



COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

Compliance Review Unit
State Personnel Board
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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit-related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Department of Resources Recycling and Recovery (CalRecycle) personnel practices in the areas of examinations, appointments, EEO, and PSC's from February 1, 2015, through October 31, 2015, and mandated training from October 1, 2013, through October 31, 2015. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Appointments	Appointment Documentation Was Not Kept for the Appropriate Amount of Time	Serious

Area	Finding	Severity
Appointments	Probationary Evaluations Were Not Provided for all Appointments Reviewed	Serious
Appointments	Applications Were Not Date Stamped and/or Accepted After the Final File Date	Non-serious or Technical
Equal Employment Opportunity	Equal Employment Opportunity Officer Also Serves As the Personnel Officer at a State Agency With More Than 500 Employees	Very Serious
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Basic Supervisory Training Was Not Provided for All Supervisors	Very Serious
Mandated Training	Ethics Training Was Not Provided for All Filers	Very Serious

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The CalRecycle is a department within the California Environmental Protection Agency. The CalRecycle administers and provides oversight for all of California's state-managed waste handling and recycling programs. Known mostly for overseeing beverage container and electronic-waste recycling, the CalRecycle is also responsible for organics management, used tires, used motor oil, carpet, paint, mattresses, rigid plastic containers, plastic film wrap, newsprint, construction and demolition debris, medical sharps waste, household hazardous waste, and food-scrap composting.

The CalRecycle provides training and ongoing support for local enforcement agencies, which regulate and inspect California's active and closed solid waste landfills, as well as materials recovery facilities, solid waste transfer stations, compost facilities, and more. The permitting and inspection processes help the CalRecycle fulfill its mission to protect the health and safety of Californians and the environment. Legislation that took effect in 2012 established a goal for California to source reduce, recycle, or compost 75 percent of its waste statewide by the year 2020. Beginning July 2012, it also put in place required mandatory recycling for most California commercial businesses and multi-

family residential buildings with five or more units. More recent laws enacted are designed to increase commercial organics recycling and curtail reliance on single-use plastic bags.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CalRecycle examinations, appointments, EEO program, and PSC's from February 1, 2015, through October 31, 2015, and mandated training from October 1, 2013, through October 31, 2015. The primary objective of the review was to determine if CalRecycle's personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of the CalRecycle's examinations and appointments were selected to ensure that various samples of examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CalRecycle provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CalRecycle EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The CalRecycle's PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether CalRecycle justifications for the contracts were legally sufficient. The review was limited to whether CalRecycle practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the CalRecycle's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all

¹ If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

On May 24, 2016, an exit conference was held with the CalRecycle to explain and discuss the CRU's initial findings and recommendations. On May 26, 2016, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

FINDINGS AND RECOMMENDATIONS

Examinations

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.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (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.)

During the period under review, the CalRecycle conducted four examinations. The CRU reviewed all four of the examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Personnel Supervisor I	Departmental Promotional	Education & Experience (E&E) ²	10/16/15	2
Recycling Specialist	Open	Supplementary Application (SAP)	Continuous Filing	26
Research Analyst II (General)	Departmental Promotional	E&E	4/9/15	6
Senior Management Auditor I	Departmental Promotional	Qualification Appraisal Panel ³	6/30/15	19

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The CalRecycle administered one open examination and three departmental promotional examinations to create eligible lists from which to make appointments. For all of the examinations, the CalRecycle published and distributed examination bulletins containing the required information. Applications received by the CalRecycle were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQ's) for admittance to the examination. The CalRecycle notified applicants as to whether they qualified to take the examination, and those applicants who met the MQ's 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 of their final scores.

The CRU found no deficiencies in the examinations that the CalRecycle conducted during the compliance review period. Accordingly, the CalRecycle fulfilled its

² In an education and experience (E&E) examination, 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.

