



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

Compliance Review Unit  
State Personnel Board  
November 6, 2018

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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 Department of Toxic Substances Control (DTSC)'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	Examinations Complied with Civil Service Laws and Board Rules
Examinations	Permanent Withhold Actions Complied with Civil Service Laws and Board Rules
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Union Was Not Notified In a Timely Manner
Personal Services Contracts	Insufficient and/or Incomplete Written Justifications
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Supervisory Training Was Not Provided for All Supervisors
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
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

<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
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Red Circle Rate Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Incorrect Authorization of Bilingual Pay
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 (ATW) Employee Exceeded the Nine Month in Any Twelve Consecutive Months Limitation
Leave	Administrative Time Off (ATO) Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Department Has Not Implemented a Monthly Internal Audit Process to Verify Timesheets are Keyed Accurately and Timely
Leave	Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Leave	715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees
Policy	Unsigned and/or Undated Performance Appraisals

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 DTSC is one of six departments which comprise the California Environmental Protection Agency (CalEPA). The CalEPA's mission is to restore, protect, and enhance California's environment; the DTSC assists the CalEPA in achieving its mission by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.

The DTSC's staff of almost 1,000 scientists, engineers, toxicologists, chemists, geologists, attorneys, criminal investigators and administrative professionals work together to restore contaminated resources, enforce hazardous waste laws, reduce hazardous waste generation, and encourage the manufacture of chemically safer products. The Department takes enforcement action against violators; oversees the removal of hazardous wastes on contaminated properties; makes decisions on permit applications from companies that want to store, treat or dispose of hazardous waste; and protects consumers against toxic ingredients in everyday products.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the DTSC'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 DTSC 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.

A cross-section of the DTSC's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the DTSC provided, which included examination

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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.

plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the DTSC's Permanent Withhold Actions documentation, including Withhold Determination Worksheets, State applications (STD 678), class specifications, and Withhold letters.

A cross-section of the DTSC'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 DTSC provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. The DTSC did not conduct any unlawful appointment investigations or made any additional appointments during the compliance review period.

The DTSC's appointments were also selected for review to ensure the DTSC applied salary regulations accurately and correctly processed employee's compensation and pay. The CRU examined the documentation that the DTSC provided, which included employee's 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: alternate range movements, hiring above minimum (HAM) requests, red circle rate requests, bilingual pay, monthly pay differentials, and out-of-class assignments. During the compliance review period, the DTSC did not issue or authorize any arduous pay.

The review of the DTSC's 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 DTSC'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 DTSC justifications for the contracts were legally sufficient. The review was limited to whether the DTSC's practices, policies, and procedures relative to PSC's complied with 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 DTSC'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 and sexual harassment prevention training within statutory timelines.

The CRU also identified the DTSC'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 DTSC to provide a copy of their leave reduction policy.

The CRU reviewed the DTSC's Leave Activity and Correction certification forms to verify that the DTSC 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 DTSC'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 DTSC's employee's 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. The CRU reviewed a selection of the DTSC employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of DTSC employees tracked by actual time worked (ATW) during the compliance review period in order to ensure that ATW was appropriately utilized.

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

The DTSC declined an exit conference to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the DTSC's amended written response on October 5, 2018, which is attached to this final compliance review 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, May 1, 2017 through January 31, 2018 the DTSC conducted one examination. The CRU reviewed the one examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Appts.
Staff Chemist	Open	Training and Experience (T&E) <sup>4</sup>	8/11/17	5

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

The CRU reviewed one open examination which the DTSC administered in order to create an eligible list from which to make appointments. The DTSC published and distributed examination bulletins containing the required information for the examination. Applications received by the DTSC were accepted prior to the final filing date. Applicants were 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

<sup>4</sup> The Training and Experience (T&E) examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examination that the DTSC conducted during the compliance review period.

**Permanent Withhold Actions**

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria (Gov. Code, § 18935 and CalHR Withhold Delegation Memo). Permanent appointments and promotions within the state civil service system are merit-based, ascertained by a competitive examination process. 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. A permanent withhold action is valid for the duration of the eligible’s list eligibility. As of February 12, 2013, 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 Delegation Memo).

