

**BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND
FINDINGS BY THE SPB COMPLIANCE REVIEW UNIT OF
THE CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of March 3, 2014, carefully reviewed and considered the attached Compliance Review Report of the California Environmental Protection Agency submitted by SPB's Compliance Review Unit.

WHEREAS, the Report was prepared following a baseline review of the California Environmental Protection Agency's personnel practices. It details the background, scope, and methodology of the review, and the findings and recommendations.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.


SUZANNE M. AMBROSE
Executive Officer

COMPLIANCE REVIEW REPORT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY FINDINGS AND RECOMMENDATIONS MARCH 3, 2014

Examinations

During the time period under review, May 1, 2011 through October 30, 2012, the California Environmental Protection Agency (Cal/EPA) conducted nine examinations. The SPB reviewed all of these examinations, which are listed below:

Classification	Exam Type	Exam Components	No. of Eligibles
Administrative Assistant	Promotional	E and E	2
Air Resources Supervisor I	Promotional	QAP	1
Air Resources Supervisor II	Promotional	QAP ¹	1
Assistant Secretary for Border Affairs, CEA 2	Supplemental	Interview	8
Assistant Secretary for Local Programs, CEA 2	Supplemental	Interview	9
Business Services Assistant (Specialist)	Promotional	E and E ²	7
Digital Composition Specialist I	Promotional	E and E	1
Executive Assistant	Promotional	E and E	3
Mailing Machines Operator I	Promotional	E and E	3

¹ The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

² In an Education and Experience (E and E) examination component, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

FINDING NO. 1 - The Cal/EPA Properly Complied With Civil Service Laws and Board Rules for All Examinations That Were Conducted During the Compliance Review Period

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Every applicant for examination shall file a formal signed application in the office of the department or a designated appointing power within a reasonable length of time before the date of examination. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

The Cal/EPA administered nine examinations to create eligible lists from which to make appointments. As part of the examination process, the Cal/EPA published and distributed examination bulletins for each of the nine classifications. Each examination assessed job-related knowledge, skills, and abilities.

State applications (STD. 678) received by the Cal/EPA were accepted prior to the final filing period. The applications were properly signed and assessed to determine whether applicants met the minimum qualifications (MQs) for admittance to the examination. Applicants were then notified whether they qualified to take the examination. Those applicants who met the MQs were also notified about the next phase of the examination process.

After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified in writing of their final scores.

The SPB found no deficiencies in the examinations that Cal/EPA conducted during the compliance review period. Accordingly, Cal/EPA fulfilled its responsibilities to administer those examinations in compliance with civil service laws and Board rules.

Appointments

During the compliance review period, Cal/EPA made 16 appointments. The SPB reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure & Time Base	No. of Appointments
Administrative Assistant I	Certification List	Permanent/Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent/Full Time	1
Associate Governmental Program Analyst	Mandatory Reinstatement	Permanent/Full Time	1
Management Services Technician	Transfer	Permanent/Full Time	1
Office Technician (Typing)	Certification List	Permanent/Full Time	1
Office Technician (Typing)	Transfer	Permanent/Full Time	1
Program Technician	Limited Term Intermittent	Temporary	6
Special Consultant	Retired Annuitant	Retired Annuitant	1
Staff Services Analyst (General)	Transfer	Permanent/Full Time	1
Staff Services Analyst (General)	Mandatory Reinstatement	Permanent/Full Time	1
Warehouse Worker	Mandatory Reinstatement	Permanent/Full Time	1

FINDING NO. 2 – Cal/EPA Did Not Separate the Equal Employment Opportunity (EEO) Questionnaire from All Applications

Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the California Department of Human Resources (CalHR) to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

Cal/EPA did not separate the EEO questionnaire from 69 of 124 applications. It is therefore recommended that within 60 days of the Board's Resolution adopting these findings and recommendations Cal/EPA submit to the Board a written corrective action plan to ensure that the EEO questionnaire is timely and properly separated from employment applications.

Equal Employment Opportunity

The SPB reviewed Cal/EPA's EEO program that was in effect during the compliance review period.

FINDING NO. 3 – The Cal/EPA Does Not Operate A Disability Advisory Committee (DAC)

The Cal/EPA's written EEO program provides employees with guidance on the EEO process, including instructions on how to file discrimination claims. The EEO program also outlines the roles and responsibilities of the EEO Officer, as well as those of the supervisors and managers. The Cal/EPA provided evidence of its efforts to promote equal employment opportunity in its hiring and employment practices, to increase its hiring of disabled persons, and to offer upward mobility opportunities for its entry-level staff, which include Office Technician (Typing) and Management Services Technician.

These components of the Cal/EPA's EEO program comply with applicable civil service laws and rules. Nonetheless, a deficiency was found in the EEO program. The Cal/EPA does not have a Disability Advisory Committee (DAC).

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

Cal/EPA must invite all employees to serve on a DAC and take appropriate steps to ensure that the final committee includes persons with disabilities or individuals who have an interest in disability issues. No later than 60 days after the Board's Resolution adopting these findings and recommendations, Cal/EPA must establish the DAC and submit to the SPB a written report of compliance.