³ 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.

responsibilities to administer those examinations in compliance with civil service laws and board rules.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CalRecycle made 153 appointments. The CRU reviewed 50 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Attorney I	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	9
Information Officer II	Certification List	Limited Term	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Limited Term	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Program Technician II	Certification List	Permanent	Intermittent	4
Recycling Specialist III (Technical)	Certification List	Permanent	Intermittent	1
Research Analyst II (General)	Certification List	Permanent	Full Time	1
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	2
Senior Environmental Scientist (Specialist)	Certification List	Permanent	Full Time	1
Staff Information Systems Analyst	Certification List	Permanent	Full Time	1
Staff Loan Officer (Supervisor)	Certification List	Limited Term	Full Time	1
Staff Programmer Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	2
Supervising Management Auditor	Certification List	Permanent	Full Time	1
Program Technician I	Permissive Reinstatement	Permanent	Intermittent	1
Research Program Specialist II (Economics)	Permissive Reinstatement	Permanent	Full Time	1
Senior Personnel Specialist	Permissive Reinstatement	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Staff Services Management Auditor	Permissive Reinstatement	Limited Term	Full Time	1
Associate Management Auditor	Transfer	Permanent	Full Time	1
Loan Officer	Transfer	Limited Term	Full Time	1
Research Analyst II (Economics)	Transfer	Permanent	Full Time	1
Research Analyst II (General)	Transfer	Permanent	Full Time	1
Senior Environmental Scientist (Supervisory)	Transfer	Permanent	Full Time	1
Staff Services Management Auditor	Transfer	Limited Term	Full Time	1
Recycling Specialist II	Mandatory Reinstatement	Permanent	Full Time	1
Staff Services Management Auditor	Mandatory Reinstatement	Permanent	Full Time	1
Supervising Integrated Waste Management Specialist I	Mandatory Reinstatement	Permanent	Full Time	1
Accounting Administrator I (Supervisory)	Retired Annuitant	Limited Term	Intermittent	1
Recycling Specialist II	Time Base Change	Permanent	Part-Time	1
Senior Environmental Scientist (Specialist)	Time Base Change	Permanent	Part-Time	1
Staff Services Management Auditor	Training and Development	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Director, Department of Human Resources CalRecycle	Exempt	Permanent	Full Time	1
Office Technician (General)	LEAP	Permanent	Full Time	1

FINDING NO. 2 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: Out of 50 appointments reviewed, nine appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, 14 of the 1,021 applications reviewed included EEO questionnaires that were not separated from the STD 678 employment application.

Criteria: 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."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The CalRecycle states that office support staff were not given adequate instruction on processing the applications nor were they instructed to remove the EEO questionnaires.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CalRecycle submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

FINDING NO. 3 – Appointment Documentation Was Not Kept for the Appropriate Amount of Time

Summary: The CalRecycle failed to retain personnel records such as NOPA's and applications. Specifically, of the 50 appointments reviewed, the CalRecycle did not retain eight NOPA's. Additionally, all applications, except the appointee's application, were missing from one appointment file.

Criteria: As specified in California Code of Regulations, section 26, (Rule 26), appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointment for a minimum period of five years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Reg., tit. 2, § 26.)

Severity: Serious. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The CalRecycle states that NOPA's were not tracked correctly and the specialists were not able to locate pending copies. The missing applications were destroyed in error by the hiring manager.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CalRecycle submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations title 2, section 26. Copies of any relevant documentation should be included with the plan.

FINDING NO. 4 – Probationary Evaluations Were Not Provided for all Appointments Reviewed

Summary: The CalRecycle did not prepare, complete, and/or retain ten required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Program Technician II	Certification List	1	1
Senior Accounting Officer (Specialist)	Certification List	1	3
Supervising Management Auditor	Certification List	1	1
Associate Management Auditor	Transfer	1	3
Research Analyst II (Economics)	Transfer	1	2
Total		5	10

Criteria: A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of

performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The CalRecycle states that while notifications are provided to the supervisory staff upon the issuance of the NOPA, there were cases in which the probation reports were not provided to the employees by their managers.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CalRecycle submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

FINDING NO. 5 – Applications Were Not Date Stamped and/or Accepted After the Final File Date

Summary: The CalRecycle accepted and processed 539 out of 1,021 applications that were not date stamped and four applications that were date stamped after the final filing date.