During the review period, the DTSC conducted one permanent withhold action which is listed below:

Exam Title	Exam ID	Date List Eligibility Began	Date List Eligibility Ended	Reason Employee Placed on Withhold
Senior Hazardous Substances Engineer	3PB5102	1/7/2017	1/7/2018	Failed to Meet Minimum Qualifications

**FINDING NO. 2 – Permanent Withhold Actions 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.) 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 period under review, May 1, 2017 through January 30, 2018, the CRU reviewed 38 of 176 appointments the DTSC made which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accounting Administrator I (Specialist)	Certification List	Permanent	Full Time	1
Associate Accounting Analyst	Certification List	Permanent	Part Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Chief Information Officer, Career Executive Assignment (CEA) B	Certification List	CEA	Full Time	1
Engineering Geologist	Certification List	Permanent	Full Time	1
Environmental Scientist	Certification List	Permanent	Full Time	1
Executive Assistant	Certification List	Permanent	Full Time	1
Hazardous Substances Engineer	Certification List	Limited Term	Full Time	1
Investigator	Certification List	Permanent	Full Time	1
Office Assistant (General)	Certification List	Permanent	Full Time	2
Personnel Specialist	Certification List	Permanent	Full Time	1
Program Technician II	Certification List	Permanent	Full Time	1
Research Scientist I (Chemical Sciences)	Certification List	Permanent	Full Time	1
Research Scientist Supervisor I (Chemical Sciences)	Certification List	Permanent	Full Time	1
Research Scientist Supervisor II (Chemical Sciences)	Certification List	Permanent	Full Time	1
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Senior Engineering Geologist	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Senior Environmental Scientist (Supervisor)	Certification List	Permanent	Full Time	1
Senior Hazardous Substances Engineer	Certification List	Permanent	Full Time	1
Senior Legal Analyst	Certification List	Permanent	Full Time	1
Senior Toxicologist	Certification List	Permanent	Full Time	1
Staff Chemist	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Limited Term	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1
Staff Toxicologist (Specialist)	Certification List	Permanent	Full Time	1
Associate Personnel Analyst	Permissive Reinstatement	Permanent	Part Time	1
Senior Hazardous Substances Engineer	Permissive Reinstatement	Permanent	Full Time	1
Assistant Information Systems Analyst	Training and Development	Permanent	Full Time	1
Associate Information Systems Analyst (Specialist)	Training and Development	Permanent	Full Time	1
Labor Relations Specialist	Training and Development	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Limited Term	Full Time	1
Hazardous Substances Engineer	Transfer	Limited Term	Full Time	1
Research Scientist IV (Chemist)	Transfer	Limited Term	Full Time	1
Senior Accounting Officer (Specialist)	Transfer	Permanent	Full Time	1
Staff Services Analyst	Transfer	Permanent	Full Time	1

**FINDING NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The DTSC did not provide nine required probationary reports of performance.

Classification	Appointment Type	No. of Appts.	No. Missing Probation Reports
Personnel Specialist	List Appointment	1	2
Associate Governmental Program Analyst	List Appointment	1	2
Executive Assistant	List Appointment	1	3
Staff Services Analyst (General)	List Appointment	1	2
<b>Total</b>		<b>4</b>	<b>9</b>

**Criteria:** The service of a probationary period is required when an employee enters in the state civil service by permanent appointment from an employment list. (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 CalHR may require. (Gov. Code, § 19172.) CalHR’s regulatory scheme provides that “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.) Specifically, 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. (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:** DTSC’s Human Resources Office (HRO) uses several methods to inform and remind supervisors of the requirement to complete probationary evaluations for all probationary employees; however, absolute compliance with this requirement is occasionally difficult to achieve for various reasons.

**Action:** The DTSC’s HRO will implement a procedure for HR staff to send a series of reminders to the supervisor: before the first, second and final probationary report is due. HRO will address non-compliance by elevating missed/late probationary reports to the second level supervisor. It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations provide a copy of this procedure to ensure conformity with California Code of Regulations section 599.795.

**Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the GO-Biz must submit a written corrective action plan that addresses the corrections the department will implement 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.

**FINDING NO. 4 – Equal Employment Opportunity Questionnaires Were Not Separated from Applications**

**Summary:** Three of 691 EEO questionnaires were not separated from the STD 678 employment applications in four of 38 appointment files the CRU reviewed.

**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, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the 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.)

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

**Cause:** DTSC staff that are responsible for reviewing STD. 678 employment applications have been instructed to remove EEO questionnaires in order to prevent inappropriate disclosure of protected class information. In the 691 applications reviewed, DTSC removed the EEO questionnaires from 99.6% of the applications; however, three applications had the EEO questionnaires attached. This 0.4% error rate can be attributed to human error.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DTSC must submit a written corrective action plan that addresses the corrections the department will implement to ensure conformity with Government Code section 19704. 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 EEO; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources 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 department to develop, implement, coordinate, and monitor the department'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).)

