



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

Compliance Review Unit  
State Personnel Board  
September 30, 2019

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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 authorities' 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.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

Pursuant to Government Code section 18502(c), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

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 the California Environmental Protection Agency (CalEPA)'s personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Permanent Withhold Action Complied with Civil Service Laws and Board Rules
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Ethics Training Was Not Provided for All Filers in the Required Timeframe
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors in the Required Timeframe
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Bilingual Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Actual Time Worked Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

<sup>1</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Area	Finding
Leave	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Were Not Provided for All Employees Whose Leave Balances Exceeded Established Limits
Leave	Service Leave Transactions Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Policy	Neptotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided To All Employees

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

- Red = Very Serious
- Orange = Serious
- Yellow = Technical
- Green = In Compliance

### **BACKGROUND**

The CalEPA's mission is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality. The CalEPA fulfills its mission by developing, implementing and enforcing environmental laws that regulate air, water and soil quality, pesticide use, and waste recycling and reduction. The CalEPA's departments are at the forefront of environmental science, using the most recent research to shape the state's environmental laws. The Office of the Secretary heads the CalEPA overseeing and coordinating the activities of one office, two boards, and three departments dedicated to improving California's environment. The CalEPA employs approximately 76 employees.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CalEPA's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if CalEPA personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

The CalEPA did not conduct any examinations during the compliance review period. The CRU reviewed the CalEPA's Permanent Withhold Action documentation, including a Withhold Determination Worksheet, State application (STD. 678), class specification, and Withhold letter.

A cross-section of the CalEPA's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CalEPA provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The CalEPA did not conduct any unlawful appointment investigations and additional appointments during the compliance review period.

The CalEPA's appointments were also selected for review to ensure the CalEPA applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CalEPA provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: bilingual pay, monthly pay differentials, and out-of-class assignments. During the compliance review period, the CalEPA did not issue or authorize hire-above-minimum (HAM) requests, red circle rate requests, or arduous pay.

The review of the CalEPA's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal

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<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The CalEPA's PSC's were also reviewed.<sup>3</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CalEPA's justifications for the contracts were legally sufficient. The review was limited to whether the CalEPA's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CalEPA's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided supervisory training and sexual harassment prevention training within statutory timelines.

The CRU also identified the CalEPA's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the CalEPA to provide a copy of their leave reduction policy.

The CRU reviewed the CalEPA's Leave Activity and Correction Certification forms to verify that the CalEPA created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the CalEPA's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the CalEPA's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the CalEPA employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of the CalEPA positive paid employees whose hours were tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

Moreover, the CRU reviewed the CalEPA's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the CalEPA's policies and processes adhered to procedural requirements.

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<sup>3</sup>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.

The CalEPA declined to have an exit conference. The CRU received and carefully reviewed the CalEPA’s written response on September 23, 2019, which is attached to this final compliance review report.

**FINDINGS AND RECOMMENDATIONS**

**Permanent Withhold Actions**

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointment and promotion within the state civil service system are merit-based, ascertained by a competitive examination process. (Cal. Const., Art. VII, § 1, subd. (b).) Once a candidate has obtained list eligibility, a department may discover information pertaining to that eligible which raises concerns regarding his/her eligibility or suitability for employment with the state. CalHR Withhold Manual, p.3.) A permanent withhold action is valid for the duration of the eligible’s list eligibility. (*Ibid.*) Departments are required to maintain a separate file for each withhold action and the file should include a copy of the withhold notification letter sent to the eligible, as well as all supporting documentation which form the basis of the withhold action. (CalHR Withhold Manual, p. 2).

During the review period, the CalEPA conducted one permanent withhold action. The CRU reviewed the permanent withhold action, which is listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Environmental Scientist	N/A	11/14/2017	11/14/2018	Failed to Meet Minimum Qualifications

**FINDING NO. 1 – Permanent Withhold Action Complied with Civil Service Laws and Board Rules**

The CRU found no deficiencies in the permanent withhold action undertaken by the department during the compliance review period.

**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.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250 (b).) Interviews shall be conducted using job-related criteria. (Ibid.) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250 (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (Ibid.) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250 (e).)