Criteria: California Code Regulations, title 2, section 174 (Rule 174) requires timely filing of applications: All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement.

Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the department's offices (or appropriate office of the agency administering the examination) by the date specified.

An application that is not postmarked or date stamped by the specified date shall be accepted, if one of the following conditions as detailed in Rule 174 apply: (1) the application was delayed due to verified error; (2) the application was submitted in error to the wrong state agency and is either postmarked or date stamped on or before the specified date; (3) the employing agency verifies examination announcement distribution problems that prevented timely notification to an employee of a promotional examination; or (4) the employing agency verifies that the applicant failed to receive timely notice of promotional examination. (Cal. Code Reg., tit. 2, § 174, suds. (a), (b), (c), & (d).) The same final filing date procedures are applied to the selection process used to fill a job vacancy.

Severity: Non-Serious or Technical. Final filing dates are established to ensure all applicants are given the same amount of time in which to apply for a job vacancy and to set a deadline for the recruitment. Therefore, although the acceptance of applications after the final filing date may give some applicants more time to prepare their application than other applicants who meet the final filing date, the acceptance of late applications will not impact the results of the job vacancy selection.

Cause: The CalRecycle states that some hiring supervisors removed and discarded the stamped mailing letters/envelopes stapled to the applications.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CalRecycle submit to the CRU a written corrective action plan that the department will implement to ensure conformity with Rule 174. Copies of any relevant documentation should be included with the plan.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and

cooperate with the CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the CalRecycle to develop, implement, coordinate, and monitor the CalRecycle's EEO program. (Gov. Code, § 19795.)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

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).)

The CRU reviewed the CalRecycle's EEO program that was in effect during the compliance review period.

FINDING NO. 6 – Equal Employment Opportunity Officer Also Serves As the Personnel Officer at a State Agency With More Than 500 Employees

Summary: The CalRecycle's Administrative Services Branch Manager, Staff Services Manager III, serves as both the Personnel Officer and EEO Officer. According to California's 2016-17 Governor's Budget, the CalRecycle employs 677 employees, more than 500 employees, and as such, the Personnel Officer may not serve as both the EEO Officer and Personnel Officer.

Criteria: California Government Code section 19795 (a) states "The appointing power of each state agency and the director of each state department shall appoint, at the managerial level, an equal employment opportunity officer, who shall report directly to, and be under the supervision of, the director of the department, to develop, implement, coordinate, and monitor the agency's equal employment opportunity program. In a state agency with less than 500

employees, the equal employment opportunity officer may be the personnel officer.”

Severity: Very Serious. The EEO Officer is responsible for developing, implementing, coordinating, and monitoring their department’s EEO program. Due to the substantial responsibilities held by each department’s EEO Officer, it is essential that each department, employing more than 500 employees, appoint an EEO Officer, at the managerial level, that may successfully maintain the effectiveness of the EEO program without the undue burden of also maintaining the effectiveness of the department’s Personnel Office.

Cause: The CalRecycle states that Senate Bill 63, Strickland, Chapter 21, Statutes of 2009 merged the former California Integrated Waste Management Board staff with staff from the Department of Conservation’s Division of Recycling creating a new department greater than 500 employees. Shortly after the merge CalRecycle’s Chief Counsel consulted with the Department of Personnel Administration’s legal office regarding the basis of the 500 employee threshold. Based on a very small number of EEO complaints and no ability to allocate a position to meet this requirement, it was determined that the Personnel Officer would continue to administer the EEO Officer duties with a direct reporting relationship to CalRecycle’s Director. That reporting relationship is the current model used by CalRecycle.

The CalRecycle further states that to address this compliance finding, the EEO Officer duties will be transferred to a Hearing Officer position which will be filled after July 1, 2016.

