

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

June 12, 2023

Alicia Ramirez
Texas Commission on Environmental Quality

VIA EFILE TEXAS

Pranjal Mehta
Office of Public Interest Counsel

VIA EFILE TEXAS

Damien Valencia
703 Carolina St.
Graham, TX 76450

VIA REGULAR MAIL

RE: Docket Number 582-22-09398.TCEQ; Texas Commission on Environmental Quality No. 2022-0733-LIC; *Executive Director of the Texas Commission on Environmental Quality v. Damien Valencia*

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER
v.
DAMIEN VALENCIA,
RESPONDENT**

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to deny Damien Valencia a Wastewater Collection I license based on his copying of portions of the licensing examination while taking it. Mr. Valencia requested a formal hearing on the denial. Having considered the evidence and applicable law, the Administrative Law Judge (ALJ) recommends that the denial of Mr. Valencia's application be upheld.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Mr. Valencia applied to the Commission in June 2021, to be licensed for Wastewater Collection I.¹ On October 28, 2021, Staff notified Mr. Valencia of the ED's intent to deny his application based on his engaging in fraud or deceit in obtaining or applying for the license by copying portions of the examination.² Mr. Valencia requested a formal hearing;³ and the ED referred the case to the State Office of Administrative Hearings (SOAH).⁴ There are no disputed issues of notice or jurisdiction in this case; therefore, those matters are addressed further in the findings of fact and conclusions of law.

A preliminary hearing was held by videoconference on October 25, 2022, at which the ALJ admitted Exhibits ED-1 through ED-5 for the limited purpose of establishing notice and jurisdiction and approved an agreed procedural schedule for a hearing to be held on March 30, 2023.

The hearing on the merits was held by videoconference on March 30, 2023, before ALJ Heather D. Hunziker. Mr. Valencia appeared and represented himself. Staff was represented by staff attorney Alicia Ramirez; and TCEQ's Office of Public Interest Counsel (OPIC) was represented by attorney Pranjal Mehta. At the close of

¹ See Staff Ex. ED-1 at 0001.

² Staff Ex. ED-1 at 0001.

³ Staff Ex. ED-2.

⁴ Staff Ex. ED-3.

the hearing, the ALJ held the record open until May 4, 2023, for closing briefs.⁵ Staff and OPIC timely filed closing briefs on April 27, 2023 (respectively, ED Closing and OPIC Closing), and reply briefs on May 4, 2023, at which point the record closed.

II. APPLICABLE LAW

Pursuant to the Texas Water Code, TCEQ has established qualifications for the licenses within its purview, including the license at issue.⁶ In order to obtain a license for Wastewater Collection I, an applicant must establish that they meet the following requirements: a high school diploma or equivalent; 20 hours of training; submission of an application and fee; and a passing score on the examination.⁷ The contents of the examination are confidential and examinees may not share them with anyone.⁸ Additionally, examinees must not copy or in any way reproduce any part of the examination and must not engage in any deceptive or fraudulent act.⁹

After notice and opportunity for a hearing, the Commission may deny the occupational license of a person who violates its examination rules.¹⁰ Furthermore, the ED and the Commission may deny, for cause, an application for an occupational

⁵ SOAH Order Memorializing Hearing and Extending the Record Close Date (March 30, 2023).

⁶ Tex. Water Code §§ 26.0301(b), 37.004; 30 Tex. Admin. Code ch. 30, subchs. A, J.

⁷ Tex. Water Code § 37.005(a); 30 Tex. Admin. Code § 30.18(a), .20(b), .340(a). The minimum passing score for an examination is 70 percent. 30 Tex. Admin. Code § 30.20(b).

⁸ 30 Tex. Admin. Code § 30.20(a).

⁹ Tex. Water Code § 37.005(c)(2); 30 Tex. Admin. Code § 30.20(h)(3)-(4).