During the period under review, October 1, 2017 through September 30, 2018, the CalEPA made 16 appointments. The CRU reviewed all of the 16 appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Data Processing Manager II	Certification List	Permanent	Full Time	1
Data Processing Manager III	Certification List	Permanent	Full Time	2
Environmental Scientist	Certification List	Permanent	Full Time	3
Executive Assistant	Certification List	Permanent	Full Time	2
Mailing Machines Operator I	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Senior Programmer Analyst (Specialist)	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Systems Software Specialist II	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Environmental Program Manager I	Transfer	Limited Term	Intermittent	1
Executive Assistant	Transfer	Permanent	Full Time	1

The CalEPA measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the 13 list appointments reviewed, the CalEPA ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU reviewed three CalEPA appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Regs., tit. 2, § 425.) The CalEPA verified the eligibility of each candidate to their appointed class.

The CRU found no deficiencies in the appointments that the CalEPA initiated during the compliance review period. Accordingly, the CRU found that the CalEPA's appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

However, in reviewing the CalEPA's appointments that were made during the compliance review period, the CRU determined the following:

**FINDING NO. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The CalEPA did not provide 22 probationary reports of performance for nine of the 16 appointments reviewed by the CRU, as reflected in the table below:

Classification	Appointment Type	No. of Appointments Missing Probation Reports	No. of Uncompleted Probation Reports
Data Processing Manager II	Certification List	1	1
Data Processing Manager III	Certification List	2	5
Executive Assistant	Certification List	2	6
Office Technician (Typing)	Certification List	1	3
Senior Program Analyst (Specialist)	Certification List	1	3
Systems Software Specialist II	Certification List	1	1
Executive Assistant	Transfer	1	3
<b>Total</b>		<b>9</b>	<b>22</b>

**Criteria:** The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer’s performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board’s record retention rules require

that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

**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 CalEPA states it attempted to remind managers and supervisors of their employees who were serving a probation period. However, the notification and tracking mechanism utilized within the Human Resources unit for probation reports was not always consistent.

**Action:** The CalEPA submitted a corrective action plan to adopt a new notification and tracking process for probation reports. It is recommended that within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CalEPA submit to CRU documentation of the notification and tracking process that the department implemented to ensure conformity with the probationary requirements of Government Code section 19172.

### **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 EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*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 department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

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).)

**FINDING NO. 3 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules**

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program’s role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the CalEPA’s EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the CalEPA. In addition, the CalEPA has an established DAC that reports to the Director on issues affecting persons with disabilities. The CalEPA also provided evidence of its efforts to promote EEO in its hiring and employment practices, and to increase its hiring of persons with disabilities. Accordingly, the CalEPA’s EEO program complied with civil service laws and Board rules.

**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 Regs., 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 period under review, October 1, 2017 through September 30, 2018, the CalEPA had 16 PSC's that were in effect. The CRU reviewed 16 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Advanced Fishing Systems, Inc.	Other	4/25/18-6/30/18	\$1,206.42	Yes
California Cupa Forum	Training Services	2/5/18-4/30/18	\$57,500.00	Yes
California Green Business Network	Other	3/1/18-3/1/19	\$1,000,000.00	Yes
Climate Registry	Other	3/1/18-2/28/21	\$180,000.00	Yes
Crown Lift Trucks	Lift Truck Service	9/18/17-9/18/20	\$1,000.00	Yes
Diana Miller Photography	Photography Services	3/1/18 - 6/30/18	\$1,030.75	Yes
ENS, Inc.	Sale Services	5/21/18-5/20/20	\$248,627.50	Yes
Environmental Council of the State	Other	1/1/18-12/31/18	\$13,000.00	Yes
Golden State Reporting & Video	Court Reporting Services	6/20/18-6/30/18	\$1,500.00	Yes
International Council on Clean Transportation	Other	7/1/18-6/30/19	\$30,000.00	Yes
Open Water Software, Inc.	Software Services	3/1/18-2/28/19	\$4,999.00	Yes
Performance Technology Partners, LLC	Security Training Services	6/30/17-6/29/19	\$60,000.00	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?
Pitney Bowes, Inc.	Maintenance Services	11/1/17-6/30/22	\$9,737.00	Yes
Smile Business Products, Inc.	Other	11/17/17-12/17/17	\$327.75	Yes
The Climate Registry	Water-Energy Registry	3/1/18-2/28/21	\$1,499,650.00	Yes
Windsor Solutions, Inc.	Other	10/1/17-6/30/20	\$357,500.00	Yes

**FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements**

The total dollar amount of all the PSC’s reviewed was \$3,466,078.42. It was beyond the scope of the review to make conclusions as to whether CalEPA justifications for the contract were legally sufficient. For all PSC’s reviewed, the CalEPA provided specific and detailed factual information in the written justifications as to how each of the 16 contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, CalEPA complied with proper notification to all organizations that represent state employees who perform the type of work contracted. Accordingly, the CalEPA PSC’s complied with civil service laws and board rules.

**Mandated Training**

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual

harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), (c), & 19995.4, subd. (b).)

Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed all the training records for the CalEPA's mandated training program that was in effect during the compliance review period. The CalEPA's supervisory training was found to be in compliance. However, the CalEPA's ethics and sexual harassment prevention training did not comply with statutory requirements.

**FINDING NO. 5 – Ethics Training Was Not Provided for All Filers in the Required Timeframe**

**Summary:** The CalEPA provided ethics training to 13 of 13 existing filers. However, the CalEPA did not provide ethics training to five of 16 new filers within six months of their 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 that its filers are aware of prohibitions related to their official position and influence.

**Cause:** The CalEPA states that failure to provide Ethics training to five new filers within six months of their appointment was due to insufficient procedures.

**Action:** The CalEPA developed new written procedures for Ethics training that will support all filers completing the Ethics training within six months of their appointment. Also, the CalEPA developed a database to track the due dates for Ethics training and each designated filer, along with their supervisor and the division liaison, will receive notification to complete training and file form 700. Within 60 days of the Executive Officer's approval of these findings and recommendations, copies of relevant documentation of compliance with Gov. Code, § 11146.3, subd. (b) must be submitted.

**FINDING NO. 6 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors in the Required Timeframe**

**Summary:** The CalEPA provided sexual harassment prevention training to ten of ten existing supervisors every two years. However, the CalEPA did not provide sexual harassment prevention training to seven of 12 new supervisors within six months of their appointment.

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

**Severity:** Very Serious. The department does not ensure that all new supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other

verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

**Cause:** The CalEPA's failure to provide sexual harassment prevention training to seven new supervisors within six months of their appointment was due to insufficient procedures.

**Action:** The CalEPA must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention 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 CalEPA must establish a process to ensure compliance with sexual harassment training mandates and submit to the SPB a corrective action plan.

## **Compensation and Pay**

### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR (Cal. Code Regs., tit. 2, § 599.666). Several salary rules dictate how departments calculate and determine an employee's salary rate<sup>4</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, September 1, 2017 through August 30, 2018, the CalEPA made 16 appointments. The CRU reviewed ten of those appointments to determine if the CalEPA applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

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<sup>4</sup> "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (CA CCR Section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Data Processing Manager III	Certification List	Permanent	Full Time	\$9,169
Data Processing Manager III	Certification List	Permanent	Full Time	\$9,169
Executive Assistant	Certification List	Permanent	Full Time	\$3,197
Executive Assistant	Certification List	Permanent	Full Time	\$4,043
Mailing Machines Operator I	Certification List	Permanent	Full Time	\$2,178
Senior Programmer Analyst (Specialist)	Certification List	Permanent	Full Time	\$8,183
Staff Services Analyst	Certification List	Permanent	Full Time	\$3,977
Systems Software Specialist II	Certification List	Permanent	Full Time	\$6,410
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$5,274
Environmental Program Manager I	Transfer	Permanent	Full Time	\$12,259

**FINDING NO. 7 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the salary determinations that were reviewed. The CalEPA appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges (Cal. Code Regs., tit. 2, § 599.681). However, in many instances, CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, September 1, 2017, through August 30, 2018, the CalEPA made one alternate range movement within a classification. The CRU reviewed the one alternate range movement to determine if the CalEPA applied salary regulations accurately and correctly processed employee’s compensation, which is listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Information Technology Associate	Range B	Range D	Full Time	\$5,598

