer).

On the test Mr. Espinoza took December 3, 2010, 16 of his wrong answers matched the 17 wrong answers on the cheat sheet. Assuming random selection of five choices, the odds of that occurring were 89 billion to 1. If narrowed to two possible answers, the odds were 30,518 to 1.

On the test Mr. Espinoza took March 4, 2011, all 15 of his wrong answers matched the 15 wrong answers on the cheat sheet. Assuming random selection of five choices, the odds of that occurring were 32 billion to 1. If narrowed to two possible answers, the odds were 1,297 to 1.

Considering both tests combined, 31 of Mr. Espinoza's wrong answers matched the 32 wrong answers on the cheat sheet. Assuming random selection of five choices, the odds of that occurring were 5.49×10^{21} to 1. If narrowed to two possible answers, the odds were 745 million to 1. Based on these results, Mr. Gardener had no doubt that Mr. Espinoza used the cheat sheet when he took these two tests.

On cross-examination, Mr. Gardener agreed that his statistical analysis provides an indication of probability but is not definitive. He also acknowledged that he did not proctor these tests and he had no personal knowledge that Mr. Espinoza cheated. He also stated that it would be difficult for Mr. Espinoza to memorize 120 answers (60 answers for each test version).

C. Parties' Arguments

Mr. Espinoza stated that he took the test eight times and studied hard for each test. He stressed that none of the Commission's witnesses had personal knowledge that he cheated. Further, he argued that the statistical analysis was not definitive and that he could have been the exception. Finally, Mr. Espinoza complained that the TCEQ investigators relied on an

anonymous telephone source to start its investigation. In his view, he worked hard, passed the test, and should be issued his license.

Staff argued that the Commission should not issue a license to Mr. Espinoza based on cheating. Staff stressed that it was undisputed that a cheat sheet existed, that Bexar Metro employees used the cheat sheet, and that Mr. Espinoza was a Bexar Metro employee. When those facts are considered with the overwhelming statistical odds that Mr. Espinoza used the cheat sheet, Staff argued that it is clear that Mr. Espinoza used the cheat sheet and should be denied a license.

D. Analysis and Recommendation

The evidence established that Mr. Espinoza used a cheat sheet when he took his last two tests for a Class C Water Distribution License. Therefore, the ALJ recommends that the Commission deny Mr. Espinoza's application for cause pursuant to Tex. Water Code § 37.005(c)(2) and 30 TAC § 30.33(a)(2)(B).

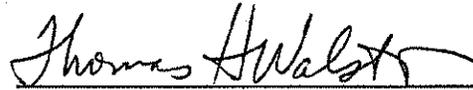
Mr. Espinoza has consistently denied that he used a cheat sheet, and he stressed that he was not caught cheating during the tests by the proctors. However, the statistical evidence presented by Staff overwhelmingly showed that Mr. Espinoza used the cheat sheet. As discussed, the odds were 745 million to 1 that Mr. Espinoza's wrong answers would randomly match the cheat sheet's wrong answers 31 out of 32 times on the last two tests combined, even assuming Mr. Espinoza had narrowed his choices to two answers. The evidence also showed that Mr. Espinoza actually changed some of his correct answers on prior tests to wrong answers that matched the cheat sheet. Further, the evidence was undisputed that TCEQ received a cheat sheet and information that Bexar Metro employees had used it, and Staff's own analysis showed that other Bexar Metro employees had used the cheat sheet on these tests.

Mr. Espinoza expressed concern that he never saw his answer sheets to compare to the cheat sheet. Also, Mr. Espinoza's answer sheets were not introduced into evidence. It would have been preferable for Mr. Espinoza's answer sheets to have been introduced into evidence.

However, the witnesses who testified for the ED about Mr. Espinoza's test results were credible, and there was no evidence to suggest they had any motive or reason not to be truthful about Mr. Espinoza test answers.

Considering all the evidence and circumstances, the ALJ finds that Mr. Espinoza engaged in deceit or fraud in applying for a license; therefore, his application should be denied pursuant to Tex. Water Code § 37.005(c)(2) and 30 TAC § 30.33(a)(2)(B).

SIGNED February 3, 2012.



**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Denying the Application of Eli Espinoza
for a Class C Water Distribution Operator License
TCEQ DOCKET NO. 2011-0912-OSS
SOAH DOCKET NO. 582-11-7315**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the application of Eli Espinoza for a Class C Water Distribution Operator License. Thomas H. Walston, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on December 14, 2011, in San Antonio, Texas, and presented the Proposal for Decision.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. On December 3, 2010, Eli Espinoza (Applicant) filed an application with the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ/Commission) for a Class C Water Distribution Operator License (the License).
2. At the time, Applicant had worked for Bexar Metropolitan Water District (Bexar Metro) for more than 16 years. In February 2010, Bexar Metro told its employees that by June 30, 2011, they had to obtain licenses from the Commission appropriate for their positions.
3. One requirement to obtain the License was for Applicant to pass a written test administered by the TCEQ (the test). A score of 70 or more was required to pass the test.