¹⁰ 30 Tex. Admin. Code § 30.20(m).

license by an applicant who has engaged in fraud or deceit in obtaining or applying for the license.¹¹

Mr. Valencia, as the moving party and the applicant, bore the burden of proving by a preponderance of the evidence that he met the requirements for a Wastewater Collection I license and that the denial of his application should be overturned.¹²

III. EVIDENCE

At the hearing, Staff offered ten exhibits, all of which were admitted without objection.¹³ Additionally, the ED presented the testimony of Sheila Barrett, a Computer Based Test Center Administrator at Midwestern State University (MSU), and Jaya Zyman, the Deputy Director of the Commission's Occupational Licensing and Registration Division. Mr. Valencia testified on his own behalf but did not offer any documentary evidence. OPIC did not offer any evidence.

¹¹ Tex. Water Code § 37.005(c)(2); 30 Tex. Admin. Code § 30.33(a)(2)(B); *see also* 30 Tex. Admin. Code § 30.20(h)(4), (m).

¹² 30 Tex. Admin. Code §§ 30.38, 80.17(a); *see also* 1 Tex. Admin. Code § 155.427.

¹³ The exhibits consisted of the ED's October 28, 2021 denial letter (Staff Ex. ED-1); Mr. Valencia's hearing request (Staff Ex. ED-2); the ED's referral of the case to SOAH (Staff Ex. ED-3); TCEQ's Notice of Hearing and SOAH's Initial Order Setting Videoconference Preliminary Hearing and Requiring Filings (Staff Ex. ED-4); Staff's Witness List (Staff Ex. ED-5); Mr. Valencia's scratch paper (Staff Ex. ED-6); Computer Based Testing Instructions printout (Staff Ex. ED-7); TCEQ Testing Sign-in Roster for Midwestern State University (Staff Ex. ED-8); TCEQ Occupational Licensing Programs User Guide for Computer-Based Testing Centers and Proctors (Staff Ex. ED-9); Midwestern State University's Report to TCEQ (Staff Ex. ED-10).

A. BACKGROUND

On October 19, 2021, Mr. Valencia took TCEQ's Wastewater Collection I exam at the MSU testing center, and passed.¹⁴ During the exam, he copied questions and answers from the exam onto his scratch paper.¹⁵ At the end of the exam, the proctor took his scratch paper, told him he was not allowed to remove scratch paper from the test center, and reported the incident to TCEQ.¹⁶

B. TESTIMONY

1. Mr. Valencia

Mr. Valencia testified that the incident in question occurred upon his third time taking the test and he really wanted to pass. His first two tries at testing were both on the same day, then he studied more before taking the test the third time. He recollected that the test questions were different on each test he took. The test was computerized, with paper and pencils given by the proctor for scratch paper.¹⁷ The test results do not tell examinees what questions they got wrong, just the percentage they got correct. On his scratch paper, he wrote down the questions he thought he would get wrong in order to study from them if he failed the test again. He argued that he was not trying to cheat and did not intend any fraud or deceit—he merely

¹⁴ See Staff Ex. ED-8 at 0024; *see also* Staff Ex. ED-10 at 0064.

¹⁵ Staff Ex. ED-6.

¹⁶ Staff Ex. ED-10.

¹⁷ *See* Staff Ex. ED-6.

wanted a copy of the questions to study from if he failed. Mr. Valencia stated that he does not cheat, adding, “that’s not me” and “I just want to do right.”

Mr. Valencia testified that he was not aware of anything on the test telling him not to copy questions or answers and was not aware that he could not take paper or questions home. No instructions were given except to empty pockets and start the test. He does not remember any further instructions; however, he said, the incident occurred two years prior to his testimony. He only remembered clicking boxes to start the test.¹⁸

Mr. Valencia said when he finished the test, he saw that he passed; but then the proctor took the paper and told him he “shouldn’t be doing that.” When he returned to work afterwards, his boss told him the proctor had reported to TCEQ that he was “trying to be fraudulent.”

2. Ms. Barrett

Ms. Barrett has worked for MSU testing center for over fifteen years and was the proctor who administered Mr. Valencia’s exam when he took TCEQ’s Wastewater Collection I exam at MSU. Ms. Barrett signed him in and provided him scratch paper to use during the test. Mr. Valencia was the only examinee that day.