Action: Within 60 days of the Executive Officer’s approval of these findings and recommendations, the CalRecycle must submit to the CRU a written corrective action plan that the department will implement to ensure conformity with California Government Code section 19795, including the duty statement and organizational chart for the EEO Officer/Hearing Officer and documentation demonstrating how this position can operate an effective EEO program while also performing the duties of a Hearing Officer.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the CalRecycle had nine PSC's that were in effect and subject to General Services (DGS) approval. The CRU reviewed all nine of the contracts listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
California State University, Chico Research Foundation	Performance Modeling for Rubberized Chip Seals Service	6/1/15-5/15/17	\$250,000.00	Yes
California Department of Food and Agriculture	Weightmaster Enforcement Program	1/15/15-6/30/17	\$1,391,242.00	Yes
California Department of Food and Agriculture	Imported Empty Beverage Container Reporting & Inspection Program	7/1/15-6/30/18	\$4,296,000.00	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Crowe Horwath, LLP	2015 Processing Fee and Handling Fee Cost Surveys Service	5/1/15-6/30/16	\$2,242,850.00	Yes
DKE Enterprises, Inc. dba DK Enterprises	Feedstock Conversion Technical Assistance and Material Testing Service	6/30/15-3/30/18	\$750,000.00	Yes
Golden State Overnight (GSO)	Small Parcel Delivery Service	8/28/14-8/27/16	\$120,000.00	Yes
Office of Environmental Health Hazard Assessment (OEHHA)	Investigation of Health Impact from Crumb Rubber Used in Synthetic Turf	6/30/15-6/15/18	\$2,858,000.00	Yes
Regents of the UC, Santa Barbara	Used Oil Life Cycle Assessment Tool Service	9/15/13-9/15/15	\$417,621.00	Yes
Robinson Anderson	Education Environmental Initiative Curriculum Printing, Storage, and Fulfillment Project Service	10/1/14-9/30/16	\$1,045,000.00	Yes

FINDING NO. 7 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of all the PSC's reviewed was \$13,370,713.00. It was beyond the scope of the review to make conclusions as to whether the CalRecycle's justifications for the contract were legally sufficient. For all PSC's reviewed, the CalRecycle provided specific and detailed fact-based information in the written

justifications as to how each of the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the CalRecycle's PSC's complied with procedural requirements.

Mandated Training

Each state agency shall offer at least semiannually to each of its filers an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, § 11146.1) New filers must be trained within six months of appointment. (Gov. Code, § 11146.3)

Each department must provide its new supervisors basic supervisory training within twelve months of appointment. (Gov. Code, § 19995.4, subs. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4, subd. (b).)

Additionally, each department must provide its supervisors two hours of sexual harassment training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1 subd. (a).)

The CRU reviewed the CalRecycle mandated training program that was in effect during the compliance review period. The CalRecycle's sexual harassment prevention training was found to be in compliance. Whereas the CalRecycle's supervisory training and ethics training were found to be out of compliance.

FINDING NO. 8 – Basic Supervisory Training Was Not Provided for All Supervisors

Summary: The CalRecycle did not provide basic supervisory training to two of 19 new supervisors within twelve months of appointment.

Criteria: Each department must provide its new supervisors supervisory training within twelve months of appointment. (Gov. Code, § 19995.4 subd. (b) and (c).) The training must be a minimum of 80 hours, 40 of which must be structured and given by a qualified instructor. The other 40 hours may be done on the job by a higher-level supervisor or manager. (Gov. Code, § 19995.4 subd. (b).)

Severity: Very Serious. The department does not ensure its new managers are properly trained. Without proper training, new supervisory employees may not properly carry out their supervisory roles, including managing employees.

Cause: The CalRecycle states the employees did not register for, nor did their managers ensure that the employees attended the mandated training within the required timeframe.

Action: The CalRecycle must take appropriate steps to ensure that new supervisors are provided supervisory training within the twelve months.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CalRecycle must establish a plan to ensure compliance with supervisory training mandates and submit to the SPB a written report of compliance.

FINDING NO. 9 – Ethics Training Was Not Provided for All Filers

Summary: The CalRecycle did not provide ethics training to 307 of 609 filers. In addition, 12 out of 20 new filers were not provided training within six months of appointment.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure its filers are aware of prohibitions related to his or her official position and influence.