**FINDING NO. 5 – 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 DTSC’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 DTSC. In addition, the DTSC has an established DAC which reports to the Director on issues affecting persons with disabilities. The DTSC also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the DTSC 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, May 1, 2017 through January 31, 2018, the DTSC had 157 PSC's that were in effect.

**FINDING NO. 6 – Union Was Not Notified In a Timely Manner**

**Summary:** The DTSC did not notify unions prior to entering into four of 24 PSC's.

Vendor	Services	Contract Amount
Geocon Consultants, Inc.	Service/Maintenance	\$100,000.00
Lexis Nexus	IT Services	\$3,000.00
National Engineering & Consulting Group, Inc.	Service/Maintenance	\$500,000.00
Parsons Environment & Infrastructure Group, Inc.	Service/Maintenance	\$3,075,723.00

**Criteria:** Government Code section 19132, subdivision (b)(1), mandates that “the contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted.”

**Severity:** Serious. Unions must be notified of impending PSC's in order to ensure they are aware contracts are being proposed for work that their members could perform.

**Cause:** DTSC follows the direction of Government Code section 19132, which states that a personal services contract (PSC) shall not be executed until the state agency has notified all organizations that represent state employees who perform the type of work to be contracted. There is no requirement within the Government Code or its corresponding regulations and no guidance from the SPB regarding an agency's notice requirements in stances where the state agency cannot identify a state classification to perform the type of work to be contracted.

Additionally, DTSC has authority to contract for removal or remedial action when there an imminent or substantial endangerment to the public health or the environment. In these cases, DTSC must enter into a PSC with urgency, and, due to human error, unions are sometimes notified after the fact and/or union notification documentation is misplaced.

**Action:** DTSC has updated its procedures and now notifies all 13 employee organizations (representing 21 bargaining units) of potential PSCs. It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations provide a copy of the updated procedures to ensure conformity with Government Code section 19132(b)(1).

**FINDING NO. 7 – Insufficient and/or Incomplete Written Justifications**

**Summary:** Nine of 24 PSC contracts lacked sufficient detailed and factual information in the written justifications. Four of 24 PSCs had unsigned or undated written justifications.

Vendor	Services	Detailed Factual Information	Signed and/or Dated Justifications	Contract Amount
Agilent Technologies, Inc.	IT Services	No		\$59,044.00
Biotage, LLC	Service/Maintenance	No		\$87,408.00
Enthalpy Analytical	Service/Maintenance	No		\$150,000.00
Geocon Consultants, Inc.	Service/Maintenance	No		\$100,000.00
JR Consulting	Training	No		\$49,000.00
National Engineering & Consulting Group, Inc.	Service/Maintenance	No		\$500,000.00
Stericycle, Inc.	Service/Maintenance	No		\$4,800.00
The Source Group, Inc.	Service/Maintenance	No		\$150,000.00

Vendor	Services	Detailed Factual Information	Signed and/or Dated Justifications	Contract Amount
West Publication Corporation DBA West	IT Services	No		\$182,742.60
AECOM Technical Services, Inc.	Training		No	\$8,549.00
The Source Group, Inc.	Service/Maintenance		No	\$30,000.00
The Source Group, Inc.	Service/Maintenance		No	\$150,000.00
Shaw Law Group, PC	Training		No	\$6,000.00

**Criteria:** “Whenever an agency executes a personal services contract under Government Code section 19130, subdivision (b), the agency shall document, with specificity and detailed factual information, the reasons why the contract satisfies one or more of the conditions” necessary to execute a PSC. “The written justification shall be signed by a person who is authorized to do so and who signs based on his or her personal knowledge, information, or belief that the written justification correctly reflects the reasons why the contract satisfies” the 10 conditions required to execute a PSC. “The date of signing, the representative's name, title, address, e-mail address, and telephone number shall be included and legible.” (Cal. Code Regs., tit. 2, § 547.60, subd. (a).)

**Severity:** Serious. Without specific and detailed factual information that demonstrates why a PSC satisfies one or more conditions specified in Government Code section 19130, the CRU could not determine that the contracted work to be performed cannot be performed by state civil service employees. Furthermore, without a signature and/or date by authorized personnel on the PSC justification form, the CRU cannot verify that the justification for the PSC contract was approved prior to being executed as a PSC.

**Cause:** DTSC is committed to adhering to Government Code section 19130 (b); however, human error resulted in four PSCs having unsigned or undated justifications. Additionally, nine PSCs were missing detailed

factual information in the justifications. This was due to a combination of human error and unintentional failure to include necessary information in the justification.

**Action:** DTSC now has procedures in place for obtaining written justifications from DTSC Contract Managers prior to executing PSCs. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations provide a copy of the updated procedures to ensure conformity with California Code of Regulations section 547.60 (a).