Ms. Barrett testified that when Mr. Valencia finished taking his exam, he notified her that he was finished and she retrieved his results from the printer. When

¹⁸ See Staff Ex. ED-7.

she returned, she noticed that his scratch paper was missing and she told him he had to hand it over and could not take it with him. He then returned the scratch paper, which was folded in his pocket, and she reported the event to TCEQ via a written report as was required by MSU's contract with TCEQ.

Finally, Ms. Barrett testified that: (1) Staff Exhibit ED-6 is the scratch paper Mr. Valencia returned to her with his notes copying the exam questions and answers; (2) Staff Exhibit 8 is MSU's testing sign-in roster with Mr. Valencia's name and signature on October 19, 2021; and (3) Staff Exhibit 9 is TCEQ's user guide for testing centers and proctors.

3. Ms. Zyman

Ms. Zyman is TCEQ's Deputy Director for the Occupational Licensing and Registration Division. Ms. Zyman testified that TCEQ contracted with MSU to administer its computer-based exams. Mr. Valencia came to her attention when TCEQ received an incident report from MSU. MSU's proctor reported that Mr. Valencia had copied most of the exam questions onto his scratch paper—“practically the entire exam.”¹⁹ Additionally, he was attempting to take the notes with him.

As a result, the ED issued Mr. Valencia a letter notifying him of their intent to deny his license application for cause, per 30 Texas Administrative Code section 30.33(a)(2)(B), because he engaged in fraud or deceit in obtaining a license.

¹⁹ See Staff Ex. 6.

Ms. Zyman testified that TCEQ's main concerns with the copying of exams are: (1) if an applicant cheats, then the exam does not truly evaluate his actual knowledge; and/or (2) if an applicant removes items from the exam, then that jeopardizes the integrity of the exam and possibly the integrity of other applicants who might take the exam and see those questions and answers ahead of time.

Ms. Zyman explained that copying the exam was a serious offense because the integrity of the exam could have been compromised. Mr. Valencia could have shared the questions with other people upon removing them from the test center. If individuals can pass the exam by having the answers instead of knowing the material, then it no longer reflects their true knowledge of the content. TCEQ cannot protect the health and safety of the public if its licensees do not know the subject matter and how to implement it in emergent and non-emergent situations.

Ms. Zyman testified that TCEQ expends copious resources to develop a finite number of test questions that are recycled over and over. She said that "[e]xam content creation is resource-intensive" and is a multi-year process. It is hard to keep up to date and relevant. Were the exam questions to be widely distributed, the agency would have to pull that exam off the market and expend its limited resources to create new questions. Therefore, Ms. Zyman said, ensuring the integrity of the exams is necessary to protect public funds, public health and safety, and the environment.

Ms. Zyman noted that, to take the exam, Mr. Valencia signed an agreement, via a pre-screen on the electronic exam, not to reproduce the exam in whole or in part. She explained that Staff Exhibit ED-7 is an example of the pre-screen

confidentiality agreement he would have had to sign in order to proceed to the test. That agreement states: “I, [examinee], agree to keep the exam content and the wording of the exam questions confidential. I will not disclose, reproduce, or transmit this exam, in whole or in part, in any form or by any means.”²⁰ Staff did not offer into evidence any confidentiality agreement actually signed by Mr. Valencia.

Ms. Zyman noted that Mr. Valencia actually passed this exam, with a score of 82, after failing the first two times. Passing requires a minimum score of 70. She pointed out that if he wants to re-apply or re-take the test, this license denial would not prevent him from doing so.

C. ARGUMENT

Staff and OPIC argued that the Commission should not issue a license to Mr. Valencia, based on his copying large portions of the licensing exam on scratch paper that he then attempted to remove from the exam room.²¹ Staff stressed that Mr. Valencia should have known that copying the test was forbidden because, in order to take the exam, he had to click on a screen to agree that he would not reproduce the exam in whole or in part.²² Mr. Valencia argued that he was not attempting to cheat and had no idea that copying test questions was prohibited.

²⁰ Staff Ex. ED-7 at 0021.

²¹ ED Closing at 3; OPIC Closing at 5-6; Staff Ex. ED-3 at 0006.

²² ED Closing at 5. A printout of the electronic confidentiality agreement Mr. Valencia would have had to agree to was admitted as Staff Ex. ED-7.