DEPARTMENTAL RESPONSE

Cal/EPA was provided a copy of the initial report to review. A copy of the Cal/EPA's response is attached as Attachment 1.

SPB REPLY

Regarding finding No. 2, Cal/EPA agrees to ensure EEO questionnaires are separated from applications and prepare a corrective action plan.

Regarding finding No. 3, Cal/EPA states its employees are now serving on a combined DAC with Air Resources Board. SPB has determined that each department does not have to have its own DAC as long as interested employees are allowed the opportunity to serve on the DAC and that the DAC advises the head of the department on issues of concern to persons with disabilities.

Accordingly, it is recommended that within 60 days of the Board's Resolution adopting these findings and recommendations the Cal/EPA submit to the Board a written report of compliance including that the DAC advises the head of Cal/EPA on issues of concern to employees with disabilities.



The SPB appreciates the professionalism and cooperation of Cal/EPA during the compliance review.



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • P.O. BOX 2815, SACRAMENTO, CALIFORNIA 95812-2815
(916) 323-2514 • (916) 324-0908 FAX • WWW.CALEPA.CA.GOV

EDMUND G. BROWN JR.
GOVERNOR

January 17, 2014

Lori Gillihan, Chief
Policy & Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

SUBJECT: COMPLIANCE REVIEW REPORT – CALEPA RESPONSE

This letter is in response to the findings and recommendations provided in the State Personnel Board's Compliance Review Report for the California Environmental Protection Agency (CalEPA) dated November 26, 2013. Below is CalEPA's written corrective action plan for each of the findings.

FINDING NO. 2 - Cal/EPA did not separate the Equal Employment Opportunity (EEO) Questionnaire from All Applications

In order to be in compliance, CalEPA will send out a memo to all CalEPA managers and supervisors informing them that Page 5 of the Standard Application form, EEO Questionnaire, should be separated from all hiring applications and confidentially destruct the EEO Questionnaires before the hiring manager(s) review the applications.

FINDING NO. 3 - Cal/EPA does not operate a Disability Advisory Committee (DAC)

In 2000, Cal/EPA and the departments for which it has oversight, the Air Resources Board, the Department of Pesticide Regulation, the Department of Toxic Substances Control, the Office of Environmental Health Hazard Assessment and the State Water Resources Control Board moved into the Joe Serna Jr., Building located at 1001 I Street in Sacramento. At that time a Cal/EPA DAC was formed to address and resolve the accessibility issues within the building. As the accessibility issues became resolved the Cal/EPA DAC became inactive in or around 2009.

The Air Resources Board's Equal Employment Opportunity (EEO) Office currently provides support and direction to CalEPA for the following programs:

- EEO discrimination, harassment, and retaliation complaints
- EEO sexual harassment prevention training

AIR RESOURCES BOARD • DEPARTMENT OF PESTICIDE REGULATION • DEPARTMENT OF TOXIC SUBSTANCES CONTROL
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
STATE WATER RESOURCES CONTROL BOARD • REGIONAL WATER QUALITY CONTROL BOARDS

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- Reasonable accommodation for persons with disabilities
- Workforce Analysis Report goals for persons with disabilities and upward mobility
- Limited Examination and Appointment Program (LEAP), and
- Upward Mobility Program

In 2012, under the guidance from the State Personnel Board's Office of Civil Rights, now CalHR Office of Civil Rights, the Air Resources Board's (ARB) EEO Officer invited CalEPA employees to participate in ARB's Disability Advisory Committee (DAC) as CalEPA did not have a current DAC. Two employees in CalEPA were interested and provided membership applications to ARB's EEO Officer on November 7, 2012. Both employees received approval to join ARB's DAC on March 8, 2013.

With the new appointments of CalEPA staff to the DAC, ARB and CalEPA DAC members began revising the DAC handbook in April 2013 to include CalEPA membership and participation. The ARB DAC handbook was finalized and approved by ARB's Executive Officer and published September 11, 2013.

Until ARB and CalEPA met with Diana Campbell from SPB for an exit interview on December 13, 2013, CalEPA sincerely believed that in the spirit of Government Code 19795, CalEPA was in compliance by participating in ARB's DAC because ARB's EEO Office provides support and direction to CalEPA for the various programs listed above, which includes assisting CalEPA employees, including those with disabilities, with reasonable accommodation, training, LEAP appointments, and upward mobility.

In order to be in compliance with Finding 3, CalEPA will send a memo and email to all CalEPA employees inviting them to serve on a disability advisory committee, which will be comprised of members who have disabilities or who have an interest in disability issues. An effort shall be made to represent the full spectrum of job categories, geographic, and organizational distribution of CalEPAs diverse workforce.

If you have questions or require additional information, please contact the Eric Jarvis, Assistant Secretary for Fiscal and Administrative Programs at (916) 323-2658 or ARB's Equal Employment Opportunity Officer, Lori Lopez, at (916) 323-7053.

Sincerely,



Matthew Rodriguez
Secretary for Environmental Protection

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cc: Eric Jarvis
Assistant Secretary for Fiscal and Administrative Programs
California Environmental Protection Agency

Lori Lopez
Equal Employment Opportunity Officer
Air Resources Board

Shereta Alexander
Human Resources Branch Chief
Air Resources Board