

State Water Resources Control Board

February 12, 2018

Mr. Constantino Silva
[REDACTED]

**Proposed Action
Accepted**

(Via email and Certified Mail)
CERTIFIED MAIL
NO. 7017 2680 0000 6289 5258

SUBJECT: EXAMINATION FINDINGS AND PROPOSED DISCIPLINARY ACTION

Dear Mr. Silva:

The State Water Resources Control Board's (State Water Board) Wastewater Operator Certification Program (WWOCP) reviewed your November 27, 2017 email (see **Attachment 1**) and subsequent letter received from Mr. Matthew W. Davis from Parker-Stanbury, LLP (see **Attachment 2**) outlining your concerns and requesting review of your wastewater examination taken on October 14, 2017, in Riverside, California. Both your email and letter allege that an examination proctor spoke with you and offered unsolicited advice during the October 14, 2017 examination. You also contend the proctor's actions led you to change answers during the examination, which resulted in failure to obtain a passing score.

1. EXAMINATION GRADING

On November 15, 2017, the State Water Board graded your examination verifying a failing score of 98 points. A score of 105 points was required to pass this examination.

2. EXAMINATION INSPECTION

On November 28, 2017, WWOCP inspected your exam booklet and Scantron sheet. No evidence of any markings or changes were discovered on your Scantron sheet.

3. EXAMINATION CONFIDENTIALITY

WWOCP requires all proctors for examinations to sign confidentiality agreements certifying they will ensure the integrity and fairness of the Wastewater Operator examination process and prohibits proctors from influencing examinees or assisting them during examinations (see **Attachment 3**). We have strict guidelines and a clearly defined protocol for all proctors.

The State Water Board's Office of Enforcement (OE) also conducted an independent investigation and interviewed the proctor in question to obtain more detailed information concerning proctor communications with examinees during the examination. Standard procedures require proctors to respond to individual questions asked by any examinees during exam sessions. While OE confirmed the proctor in question responded to questions from several examinees during your exam, there is no evidence to support your allegation that the proctor acted inappropriately in assisting you with providing input to questions or answers.

Finally, WWOCP conducted an internal review of your completed exam Scantron and associated materials. WWOCP concluded no changes were made to any of your answers on the Scantron sheet as you asserted in your request for a grade revision.

4. DISHONEST CONDUCT DURING WASTEWATER EXAMINATION REVIEW SESSION

On January 3, 2018, you attended a wastewater examination review session conducted by a WWOCP proctor in Riverside, California. The purpose of the examination review session was to provide examinees with an opportunity to review wastewater examination booklets and Scantron sheets from the October 14, 2017 examination given in Riverside, California.

The WWOCP proctor verified you signed the wastewater examination review session instruction sheet (see **Attachment 4**) indicating that you would not bring any personal belongings into the review session. The instruction sheet also includes instructions to refrain from writing on your examination booklet or Scantron sheet.

At the end of the wastewater examination review session, the WWOCP proctor observed your returned Scantron sheet had numerous alterations made to eight (8) individual answers in pencil. This evidence demonstrates you altered your Scantron during the exam review session.

5. PROPOSED DISCIPLINARY ACTION

OE reviewed the above evidence and proposes the following appropriate disciplinary action:

STATUTORY AUTHORITY AND LIABILITY

The State Water Board may refuse to grant, suspend, or revoke an operator, provisional operator, or operator-in-training certificate or may reprimand or place on probation an operator, provisional operator, or operator-in-training upon any reasonable ground, including performing, or allowing or causing another to perform, any of the following acts as stated in the California Code of Regulations, title 23, section 3710 (Grounds for Disciplinary Action) as follows:

(4) Engaging in dishonest conduct during an examination, or violating confidentiality of examination questions.

ALLEGATION

OE determined that you violated the California Code of Regulations, title 23, section 3710(a)(4), by engaging in dishonest conduct during the January 3, 2018 Wastewater Operator Examination Review Session in Riverside, California.

Considering that this violation did not occur during performing duties at a wastewater treatment plant, OE is proposing a formal disciplinary action against you and your operator certificate as follows:

- 1) **SUSPENSION** of your current Grade I Wastewater Operator Certificate (No. 40749) for a period of thirty (30) days with the following conditions:
 - a) **By February 23, 2018**, you must surrender your current Grade I Wastewater Operator Certificate to WWOCP. Upon receipt of your Grade I Wastewater Operator Certificate, WWOCP will then begin your thirty (30) day suspension period.
 - b) After your thirty (30) day suspension and your examination funds are received by WWOCP, your Grade I Wastewater Operator Certificate will be reinstated.
 - c) You will be prohibited from taking any grade level of wastewater examination(s) for a period of one exam cycle, or until October 13, 2018. Should you wish to take this examination, the application and fee must be received in our office for this examination on or before August 14, 2018.
 - d) A copy of this letter will be sent to your current employer to inform them of the suspension of your Wastewater Operator Certificate since you will not be permitted to work as a certified wastewater operator during the suspension period.

- 2) **\$500 PENALTY** with the following conditions:
 - a) Payment of the full penalty to the State Water Board is required by **March 30, 2018** (Cal. Code Regs., tit. 23, §§ 3570 et seq.).