IV. ANALYSIS AND RECOMMENDATION

There was no argument or evidence as to whether Mr. Valencia meets the prerequisites for licensure—high school diploma or equivalent; 20 hours of training; and submission of an application and fee. As for the passing exam score requirement, there was no dispute that Mr. Valencia made a passing score on the October 19, 2021 examination; however, as explained below, Mr. Valencia is subject to denial because he copied the test questions.

The ALJ agrees with OPIC’s summary of why test-confidentiality is so important:

Licensing exams play a crucial role in safeguarding public health and environmental protection The exam results determine the competency of individuals responsible for critical tasks like wastewater collection. Therefore, it is essential to safeguard the confidentiality of exam content and hold accountable those who breach this trust.²³

A. VIOLATING THE COMMISSION’S RULES ON EXAMINATIONS

Mr. Valencia admitted, and the ALJ finds, that he copied the examination questions when he took his third test for a Wastewater Collection I license at MSU.²⁴ Under 30 Texas Administrative Code section 30.20(m), the Commission may deny the occupational license of a person who violates its examination rules, including copying or reproducing any part of the examination.²⁵ Therefore, the ALJ

²³ OPIC Closing at 5-6.

²⁴ *See also* Staff Ex. ED-6 (Mr. Valencia’s scratch paper where he copied questions and answers).

²⁵ 30 Texas Administrative Code § 30.20(h)(3), (m).

recommends that the Commission uphold the denial of Mr. Valencia's application pursuant to 30 Texas Administrative Code section 30.20(h)(3), (m).

B. ENGAGING IN FRAUD OR DECEIT

Next, the analysis turns to the question of whether Mr. Valencia engaged in fraud or deceit in applying for the license, or engaged in a deceptive or fraudulent act. Texas Water Code section 37.005(c)(2) and 30 Texas Administrative Code section 30.33(a)(2)(B) authorize the Commission to 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. The Commission may also deny the occupational license of a person who violates its examination rules by engaging in any fraudulent or deceptive act as an examinee.²⁶

Staff and Staff's witness Ms. Zyman argued or least implied that, by copying the exam questions, Mr. Valencia was fraudulently attempting to cheat, or help others cheat, on the exam, thus compromising the integrity of the Commission's resource-intensive and vigorously protected exams. Yet, Mr. Valencia denied that he had any intent to defraud, deceive, or cheat. He stressed that he was not aware of the test confidentiality provisions.²⁷ There is no evidence he shared or planned to share the exam questions with anyone else or removed them from the examination room. When asked by the proctor for his scratch paper, he freely returned it. He had

²⁶ 30 Texas Administrative Code § 30.20(h)(4), (m).

²⁷ The ALJ notes that it is not uncommon for individuals signing into electronic systems to unthinkingly check off preliminary boxes in order to proceed to their goal. Nevertheless, ignorance of the confidentiality of the test materials does not excuse Mr. Valencia's violation of the Commission's rules regarding copying questions. However, it does underscore his lack of malicious intent.

failed the test twice previously; and he testified, credibly, that his intent was to study from his scratch paper notes if he failed again. Moreover, he said the test questions were different on each of the three tests he took; therefore, it would have been reasonable for him to expect different questions on any future test, resulting in the copied questions being of little use for the purpose of cheating.

For these reasons, the ALJ finds no evidence of fraud, deceit, or deception. Therefore, the ALJ does not find Texas Water Code section 37.005(c)(2) or 30 Texas Administrative Code sections 30.20(h)(4) or .33(a)(2)(B) to be proper bases for denial of Mr. Valencia's license application.

C. CONCLUSION

In conclusion, considering all the evidence, the ALJ finds that Staff appropriately denied Mr. Valencia's license application due his violation of the Commission's rules on examinations; therefore, the ALJ recommends that the Commission sustain the denial of the application.

V. FINDINGS OF FACT

1. In June 2021, Damien Valencia applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for a Wastewater Collection I license (License).
2. One requirement to obtain the License was for Mr. Valencia to pass TCEQ's Wastewater Collection I test (Test). A score of 70 or more was required to pass the Test.
3. TCEQ has a finite number of prepared questions, from which the Test is newly assembled each time it is administered.