**FINDING NO. 8 – Alternate Range Movement Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU determined that the one alternate range movement the CalEPA made during the compliance review period satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages ten percent or more of the total time worked. According to the Pay Differential 14, the ten percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is

granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, September 1, 2017 through August 30, 2018, the CalEPA issued bilingual pay to one employee. The CRU reviewed the one bilingual pay authorization to ensure compliance with applicable CalHR policies and guidelines. The bilingual pay authorization is listed below:

Classification	Bargaining Unit	Time Base
Career Executive Assignment	M01	Full Time

**FINDING NO. 9 – Bilingual Pay Authorization Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found that the bilingual pay authorized to the employee during the compliance review period satisfied civil service laws, Board rules and CalHR policies and guidelines.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230).

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, September 1, 2017 through August 30, 2018, the CalEPA issued pay differentials<sup>5</sup> to four employees. The CRU reviewed four of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Executive Assistant	52	One Time 1.5% Salary Step
Executive Assistant	52	One Time 1.5% Salary Step
Executive Assistant	52	One Time 1.5% Salary Step
Executive Assistant	52	One Time 1.5% Salary Step

**FINDING NO. 10 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the pay differentials that the CalEPA authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments (OOC) and Pay

For excluded<sup>6</sup> and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810 (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810 (a)(3).)

<sup>5</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.  
<sup>6</sup> "Excluded employee" means an employee as defined in section 3527(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provision or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires (Classification and Pay Guide Section 375.)

During the period under review, September 1, 2017 to August 30, 2018, the CalEPA issued OOC pay to three employees. The CRU reviewed all three of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Management Service Technician	R04	Executive Assistant	12/5/17 – 5/5/18
Senior Environmental Scientist (Specialist)	R10	Senior Environmental Scientist (Supervisor)	12/2/17 – 4/30/18
Senior Environmental Scientist (Specialist)	R10	Senior Environmental Scientist (Supervisor)	10/2/17 – 4/5/18

**FINDING NO. 11 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the OOC pay assignments that the CalEPA authorized during the compliance review period. OOC pay was issued appropriately to employees performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

## Leave

### Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of nine months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days<sup>7</sup> worked and paid absences,<sup>8</sup> is counted. (Cal. Code Regs., tit.2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12-consecutive month period. (*Ibid.*) A new 189-day working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded.<sup>9</sup> (Cal. Code Regs., tit.2 § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications, a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year (Applicable Bargaining Unit Agreements), however Bargaining Unit 6 employees may work up to 2,000 hours in any calendar year.

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<sup>7</sup> For example, two hours or ten hours counts as one day.

<sup>8</sup> For example, vacation, sick leave, compensating time off, etc.

<sup>9</sup> "California Code of Regulations section 265.1 became effective July 1, 2017, and did not apply at the time of all of these appointments. The current regulation sets forth the method for counting time for temporary appointments. The cap under the current regulation is 189 days.



Additionally, according to Government Code Section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June) without reinstatement, loss or interruption of benefits for all state employers.

At the time of the review, the CalEPA had two employees whose hours were tracked. The CRU reviewed both of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

Classification	Time Base	Time Frame	Time Worked
Environmental Program Manager (Supervisor)	Intermittent	1/1/18 – 12/31/18	350
Office Assistant	Intermittent	7/1/18 – 7/1/19	1365

**FINDING NO. 12 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found no deficiencies in the employees reviewed whose hours were tracked during the compliance review period. The CalEPA provided the sufficient justification and adhered to applicable laws, regulations and CalHR policy and guidelines for positive paid employees.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation; extreme weather preventing safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (*Ibid.*)

During the period under review, July 1, 2017 through June 30, 2018, the CalEPA placed one employee on ATO. The CRU reviewed the one ATO appointment to ensure

compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Classification	Time Frame	No. of Days on ATO
Environmental Program Manager (Supervisory)	4/7/17 – 7/5/17	90

**FINDING NO. 13 – Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found no deficiencies in the ATO transaction reviewed during the compliance review period. The CalEPA provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction (Cal. Code Regs., tit. 2, § 599.665).