4. Applicant took the test several times during 2009 and 2010, but he did not achieve a passing score.
5. Applicant took the test on December 3, 2010, and made a score of 69.
6. Applicant took the test on March 4, 2011, and made a score of 75.
7. On March 9, 2011, a TCEQ employee received an anonymous telephone call, stating that several employees of Bexar Metro had cheated on the Class C Water Distribution Operator License examination. The person called back on March 11, 2011, and faxed to the TCEQ a copy of an alleged cheat sheet used by Bexar Metro employees.
8. The TCEQ administered two versions of the test. Both versions contained the same questions, but the questions were arranged in a different order on each version. The cheat sheet provided answers for both versions of the test.
9. For test version C0401, the cheat sheet contained 45 correct answers and 15 incorrect answers, which would produce a score of 75.
10. For test version C0402, the cheat sheet provided 43 correct answers and 17 incorrect answers, which would produce a score of 72.
11. TCEQ staff analyzed test scores and answers for several tests taken by Bexar Metro employees and concluded that many of these employees had used the cheat sheet, including Applicant.
12. In the analysis, TCEQ staff compared the coincidence of wrong answers by the test takers to the wrong answers on the cheat sheet.
13. On the test Applicant took on December 3, 2010, his answers matched 42 of the 43 correct answers and matched 16 of the 17 wrong answers on the cheat sheet for test version C0402.

14. On the test Applicant took on March 4, 2011, his answers matched 45 of the 45 correct answers and matched 15 of the 15 wrong answers on the cheat sheet for test version C0401.
15. On the test Applicant took December 3, 2010, 16 of his wrong answers matched the 17 wrong answers on the cheat sheet. Assuming random selection of five choices, the odds of that occurring were 89 billion to 1. If narrowed to two possible answers, the odds were 30,518 to 1.
16. On the test Applicant took March 4, 2011, 15 of his wrong answers matched the 15 wrong answers on the cheat sheet. Assuming random selection of five choices, the odds of that occurring were 32 billion to 1. If narrowed to two possible answers, the odds were 1,297 to 1.
17. Considering both tests together, 31 of Applicant's wrong answers matched the 32 wrong answers on the cheat sheet. Assuming random selection of five choices, the odds of that occurring were 5.49×10^{21} to 1. If narrowed to two possible answers, the odds were 745 million to 1.
18. Applicant engaged in deceit or fraud on March 4, 2011, to pass the test for a Class C Water Distribution Operator License.
19. On April 13, 2011, the ED issued and served on Applicant written notice of its intent to deny his application for a Class C Water Distribution Operator License. The notice included a short, plain statement of facts and informed Mr. Espinoza of the reason for the denial of his application, including a reference to the relevant regulatory provisions.
20. On May 10, 2011, Applicant appealed the ED's decision.
21. On June 10, 2011, the ED referred this matter to SOAH for a contested case hearing.

22. On July 15, 2011, the Commission issued a Notice of Hearing, which scheduled a preliminary hearing on August 1, 2011. Thereafter, a procedural schedule was established that led to a hearing on the merits.
23. The hearing on the merits convened on December 14, 2011, before ALJ Thomas H. Walston at the SOAH hearing facility in San Antonio, Texas. Staff attorney Kathy Humphreys represented the ED; attorney Crystal Wright represented Applicant; and attorney Eli Martinez represented the Office of Public Interest Counsel. The record closed the same day.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Water Code Ch. 37.
2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ch. 2003.
3. Applicant received sufficient notice of the hearing on the denial of his application, pursuant to Tex. Gov't Code §§ 2001.051(1) and 2001.052; Texas Water Code § 37.005(c); and 30 Tex. Admin. Code §§ 1.12, 30.38, 70.104, and 80.6(b)(3).
4. When asking the Commission to deny an application for an occupational license because the Applicant engaged in deceit or fraud in applying for the license, the ED has the burden of proof. 30 Tex. Admin. Code §§ 30.38 and 80.17.
5. Based on the above Findings of Fact, the application should be denied, in accordance with Tex. Water Code § 37.005(c)(1) and 30 Tex. Admin. Code § 30.33(a)(2)(B), because the Applicant engaged in deceit in applying for a license.

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

1. Applicant's application for a Class C Water Distribution Operator License is denied.
2. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
3. The effective date of this Order is the date the Order is final, as provided by 30 Tex. Admin. Code § 80.273 and Tex. Gov't Code § 2001.144.
4. The Commission's Chief Clerk shall forward a copy of this Order to Applicant.
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

Bryan W. Shaw, Ph.D., Chairman
For the Commission