4. Prior to October 19, 2021, Mr. Valencia took the Test twice without achieving a passing score.
5. On October 19, 2021, Mr. Valencia took the Test a third time and passed, scoring an 82.
6. Mr. Valencia was on notice that the test materials were confidential and must not be copied.
7. On October 19, 2021, Mr. Valencia copied many of the Test questions and answer choices on his scratch paper to study from if he failed again.
8. When the proctor pointed out that he could not remove the scratch paper, Mr. Valencia freely handed it over.
9. Mr. Valencia did not share the Test questions with others or remove them from the examination site.
10. Mr. Valencia did not engage in deceit or fraud to pass the Test.
11. On October 28, 2021, the Executive Director (ED) of TCEQ notified Mr. Valencia that his License application would be denied based on his deceit or fraud in obtaining or applying for the License.
12. On November 15, 2021, Mr. Valencia appealed the ED's decision.
13. The ED referred the case to the State Office of Administrative Hearings (SOAH) for a contested case hearing and, on September 28, 2022, issued a Notice of Hearing describing a preliminary hearing on October 25, 2022.
14. On September 8, 2022, the Administrative Law Judge (ALJ) issued the initial order in this case, scheduling a preliminary hearing by Zoom videoconference on October 25, 2022.
15. At a preliminary hearing on October 25, 2022, the ALJ admitted Exhibits ED-1 through ED-5 for the limited purpose of establishing notice and jurisdiction and entered an agreed procedural schedule for a hearing to be held on March 30, 2023.

16. On October 26, 2022, the ALJ issued an order setting the matter for hearing on the merits by Zoom videoconference on March 30, 2023.
17. The Notice of Hearing and the October 26, 2022 order provided the date, time, and place of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
18. The hearing convened via Zoom videoconference on March 30, 2023, before ALJ Heather D. Hunziker of SOAH. Respondent Mr. Valencia represented himself. The ED was represented by staff attorney Alicia Ramirez; and TCEQ's Office of Public Interest Counsel was represented by attorney Pranjal Mehta. The record closed on May 4, 2023, when replies to closing briefs were due.

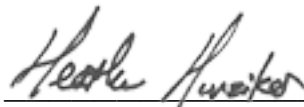
VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction and authority over Wastewater Collection licensing decisions. Tex. Water Code §§ 26.0301, 37.004, 37.005(a); 30 Tex. Admin. Code ch. 30, subchs. A, J.
2. SOAH has jurisdiction over all matters related to the hearing in this case, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 30 Tex. Admin. Code § 30.38 and ch. 80, subch. A.
3. Mr. Valencia received proper notice of the hearing on the merits. Tex. Gov't Code §§ 2001.051-.052; Texas Water Code § 37.005(c); and 30 Tex. Admin. Code §§ 30.20(m), 30.38, and 80.6(b)(3).
4. Mr. Valencia had the burden of proving by a preponderance of the evidence that he met the requirements for the License and that the denial of his application should be overturned. 30 Tex. Admin. Code §§ 30.38, 80.17(a); *see also* 1 Tex. Admin. Code § 155.427.

5. Staff had the burden of proof that Mr. Valencia's application should be denied despite his qualifications. 30 Tex. Admin. Code §§ 30.38, 80.17(a); *see also* 1 Tex. Admin. Code § 155.427.
6. Mr. Valencia did not prove that he meets the prerequisites for licensure, including high school diploma or equivalent; 20 hours of training; and submission of an application and fee. *See* Tex. Water Code § 37.005; 30 Tex. Admin. Code § 30.18(a), .340(a).
7. Based on the above Findings of Fact and Conclusions of Law, Mr. Valencia's application was properly denied because he violated the Commission's examination rules by copying the Test. 30 Tex. Admin. Code § 30.20(h)(3), (m).

Signed June 12, 2023.