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101). If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

**FINDING NO. 14 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU reviewed employee leave records from one leave period to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The CalEPA kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

## Leave Reduction Efforts

Departments must create a leave reduction policy for their organization and monitor employees' leave to ensure compliance with the departmental leave policy; and ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. (Human Resources Manual Section 2124.)

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. "If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion."<sup>10</sup> (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave balance that will be above the maximum amount<sup>11</sup> as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

"It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (Cal. Code Regs., tit. 2, § 599.742.1.), ensuring employees maintain the capacity to optimally perform their jobs. For excluded employees, "the employee shall also be notified by July 1 that, if the employee fails to take off the required number of hours by January 1, the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (*Ibid.*) To both comply with existing civil service rules and adhere to contemporary human resources principles, state managers and supervisors must cultivate healthy work-life balance by granting reasonable employee vacation and annual leave requests when operationally feasible. (Human Resources Manual Section 2124.)

As of December 2017, eight CalEPA employees exceeded the established limits of vacation or annual leave. The CRU reviewed eight of those employees' leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

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<sup>10</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours. However, for bargaining unit 6 there is no established limit, and for bargaining unit 5 the established limit is 816 hours.

<sup>11</sup> Excluded employees shall not accumulate more than 80 days.

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Career Executive Assignment	E	707	No
Career Executive Assignment	E	970	No
Deputy Secretary for Law Enforcement and Counsel	E99	634.5	No
Digital Composition Specialist III	R14	124.67	No
Information Technician Manager I	M01	100	No
Information Technician Specialist II	R01	820	No
Senior Environmental Scientist (Supervisor)	S10	596	Yes
Staff Service Analyst	R01	1143.5	No
<b>Total</b>		<b>5,095.67</b>	

In reviewing the CalEPA’s leave reduction policies and practices that were in effect during the compliance review period, the CRU determined the following:

**FINDING NO. 15 – Leave Reduction Plans Were Not Provided for All Employees Whose Leave Balances Exceeded Established Limits**

**Summary:** Although the CalEPA had a leave reduction policy in place, the CalEPA did not provide leave reduction plans for seven of the eight employees reviewed whose leave balances exceeded established limits.

**Criteria:** “It is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. (Human Resources Manual Section 2124.) Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place and are actively reducing hours.” (*Ibid.*)

**Severity:** Technical. California state employees have accumulated significant leave hours creating an unfunded liability for departmental budgets. The value of this liability increases with each passing promotion and

salary increase. Accordingly, leave balances exceeding established limits need to be addressed immediately.

**Cause:** The CalEPA's failure to provide leave reduction plans for seven of the eight employees was due to insufficient procedures.

**Action:** The CalEPA submitted a corrective action plan to address leave reduction efforts. The CalEPA must take appropriate steps to ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place and are actively reducing hours.

It is recommended that, within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CalEPA submit to CRU documentation of the notification and tracking process that the department implemented to ensure conformity with the requirements of Human Resources Manual Section 2124.

### State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

An employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service<sup>12</sup> (Cal. Code Regs., tit. 2, § 599.608). Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609).

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, §

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<sup>12</sup> Except as provided in sections 599.609 and 599.776.1(b) of these regulations, in the application of Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4 and sections 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791, 599.840 and 599.843 of these regulations.

599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs. tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded employees<sup>13</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period are not counted or accumulated towards leave credits.

During the period under review, September 1, 2017 through August 30, 2018, the CalEPA had one employee with a non-qualifying pay period transaction. The CRU reviewed the one transaction to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which is listed below:

Type of Transaction	Time base	Number Reviewed
Non-Qualifying Pay Period	Full Time	1

**FINDING NO. 16 – Service and Leave Transactions Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU determined that the CalEPA ensured employees with non-qualifying pay periods did not receive vacation/sick leave, annual leave, and/or state service accruals. The CRU found no deficiencies in this area.