This letter constitutes a proposed disciplinary action under California Code of Regulations, title 23, section 3712, and is considered final and conclusive, unless you request that the Director of OE reconsider this proposed disciplinary action. You have 45 days from receipt of this letter to appeal this decision, as specified in the California Code of Regulations, title 23, section 3712. A request for reconsideration shall contain:

1. The name, address, telephone number, and email address (if available) of the requestor;
2. A copy of the proposed disciplinary action letter;
3. A full and complete statement of the reasons why the proposed disciplinary action letter is erroneous, inappropriate, or improper; and,
4. The specific action that the requestor seeks from the Director of the OE.

Appeals should be addressed to:

Mr. Christian Carrigan, Director
Office of Enforcement
State Water Resources Control Board
801 K Street, Suite 2300
Sacramento, California 95814

Your appeal must contain all documents above and any evidence you wish to be considered by Mr. Carrigan during his review.

Any future misconduct, including examination cheating may subject you to additional disciplinary action(s) pursuant to California Code of Regulations, title 23, section 3710 (Grounds for Disciplinary Action), which could include penalties and/or permanent revocation of your Wastewater Operator Certificate.

If you have any questions, please contact me by telephone at (916) 341-5891, or by email at matthew.buffleben@waterboards.ca.gov.

Sincerely,



Dr. Matthew Buffleben, PE
Supervising WRCE
Office of Enforcement

Enclosures: Attachment 1 – Email from Mr. Constantino Silva dated November 27, 2017
Attachment 2 – Letter from Mr. Matthew W. Davis of Parker-Stanbury, LLP
Attachment 3 – Proctor confidentiality instruction sheet
Attachment 4 – Signed wastewater examination review instruction sheet

cc: *(via certified mail, w/ attachments)*

Mr. Gaspar Garza, Jr.
Irvine Ranch/Michelson WRP
Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, CA 92618-3102

**CERTIFIED MAIL
NO. 7017 2680 0000 6289 5005**

Mr. Matthew W. Davis
Parker Stanbury LLP
Attorneys at Law
444 South Flower Street
Los Angeles, CA 90071-2901

**CERTIFIED MAIL
NO. 7017 2680 0000 6289 4992**

(via email only, w/o attachments)

Mr. Wes Wilkinson
Staff Services Manager I
Office of Operator Certification
Division of Financial Assistance
wes.wilkinson@waterboards.ca.gov

Mr. Nickolaus Knight
Attorney III
Office of Enforcement
nickolaus.knight@waterboards.ca.gov

Attachment 1 – Email from Mr. Constantino Silva dated November 27, 2017

Constantino Silva
[REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

Wastewater Operator Licence Number: 100325 Certificate Number:40749

November 27, 2017

Wes Wilkinson

Wastewater Unit Manager

State Water Resources Control Board

P.O. Box 944212

Sacramento, CA 94244-2120

Phone: (916) 341-5131

Fax: (916) 341-5734

Email: Wes.Wilkinson@waterboards.ca.gov

Re: I am writing this letter to request a grade revision for my Wasterwater Treatment Plant Operator Examination Grade II Riverside which I took 10/14/2017

Situation: Jaime Marotte, As we talked over the phone earlier today, I would like resolution concerning the actions of the Proctor during my examination as I believe they had a negative impact on my score.

I came to the exam feeling quite well prepared as I had been studying practice exams and studying diligently math, multiple choice and true/false questions from several different study classes. While I in the middle of my test working on the multiple choice questions the Proctor, an African American male, while passing my sitting area addressed me asking softly, "Are you ok?". I shook my head affirmatively as we had been instructed not to talk to anyone. He then proceeded to look over my test and place his hand with fingers pointing at several questions I had already answered and I understood to say very softly, using military coding alphabet "Charlie, Delta, Bravo". Which made me lose my concentration and doubt my initial answers. I was swayed by his position of authority, reviewed my first answers and elected to change my answers. This happened again later while I was in the Math section. By this I mean, the same Proctor as he was passing by looked at my test, again placed his hand next to several questions and tapped with his finger what I took to be corrections to my math answers.

Now, I know it was my option to change my answers. I should have considered the seemingly helpful advice might be a ploy to see if I would cheat or shortcut. Although I felt prepared I was intimidated by the authority and presence of the Proctor, therefore when I reviewed my test before I handed it in, I did change several answers.

I would like things to be resolved –

1. I would like SWRCB exam review board to review the test and see if my original answers were correct as I only missed passing by 7 points. I feel I had passed my exam with no doubts if it was not per the Proctor causing divagate me of taking the test getting blind mine mind.
2. I would like to know if there is a policy of trying to induce examinees to doubt their answers, even if in a subtle fashion. The Proctors are regarded as professionals by us examinees, but what are their real qualifications /backgrounds and scope of their job description with SWRCB?