ALJ Signature:



Heather D. Hunziker

Presiding Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER
DENYING THE APPLICATION BY
DAMIEN VALENCIA FOR WASTEWATER COLLECTION I LICENSE;
TCEQ DOCKET NO. 2022-0733-LIC;
SOAH DOCKET NO. 582-22-09398**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Damien Valencia for a Wastewater Collection I license. A Proposal for Decision (PFD) was presented by Heather D. Hunziker, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

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

I. FINDINGS OF FACT

1. In June 2021, Damien Valencia applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for a Wastewater Collection I license (License).
2. One requirement to obtain the License was for Mr. Valencia to pass TCEQ's Wastewater Collection I test (Test). A score of 70 or more was required to pass the Test.
3. TCEQ has a finite number of prepared questions, from which the Test is newly assembled each time it is administered.

4. Prior to October 19, 2021, Mr. Valencia took the Test twice without achieving a passing score.
5. On October 19, 2021, Mr. Valencia took the Test a third time and passed, scoring an 82.
6. Mr. Valencia was on notice that the test materials were confidential and must not be copied.
7. On October 19, 2021, Mr. Valencia copied many of the Test questions and answer choices on his scratch paper to study from if he failed again.
8. When the proctor pointed out that he could not remove the scratch paper, Mr. Valencia freely handed it over.
9. Mr. Valencia did not share the Test questions with others or remove them from the examination site.
10. Mr. Valencia did not engage in deceit or fraud to pass the Test.
11. On October 28, 2021, the Executive Director (ED) of TCEQ notified Mr. Valencia that his License application would be denied based on his deceit or fraud in obtaining or applying for the License.
12. On November 15, 2021, Mr. Valencia appealed the ED's decision.
13. The ED referred the case to SOAH for a contested case hearing and, on September 28, 2022, issued a Notice of Hearing describing a preliminary hearing on October 25, 2022.
14. On September 8, 2022, the ALJ issued the initial order in this case, scheduling a preliminary hearing by Zoom videoconference on October 25, 2022.
15. At a preliminary hearing on October 25, 2022, the ALJ admitted Exhibits ED-1 through ED-5 for the limited purpose of establishing notice and jurisdiction and entered an agreed procedural schedule for a hearing to be held on March 30, 2023.
16. On October 26, 2022, the ALJ issued an order setting the matter for hearing on the merits by Zoom videoconference on March 30, 2023.

17. The Notice of Hearing and the October 26, 2022 order provided the date, time, and place of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
18. The hearing convened via Zoom videoconference on March 30, 2023, before ALJ Heather D. Hunziker of SOAH. Respondent Mr. Valencia represented himself. The ED was represented by staff attorney Alicia Ramirez; and TCEQ's Office of Public Interest Counsel was represented by attorney Pranjal Mehta. The record closed on May 4, 2023, when replies to closing briefs were due.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction and authority over Wastewater Collection licensing decisions. Tex. Water Code §§ 26.0301, 37.004, 37.005(a); 30 Tex. Admin. Code ch. 30, subchs. A, J.
2. SOAH has jurisdiction over all matters related to the hearing in this case, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; 30 Tex. Admin. Code § 30.38 and ch. 80, subch. A.
3. Mr. Valencia received proper notice of the hearing on the merits. Tex. Gov't Code §§ 2001.051-.052; Texas Water Code § 37.005(c); and 30 Tex. Admin. Code §§ 30.20(m), 30.38, and 80.6(b)(3).
4. Mr. Valencia had the burden of proving by a preponderance of the evidence that he met the requirements for the License and that the denial of his application should be overturned. 30 Tex. Admin. Code §§ 30.38, 80.17(a); *see also* 1 Tex. Admin. Code § 155.427.
5. Staff had the burden of proof that Mr. Valencia's application should be denied despite his qualifications. 30 Tex. Admin. Code §§ 30.38, 80.17(a); *see also* 1 Tex. Admin. Code § 155.427.

6. Mr. Valencia did not prove that he meets the prerequisites for licensure, including high school diploma or equivalent; 20 hours of training; and submission of an application and fee. *See* Tex. Water Code § 37.005; 30 Tex. Admin. Code § 30.18(a), .340(a).
7. Based on the above Findings of Fact and Conclusions of Law, Mr. Valencia's application was properly denied because he violated the Commission's examination rules by copying the Test. 30 Tex. Admin. Code § 30.20(h)(3), (m).

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 Damien Valencia for a Wastewater Collection I 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 herein, are hereby 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

Jon Niermann, Chairman for the Commission