Cause: The CalRecycle states that the department identifies conflict of interest positions on the duty statement, details the required training on the new employee on-board checklist, provides outreach on training opportunities, and tracks completion of the training. However, for this review period, these resources were not successfully applied and/or utilized by the employee nor their

managers to ensure the ethics training requirements were met. Additionally, follow-up by the Administrative Services Branch to ensure outstanding training was completed was not done.

Action: The CalRecycle must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the CalRecycle must establish a plan to ensure compliance with ethics training mandates and submit to the SPB a written report of compliance.

DEPARTMENTAL RESPONSE

The CalRecycle's response is attached as Attachment 1.

SPB REPLY

Based upon the CalRecycle's written response, the CalRecycle will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the CalRecycle comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

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May 27, 2016

State Personnel Board
Compliance Review Unit
801 Capitol Mall
Sacramento, CA 95815

This letter is in response to the California State Personnel Board's (SPBs) compliance review draft of the Department of Resources Recycling and Recovery's (CalRecycle) personnel practices. The SPB draft report provided nine findings, seven of which require a response from CalRecycle. The following includes those seven findings, an explanation of why they occurred, and details to summarize corrective action plans.

Finding 2: Equal Employment Opportunity (EEO) Questionnaires Were Not Separated From Applications.

Cause: CalRecycle acknowledges and agrees with SPB's finding. The Human Resources Office (HRO) experienced a high volume of applications during the period of February 2015 through September 2015. During this timeframe, the Classification & Pay (C&P) Unit had one vacancy and one employee on leave, which resulted in temporarily assigning logging in applications to office support staff. The office support staff were not given adequate instruction on processing the applications nor were they instructed to remove the EEO questionnaires.

Response: The HRO support staff have received thorough written and verbal instructions and been trained on the removal of EEO questionnaires to prevent reoccurrences. CalRecycle's C&P Request for Personnel Action (RPA) checklist has been updated to include proper application processing with the removal of the EEO questionnaire (when attached) and confidential destruct before distribution back to the hiring managers. CalRecycle will ensure all EEO questionnaires are separated from applications per Government Code section 19704 and 19705.

Finding 3: Appointment Documentation Was Not Kept for the Appropriate Amount of Time.

Cause: CalRecycle acknowledges that eight Notices of Personnel Action (NOPA) were missing, and for one appointment, all applications, except the appointee's application, were not kept for the appropriate amount of time. This is due to the fact that the



NOPA's were not tracked correctly and the specialists were not able to locate pending copies. The missing appointment file and recruitment materials were destroyed in error by the hiring manager.

Response: CalRecycle has created and implemented a NOPA tracking system that requires the personnel specialist to keep a pending copy until the original is returned. When the original NOPA is sent out to the personnel liaisons for distribution, it will include a memo that directs the employee to review, sign, and return one copy of the NOPA to their personnel specialist within 10 business days. Email reminders from the personnel specialist will be sent to the employee with a copy to their supervisor until the signed NOPA is received in the Transactions Unit. Since the completion of the compliance review, an email addressing application retention requirements was sent out to all managers and supervisors reminding them of the requirement to retain all hiring applications and interview materials for a period of five years after the date of hire.

Finding 4: Probationary Evaluations Were Not Provided for all Appointments Reviewed.

Cause: CalRecycle acknowledges that not all supervisors and managers consistently meet this requirement for employees on probation. Notifications are provided to the supervisory staff upon the issuance of the NOPA. However, as the audit found, there were cases in which the probation reports were not provided to the employees by their managers.

Response: CalRecycle will enhance its Position and Employee Tracking System (PETS) to track employees on probation, due dates of evaluation, notification to hiring managers, and completion of the probation report. In addition, within two weeks of the initial appointment, an email will be sent to the employee's supervisor from the personnel specialist with the probationary dates and the required Report of Performance for Probationary Employee (STD. 636) for completion. Failure to complete the probationary reports will result in upper management and executive staff automatically being notified of the deficiency so that follow-up action can be taken.

