



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

February 12, 2015

Steven Lemley
4831 Westchester Dr.
Apt #305
Austintown, Ohio, 44515

RE: Steven Lemley
Director's Final Findings and Orders
Water/Wastewater Operator Certification
Mahoning County

Subject: Director's Final Findings and Orders

CERTIFIED MAIL

9171082133393715021037

Dear Mr. Lemley:

I have enclosed a certified copy of the journalized, Director's Final Findings and Orders, prohibiting you from taking future water and wastewater examinations for a period through November 7, 2018. This document is a final action of the Director and will be public noticed as required by Rule 3745-47-07(A) of the Ohio Administrative Code. The effective date of these orders is February 12, 2015.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

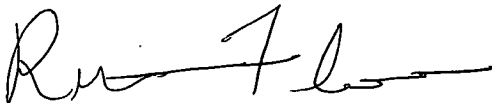
Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, OH 43215

Steven Lemley

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If you have any questions concerning compliance with these Orders, please feel free to contact me at (614) 644-2761.

Sincerely,



Ruthanne Flottman
Environmental Specialist
Compliance Assurance Section

Enclosures

cc: W. Samuel Wilson, Esq., (w/enclosures)
Hearing Clerk, OEPA (w/enclosures)
Casey L. Chapman, Esq., (w/enclosures)
Rees Alexander, Esp., (w/enclosures)
Operator file (w/enclosures)

ec: Holly Kaloz, CAS Manager, DDAGW-CO
Julie Spangler, CAS Supervisor, DDAGW-CO
Susan Schell, ELO Manager, DDAGW-CO
Nancy Rice, District Manager, DDAGW-NEDO
Andy Barienbrock, Operator Certification Supervisor, DDAGW-CO
Colin Bennett, Legal

OHIO E.P.A.

BEFORE THE

FEB 12 2015

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:	:	<u>Director's Final Findings of</u>
	:	<u>Fact, Conclusions</u>
Steven L. Lemley	:	<u>of Law and Orders</u>
	:	
Applicant.	:	

I. JURISDICTION

This matter is before the Director of Environmental Protection ("Director") and these Director's Final Findings of Fact, Conclusions of Law and Orders, ("Orders"), are issued to Steven L. Lemly ("Applicant"), pursuant to the authority vested in the Director under Ohio Revised Code ("ORC") Chapters 119, 3745, and 6109 and the rules adopted thereunder.

II. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6109 and the rules adopted thereunder.

III. FINDINGS OF FACT

The Director, after review and consideration of the entire record of this proceeding, determines the following findings of fact:

1. On November 7, 2013, Applicant sat for a Class 1 Water Supply Certified Operator examination at the Lausche Building, Ohio State Fairgrounds, Columbus, Ohio.
2. Prior to the examination, Ohio EPA sent a letter dated August 22, 2013 to Applicant informing him that he had been approved to take the Class 1 Water Supply Certified Operator examination on November 7, 2013. The letter contained a section captioned "Exam Day Guidelines." This section contained a "Do Not Bring" list of items that examinees were not permitted to bring into the exam. This list of prohibited items was as follows: "hats; cell phones, pagers, PDA's [personal digital assistants]; headphones; adding machines with tape; backpacks, briefcases, purses, etc.; books, paper."

3. The letter also contained a "Do Bring" section of items that examinees were permitted to bring into the exam. This list of items included "basic calculators; your entrance letter; your picture ID, number 2 pencils, money for pop machine; snacks (in clear bags only)."
4. On the day of the November 7, 2013 examination, a sign captioned "Exam Day Guidelines" was posted on the entrance door. This sign contained a section captioned "Exam Day Guidelines." This section also contained the same "Do Not Bring" list of items that examinees were not permitted to bring into the exam, *i.e.*, "hats; cell phones, pagers, PDA's; headphones; adding machines with tape; backpacks, briefcase, purses, etc.; books, paper." It also contained the same "Do Bring" list of items listed in Finding 3 that examinees were permitted to bring into the exam.
5. On the day of the November 7, 2013 examination, Andrew Barienbrock, Ohio EPA Environmental Supervisor of the Operator Certification Unit, made an announcement to the examinees immediately prior to the beginning of the test. Mr. Barienbrock used a script for the announcement.
6. Paragraph 5 of Mr. Barienbrock's announcement was read to the examinees and stated "[I]f you have any prohibited items, please push them to the middle of your table at this time." Furthermore, Paragraph 10 of the announcement was read to the examinees: "If you have any reference material or paper that wasn't already taken from you, please move it to the center of your table. If you are caught with any extraneous material, you will be removed from the exam site and will fail the exam."
7. All Water Supply I examinees were given a formula sheet as part of their examination booklet.
8. James Baltzer, Ohio EPA Supervisor Engineer 3, served as a proctor during the November 7, 2013 examination.
9. As part of his duties as proctor, Mr. Baltzer walked around the examinees in the Lausche Building during the exam to make sure that there were no extraneous items on the table, to make sure examinees were not looking at someone else's exam or communicating with another examinee, and to make sure that examinees did not carry anything into or out of the restroom or communicated with anyone while using the restroom.
10. While conducting his duties as proctor, Mr. Baltzer was cleaning items from a table when he saw some napkins at the table where Applicant was seated. When he picked up the napkins, he found a laminated formula sheet underneath the napkins. This formula sheet contained ten additional formulas that the other examinees did not receive as part of the examination booklet.