**Policy and Processes**

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to

<sup>13</sup> As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) or as it applies to employees excluded from the definition of state employee under Government Code section 3513(c) or California Code of Regulations section 599.752 subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) In addition, there may be personal relationships beyond this general definition that could be subject to these policies. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

**FINDING NO. 17 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU verified that the policy was disseminated to all staff and emphasized the CalEPA’s commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CalEPA’s nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers’ Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers’ compensation law. (Cal. Code Regs., tit. 8, § 9880 subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee’s “personal physician,” as defined by Labor Code Section 4600. (Cal. Code Regs., tit. 8, § 9880 subd. (c)(7)(8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers’ compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers’ compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

**FINDING NO. 18 – Workers’ Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU verified that the CalEPA provides notice to their employees to inform them of their rights and responsibilities under CA Workers’ Compensation Law. Furthermore, the CRU verified that when the CalEPA received worker’s compensation claims, the CRU properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2 subsection (a), appointing powers must “prepare performance reports.” Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee’s probationary period.

The CRU selected 18 permanent CalEPA employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

Classification	Date Performance Appraisals Due
Administrative Assistant I	6/11/18
Air Pollution Specialist	1/15/18
Air Resources Supervisor I	8/11/18
Associate Governmental Program Analyst	6/30/18
Associate Business Management Analyst	1/30/18
Digital Composition Specialist I	12/31/18
Digital Composition Specialist III	9/30/18
Environmental Program Manager I, Supervisor	7/1/18
Environmental Scientist	7/17/18
Executive Assistant	2/28/18
Information Technology Specialist I	11/11/17
Mail Machines Operator I	2/28/18
Office Technician (Typing)	5/11/18
Program Technician	12/3/17
Staff Service Analyst (General)	5/31/18
Staff Services Manager I	12/31/17



Classification	Date Performance Appraisals Due
Staff Services Manager II, Supervisor	1/10/18
Warehouse Worker	9/30/18

In reviewing the CalEPA's performance appraisals policies and processes, the CRU determined the following:

**FINDING NO. 19 – Performance Appraisals Were Not Provided to All Employees**

**Summary:** The CalEPA did not provide performance appraisals to 18 of 18 non-probationary employees.

**Criteria:** “Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule.” (Gov. Code § 19992.2 subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit.2, § 599.798.)

**Severity:** Serious. The department does not ensure that all of its non-probationary employees are apprised of work performance issues and/or goals in a systematic manner.

**Cause:** The CalEPA states the failure to provide written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve months following the employees' probationary period was the result of lack of communication with supervisors in providing direction and due dates.

**Action:** It is recommended that, within 60 days of the SPB's Executive Officer's approval of these findings and recommendations, the CalEPA submit to CRU documentation of the plan that the department implemented to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of any relevant documentation should be included with the plan.

## **DEPARTMENTAL RESPONSE**

The CalEPA's response is attached as Attachment 1.

## **SPB REPLY**

Based upon the CalEPA's written response, the CalEPA will comply with the CRU recommendations and findings.

It is further recommended that the CalEPA 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.



Gavin Newsom  
Governor

Jared Blumenfeld  
Secretary for Environmental Protection

September 23, 2019

Diana Campbell  
Compliance Review Manager  
State Personnel Board  
801 Capital Mall  
Sacramento, CA 95818

Dear Ms. Campbell:

The California Environmental Protection Agency (CalEPA) would like to thank the State Personnel Board's (SPB) Compliance Review Unit for undertaking the 2018 CalEPA Compliance Review. CalEPA has reviewed the draft report and provides the following responses to each deficient findings as presented by the SPB.

**FINDING NO. 2 Probationary Evaluations Were Not Provided for All Appointments Reviewed. The report noted that CALEPA did not prepare, complete, and/or retain required probationary reports of performance for nine of the 16 appointments reviewed by the SPB Compliance Review Unit (Serious)**

**Cause:** CALEPA attempted to remind managers/supervisors of their employees that were serving a probation period. However, the notification and tracking mechanism utilized within the Human Resources unit for probation reports was not always consistent.

**Department Response and Corrective Action Plan:** CALEPA has developed a new notification/tracking process. The new notification and tracking process for probation reports was disseminated to all CalEPA manager and supervisors on May 24, 2019.