Finding 5: Applications Were Not Date Stamped and/or Accepted After the Final Filing Date.

Cause: CalRecycle acknowledges all applications must be date stamped and post marked by the final filing date. CalRecycle's mail is date stamped daily by the Business Services Unit and delivered to the HRO. The C&P analyst processes all application documents (staples envelopes to the back of all applications and documents). All applications are logged in and sent to program three business days after the final filing date. Program receives all applications and make copies; however, the HRO discovered some hiring supervisors removed and discarded the mailing letters/envelopes stapled to the applications.

Response: CalRecycle has implemented an application intake process to ensure all applications are date stamped. CalRecycle's Personnel Liaison's Request for Personnel Action Guide will be updated to include instructions for hiring program staff on how to process and retain all application documents, including date stamped envelopes.

Finding No. 6: Equal Employment Opportunity Officer Also Serves As the Personnel Officer at a State Agency With More Than 500 Employees

Cause: Senate Bill 63, Strickland, Chapter 21, Statutes of 2009 merged the former California Integrated Waste Management Board staff with staff from the Department of Conservation's Division of Recycling creating a new department greater than 500 employees. Shortly after the merge CalRecycle's Chief Counsel consulted with CalHR's legal office regarding the basis of the 500 employee threshold. Based on a very small number of EEO complaints and no ability to allocate a position to meet this requirement, it was determined that the Personnel Officer would continue to administer the EEO Officer duties with a direct reporting relationship to CalRecycle's Director. That reporting relationship is the current model used by CalRecycle.

Response: For the next few months, CalRecycle will continue to administer EEO duties under the current model so that legal and/or significant issues are responded to thoroughly and timely. However, after July 1st, CalRecycle will be filling a new hearing officer position (included in the FY 2016-17 budget). To address this compliance finding, CalRecycle will include the administration of EEO Officer duties within the job description of that position. That position will be located within the Executive Office and will be reporting directly to the Director.

Finding No. 8: Basic Supervisory Training Was Not Provided for All Supervisors

Cause: CalRecycle agrees with this finding. The employees did not register for, nor did their managers ensure that the employees attended the mandated training within the required timeframe. However, since the time this review was conducted, the employees have either completed or have registered for the mandated 40-hours of formal supervisory training.

Response: In order to ensure that future non-compliance issues do not occur, the HRO will provide copies of all new supervisory appointments to the Training Office. The Training Office will enroll employees and track course completion to ensure timeframes are met. If employees fail to attend training, the issue will be escalated to upper management and executive staff to address. Additionally, when the NOPA is distributed the employee and the employee's manager will be reminded of the training requirement by the HRO.

Finding No. 9: Ethics Training Was Not Provided to All Filers

Cause: CalRecycle acknowledges and agrees with this finding. The department identifies conflict of interest positions on the duty statement, details the required training on the new employee on-board checklist, provides outreach on training opportunities, and tracks completion of the training. However, for this review period, these resources were not successfully applied and/or utilized by the employee nor their managers to ensure the ethics training requirements were met. Additionally, follow-up by the Administrative Services Branch to ensure outstanding training was completed was not done.

Response: The New Employee Checklist will be amended to more clearly define when the training is required and provide direction on how to access the training. The HRO will provide a training requirement reminder to the employee when distributing the NOPA. Additionally, the department's PETS system will be enhanced to track positions identified as conflict of interest positions; when training is due to be completed; when it is completed; and provide reminders to the employee and their supervisor. Failure to complete the mandated training will result in upper management and executive staff being notified of the deficiency so that action can be taken.

The department will work to formalize and implement corrective action for all of the above noted findings. In addition, we will work with the SPB to report on updates for each of the items resulting from the final compliance report.

CalRecycle appreciates the SPBs assessment of our personnel practices and looks forward to continued cooperation in strengthening our processes.

If you have any questions, please contact me at 916-341-6091 or Tiffany.Donohue@CalRecycle.ca.gov.

Sincerely,



Tiffany Donohue, Personnel Officer
Department of Resources and Recycling