Thank you for your time and consideration,

Constantino Silva
[REDACTED]

Attachment 2 – Letter from Mr. Matthew W. Davis of Parker – Stanbury, LLP

PARKER · STANBURY LLP

ATTORNEYS AT LAW

444 SOUTH FLOWER STREET

NINETEENTH FLOOR

LOS ANGELES, CA 90071-2901

TELEPHONE (213) 622-5124

FAX (213) 622-4858

E-MAIL: LA@PARKSTAN.COM

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HARRY D. PARKER (1891-1976)
RAYMOND G. STANBURY (1904-1966)

IRVINE • LOS ANGELES • SACRAMENTO
RIVERSIDE • SAN DIEGO

December 15, 2017

Wes Wilkinson
Wastewater Unit Manager
State Water Resources Control Board
P.O. Box 944212
Sacramento, California 94244-2120

Dear Wilkinson:

Re: Constantino Silva
Our File Number: 3974257

This law firm has been consulted by Constantino Silva regarding the Wasterwater Treatment Plant Operator Examination II.

Mr. Silva informed this office that on October 14, 2017 he took the Wasterwater Treatment Plant Operator Examination II in Riverside, California. During the examination, one of the proctors acted inappropriately which served to distract Mr. Silva and negatively impacted Mr. Silva's performance. The proctor in question attempted to speak to Mr. Silva softly and even looked over the examination and pointed at several questions which Mr. Silva had already answered.

Mr. Silva did not pass the Wasterwater Treatment Plant Operator Examination II. Consequently, he brought this to your attention in a letter dated November 27, 2017. Enclosed with this letter a copy of that letter for your benefit. As of the date of this correspondence, Mr. Silva has not received any response.

Accordingly, Mr. Silva requests that the State Water Resources Control Board respond to his letter of November 27, 2017 including the specific demands set forth therein. The information provided to this office demonstrates that the proctor acted highly inappropriately. The proctor had no right to attempt to interfere with the examinees and disrupt the examination environment. Mr. Silva and the other examinees deserved to have a sterile environment so that they could concentrate on the examination itself.

Mr. Silva has been advised as to his legal rights and remedies regarding this matter. You may direct any response in writing to this law firm referencing our file number.

Nothing in this letter should be construed as a waiver of any of Mr. Silva's rights or remedies in this matter, all of which he expressly reserves.

Very truly yours,

PARKER · STANBURY LLP

By 
Matthew W. Davis

cc: Mr. Silva
Enclosure

Constantino Silva

[REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

Wastewater Operator Licence Number: 100325 Certificate Number:40749

November 27, 2017

Wes Wilkinson
Wastewater Unit Manager
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120
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Thank you for your time and consideration,

Attachment 3 – Proctor confidentiality instruction sheet



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

**Wastewater Treatment Plant Operator Certification Examination
Confidentiality Agreement and Acknowledgement of Proctor Obligations**

I, _____ (name), acknowledge receipt of the Notice to Proctors. I have read and understand the Notice to Proctors, outlining the proctor instructions that ensure the integrity of the Wastewater Treatment Plant Operator Certification examination process.

I acknowledge and accept the responsibility of being a proctor for the Wastewater Treatment Plant Operator Certification examination to be given at _____ on _____.

I hereby certify to the following:

- I understand the roles and responsibilities of being a proctor for the above examination.
- I understand that I may be asked to complete various tasks or serve in varied capacities during the examination process. I will accept each such role and complete each such task.
- I understand that the examination materials are proprietary and are to be kept confidential to ensure integrity and fairness of the examination results. I will maintain the **integrity and confidentiality** of all examination materials.

Signature of Proctor:*

Print Name

Date

Signature

***PLEASE SIGN IN BLUE INK**

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Attachment 4 – Signed wastewater examination review instruction sheet

IMPORTANT!!!

The purpose of the exam review is to provide an opportunity for the examinee to focus on areas where improvement may be warranted. The review is not meant as a way to gain additional points on your exam score.

We strongly recommend submitting your application for the next Examination prior to the final filing deadline. You **may not** receive a response concerning the grading or scoring of your Exam prior to the next examination application deadline. **Applications MUST be received in our office by the Final Filing Date of FEBRUARY 13, 2018, for the APRIL 14, 2018 exam.**


RIVERSIDE

**INSTRUCTIONS
OPERATOR EXAMINATION REVIEW: ALL GRADES
OCTOBER 14, 2017 EXAM**

EXAM REVIEW - WEDNESDAY, JANUARY 3, 2018

- Please show government-issued photo identification (i.e. state issued drivers' license or identification.) to review proctor.
- There is a one-hour time limit to review your examination.
- **DO NOT** write anywhere on the examination booklet or Scantron.
- **DO NOT** converse with others while in the examination review room.
- Examination questions **may not** be copied.
- This notification may be used as scratch paper. Notes made **cannot** be removed from the review room. Notes **must** be returned to the review proctor upon completion of your review. Notes made on any piece of paper during your review must include your name, telephone number, and grade.
- Grading errors may occur in the exam process. Any questions or concerns about examination scoring (missed points, score added incorrectly, etc.), should be noted on the back of this notification with the number of the problem you are referring to. Please be specific.

Thank you for your cooperation and good luck on future Wastewater Operator Examinations.



Signature

12:05 PM

Date

CONSTANTINO SILVA

Print Name



Telephone Number