11. Mr. Baltzer confiscated the list of formulas. Applicant admitted to Mr. Baltzer that the laminated formula sheet was his and that he thought he was permitted to have the formula sheet. Furthermore, at the adjudication hearing held in this matter on May 20, 2014, Applicant did not dispute Mr. Baltzer's testimony that the formula was concealed under a set of napkins.
12. Applicant's examination test was introduced into evidence at the May 20, 2014 adjudication hearing. The test contained a handwritten copy of one of the formulas that was included on Applicant's laminated formula sheet that was not provided to the examinees, demonstrating that Applicant used his laminated formula sheet as part of an answer on the examination.
13. After the conclusion of the adjudicatory hearing, the Hearing Officer filed a Report and Recommendation on August 27, 2014, concluding that Applicant had violated Ohio Administrative Code ("OAC") 3745-7-18(B)(3) by "possessing during the administration of the certification examination any book, notes, written or printed material or data of any kind."
14. However, the Hearing Officer also recommended in the Report and Recommendation that the Applicant should be disqualified for a period of only two years pursuant to OAC 3745-7-18(A)(2), in contravention to a disqualification period of five years as recommended in a January 16, 2014 Proposed Order from the Director of Ohio EPA.
15. Applicant and the staff of the Ohio EPA ("Staff") were provided with an opportunity to file objections to the Report and Recommendation of the Hearing Officer, with Staff's Objections filed on September 12, 2014. The Staff's Objections stated that although Staff agreed with the Hearing Officer's conclusion that Applicant had violated OAC 3745-7-18(B)(3), Staff objected to the recommendation that the period of disqualification from taking the certification examination should be for a period of only two years. Staff again recommended disqualification for the full five year period as set forth in OAC 3745-7-18(A)(2).

IV. CONCLUSIONS OF LAW

The Director, after review and consideration of the entire record of this proceeding, makes the following conclusions of law:

1. The burden of proof in this proceeding is upon the Staff with the standard of proof being the preponderance of the evidence.

2. "Preponderance of the evidence" means evidence that is more probable, more persuasive or of greater probative value. *In re N.F.* (2009), 2009 WL 1798146, 2 (Ohio App. 10 Dist.).
3. Ohio Administrative Code 3745-7-18(A) sets forth the appropriate conduct of examinees during the application and examination process for water and wastewater certifications. It states in pertinent part:

(A) No person shall engage in conduct that subverts or attempts to subvert the application, examination, or review process. Any such action shall cause a person's scores to be withheld and declared invalid.

...

(2) Persons who do not possess a certificate issued under this chapter shall be disqualified from taking future water and wastewater exams for a period of up to five years.
4. Ohio Administrative Code 3745-7-18(B)(3) further states in pertinent part:

(B) Conduct that subverts or attempts to subvert the application, examination, or review process includes, but is not limited to:

...

(3) Conduct that violates the examination process, such as communicating with any other examinee during the administration of the examination; copying answers from another examinee or allowing answers to be copied by another examinee during the administration of the examination; possessing during the administration of the certification examination any book, notes, written or printed materials or data of any kind, other than the examination materials distributed or specifically listed as approved materials for the examination room in the information provided to the examinee in advance of the examination date by the director. The examination process begins upon entering the location of the exam.
5. Applicant's possession of the laminated formula sheet during the administration of the November 7, 2013 examination was a violation of OAC 3745-7-18(B)(3) as the formula sheet constituted "any book, notes, written or printed materials or data of any kind, other than the examination materials distributed or specifically listed as approved materials for the examination room in the information provided to the examinee in advance of the examination date by the director."
6. Because Applicant's conduct violated OAC 3745-7-18(B)(3), Applicant must be disqualified for a period of up to five years from taking future water and wastewater examinations as set forth in OAC 3745-7-18(A)(2).