When an employee's appointment is entered into the payroll systems, a Notice of Personnel Action (NOPA), Report of Appointment, is generated by the State Controller's Office. The NOPA contains information relevant to the appointment, including the length if the probationary period and the dates that the first, second, and final probation reports are due.

The new notification and tracking process will require staff to send the NOPA, along with a cover letter restating the dates the probation reports are due. The

Human Resources Branch (HRB) staff at the Air Resources Board (ARB) will also generate monthly reports for employees who have a probation report due within the next two months as a reminder. HRB will designate staff that will maintain a tracking mechanism for the probation evaluations to ensure that reports are completed on time and submitted to HRB.

**FINDING NO. 5 Ethics Training Was Not Provided for All Filers in the Required Timeframe (Very Serious)**

**Cause:** Failure to provide Ethics training to five of the 16 new filers within six months of their appointment was due to insufficient procedures.

**Department Response and Corrective Action Plan:** HRB has developed new written procedures for Ethics training that will support all filers completing the Ethics training within six months of their appointment. HRB has developed a database to track the due dates for Ethics training, and we now collaborate with the HRB Selections Unit for notifications of new hires/promotions/transfers. Upon receiving a notification, we notify each new designated filer, their supervisor, and the division liaison via email of the filer's responsibility to complete Ethics training and file their 700 form. Liaisons are updated every 30 days on who is upcoming due and who is past due for the Ethics training. The new filer and their respective supervisor are also notified of due dates for Ethics training. This new procedure creates a multilayer system of accountability to ensure Ethics compliance.

**FINDING NO. 6 Sexual Harassment Prevention Training Was Not Provided for All Filers in the Required Timeframe (Very Serious)**

**Cause:** Failure to provide sexual harassment prevention training to seven of 12 new supervisors within six months of their appointment.

**Department Response and Corrective Action Plan:** CALEPA has developed a new notification/tracking process. The new notification and tracking process for probation reports was disseminated to all CalEPA manager and supervisors on May 24, 2019. This report will be monitored for completion every four months. If an employee has not taken their training a memo will be sent to them and their supervisor reminding them they must take the training and indicating they have two months to comply.

**FINDING NO. 15 Leave Reduction Plans Were Not Provided for All Employees Whose Leave Balances Exceeded Established Limits (Non-Serious / Technical)**

**Cause:** Failure to provide leave reduction plans for seven of the eight employees reviewed whose leave balances exceeded established limits.

**Department Response and Corrective Action Plan:** Every year CalEPA sends out a notification to those employees who are over their leave balance maximum. CalEPA will continue to do so but will also enforce by sending a memorandum to the supervisors of those employees directing them to submit and implement a leave reduction plan. Every four months, the employee will be required to notify their supervisors of their progress. That information will be compiled into one status document that will be provided to HRB and CalEPA. For those who are not complying, a separate memo will be sent to both the employee and supervisor requiring compliance within two months.

**FINDING NO. 19 Performance Appraisals Were Not Provided to All Employees (Serious)**

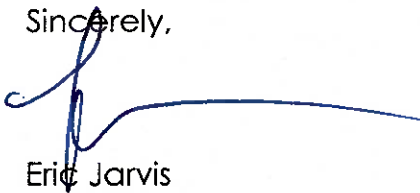
**Cause:** Failure to provide written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employees' probationary period was the result of lack of communication with supervisors in providing direction and due dates.

**Department Response and Corrective Action Plan:** CalEPA will send an annual memorandum to supervisors to conduct and submit performance appraisals by the end of each fiscal year. A new tracking procedure will be implemented to ensure performance appraisals are submitted on time. The Classification and Performance Management Unit, within HRB at the ARB will track compliance and follow up with supervisors who did not complete the assignment on time with monthly reminders. With the implementation of written procedures and a plan to track documents, it will allow staff to ensure that performance appraisals are conducted and submitted in a timely manner.

CalEPA would like to once again thank the SPB Compliance Review team and appreciate the opportunity to respond to the compliance review. CalEPA will continue to work toward ensuring consistent application of laws, rule, and regulations in regard to personnel practices.

If you have any further questions or need additional information, please feel free to contact me at (916) 323-2658.

Sincerely,



Eric Jarvis  
Assistant Secretary  
Fiscal and Administrative Programs