7. In determining the two year disqualification period, the Hearing Officer concluded that the Applicant merited a less severe time period because Applicant could reasonably have believed that using a formula sheet would be acceptable. This was based on the Hearing Officer's conclusion that the formula sheet was not specifically prohibited in the "Do Not Bring" section of the August 22, 2013 entrance examination letter or the "Exam Day Guidelines" sign at the front entrance, as well as the fact that Ohio EPA provided some formulas with the examination booklet. The Hearing Officer concluded that because of this lack of specificity, Applicant was unaware of the prohibition and therefore did not intend to cheat.
8. However, the list of prohibited items set forth in the entrance examination letter, and the "Exam Day Guidelines" sign were meant to be illustrative only, and not an exhaustive list of all possible items that could fall within the definition of prohibited material set forth in OAC 3745-7-18(B)(3). Applicant knew, or should have known by any objective standard of reasonableness, that possession of paper or additional data of any kind was prohibited. As clearly stated in Mr. Barienbrock's final announcement before the exam, "[I]f you have any reference material or paper that wasn't already taken from you, please move it to the center of your table. If you are caught with any extraneous material, you will be removed from the exam site and will fail the exam." Despite these notifications, Applicant brought the prohibited formula sheet into the examination and utilized the formula sheet as part of an answer to one of the examination's questions.
9. The Hearing Officer also went into a lengthy discussion on the various transgressions set forth in OAC 3745-7-18(B)(3), and determined that bringing in a formula sheet during the examination was less egregious than certain other acts set forth in OAC 3745-7-18(B)(3), e.g., copying answers from another examinee's test or impersonating another examinee.
10. Contrary to the Hearing Officer's determination, OAC 3745-7-18(B)(3) does not distinguish between the severity of the subversive conduct set forth in that section. All subversive actions are equally damaging to the integrity of the examination system and diminish the public's trust that certified operators are properly qualified to operate water and wastewater systems throughout the State. It is within the Director's discretion to determine the severity of sanctions based upon the individual facts of each particular violation.
11. In the case of *In Re Guamera*, Case No. 08-OC-02, the applicant was disqualified from taking the water/wastewater examination for a period of four and a half years after attempting to subvert the examination process by bringing in a mathematical formula sheet concealed in the cover of his calculator. In that case, the Respondent was caught with the formula sheet prior to entering the examination area and taking the test.

12. With respect to Applicant's conduct in this case, possessing a laminated formula sheet containing formulas in addition to those provided is an egregious violation when considering the length of disqualification pursuant to OAC 3745-7-18(A)(2). Furthermore, the seriousness of the violation is further magnified because Applicant actually utilized the formula sheet on his test, gaining an unfair advantage over other test takers.
13. Applicant admitted the formula sheet was his, and contrary to the Hearing Examiner's report, knew that the formula sheet was prohibited, as evidenced by his attempt to conceal the formula sheet underneath a pile of napkins. Applicant only acknowledged that the formula sheet was his after he was caught with the formula sheet at his desk by the proctor, Mr. Baltzer.
14. The evidence demonstrates that Applicant's violation warrants the full five year disqualification as set forth in OAC 3745-7-18(A)(2).

V. ORDERS

1. To the extent that the findings of fact of the Hearing Officer are inconsistent with the findings of fact in these Orders, the findings of fact of the Hearing Officer are disapproved. The reasons for said disapproval are set forth herein and in Staff's Objections to the Report and Recommendation, filed September 12, 2014.
2. To the extent that the conclusions of law of the Hearing Officer are inconsistent with the conclusions of law in these Orders, the conclusions of law of the Hearing Examiner are disapproved. The reasons for said disapproval are set forth herein and in Staff's Objections to the Report and Recommendation, filed September 12, 2014.
3. For the reasons set forth herein and in the Staff's Objections to the Hearing Officer's Report and Recommendation, the Recommendation of the Hearing Examiner that Applicant be given only a two year disqualification is disapproved.
4. In determining a period of time to disqualify Applicant from taking future waste and wastewater examinations, an appropriate time period to prohibit applicant from taking future examinations commences from the date of applicant's examination date.
5. Pursuant to OAC 3745-7-18(A)(2) as set forth herein and in the Staff's Objections to the Hearing Officer's Report and Recommendation, Applicant is hereby prohibited from taking future water and wastewater examinations for a period through November 7, 2018.
6. These Orders shall be entered into the Director's Journal and served upon the parties to the proceeding and public noticed as is required by law.

VI. APPEAL RIGHTS

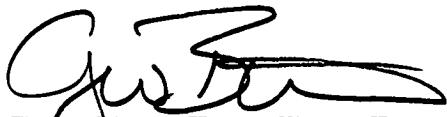
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Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

VII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

IT IS SO ORDERED



Craig W. Butler
Director of Environmental Protection

2-9-15

Date