### **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 the DTSC's mandated training program that was in effect during the compliance review period.

#### **FINDING NO. 8 – Ethics Training Was Not Provided for All Filers**

**Summary:** The DTSC did not provide ethics training to 40 of 152 existing filers. In addition, the DTSC did not provide ethics training to four of 558 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:** DTSC's Office of Training uses several methods to inform and remind employees of the requirement to complete the Ethics Training for State Officials provided by the Department of Justice (DOJ); however, follow-up to ensure these employees have completed this training is inconsistent.

**Action:** DTSC will generate a monthly report listing all employees out of compliance for the senior leadership team. DTSC will follow-up with new hires/appointments and their supervisors at 30 and 60 days to remind them of the requirement. DTSC will also email employees and their supervisors to complete ethics training if they are out of compliance. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations provide a copy of the monthly report and email notifications to ensure conformity with Government Code section 11146.3, subdivision (b).

**FINDING NO. 9 – Supervisory Training Was Not Provided for All Supervisors**

**Summary:** The DTSC did not provide basic supervisory training to 18 of 20 new supervisors within twelve months of appointment.

**Criteria:** Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biannually. (Gov. Code, § 19995.4, subds. (b) and (c).)

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

**Cause:** DTSC's Office of Training uses several methods to inform and remind employees of the requirement to complete the Ethics Training for State Officials provided by the Department of Justice (DOJ); however, follow-up to ensure these employees have completed this training is inconsistent.

**Action:** Recently, CalHR issued revised requirements in relation to Government Code section 19995.4 which stipulates that only CalHR provide supervisors' training. Going forward and to ensure conformity with the new requirement, DTSC will ensure all new supervisors and managers attend the CalHR training within the prescribed timeframe. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations provide a copy of the monthly report and notifications to ensure

conformity with Government Code sections 19995.4 subdivisions (b) and (c).

**FINDING NO. 10 – Sexual Harassment Prevention Was Not Provided for All Supervisors**

- Summary:** The DTSC did not provide sexual harassment prevention training to six of 37 new supervisors within six months of their appointment. In addition, the DTSC did not provide sexual harassment prevention training to 29 of 98 existing supervisors every two years.
- 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 its 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:** DTSC's Office of Training uses several methods to inform and remind employees of the requirements to complete Sexual Harassment Training; however, follow-up to ensure these employees have completed this training is inconsistent.
- Action:** DTSC's Office of Training recently modified the sexual harassment training tracking on the Department's learning management system home page to help ensure new supervisors complete two hours of sexual harassment training within six months of appointment and all supervisors completed sexual harassment training every two years. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations submit a written corrective action plan that addresses the corrections the department will implement to ensure conformity with Government Code section 12950.1. Copies of any relevant documentation should be included with the 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>5</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

During the period under review, May 1, 2017 through January 30, 2018, the DTSC made 176 appointments. The CRU reviewed 14 of those appointments to determine if the DTSC applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Administrator I (Specialist)	List Appointment	Permanent	Full Time	\$5,255
Associate Accounting Analyst	List Appointment	Permanent	Part Time	\$5,022
Associate Governmental Program Analyst	List Appointment	Permanent	Full Time	\$4,600
Engineering Geologist	List Appointment	Permanent	Full Time	\$5,098
Hazardous Substances Engineer	List Appointment	Limited Term	Full Time	\$5,098
Personnel Specialist	List Appointment	Permanent	Full Time	\$3,129
Research Scientist Supervisor I (Chemical Sciences)	List Appointment	Permanent	Full Time	\$9,206
Staff Services Analyst (General)	List Appointment	Limited Term	Full Time	\$3,977
Staff Services Analyst (General)	List Appointment	Permanent	Full Time	\$3,824
Assistant Information Systems Analyst	Training and Development	Permanent	Full Time	\$4,835

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<sup>5</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).

Associate Information Systems Analyst (Specialist)	Training and Development	Permanent	Full Time	\$5,816
Labor Relations Specialist	Training and Development	Permanent	Full Time	\$5,931
Hazardous Substances Engineer	Transfer	Limited Term	Full Time	\$8,447
Senior Accounting Officer (Specialist)	Transfer	Permanent	Full Time	\$5,106

**FINDING NO. 11 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the 14 salary determinations that the DTSC made during the compliance review period. The DTSC 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. They 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, February 1, 2017 through October 31, 2017, the DTSC made 19 alternate range movements within a classification<sup>6</sup>. The CRU reviewed nine of those alternate range movements to determine if the DTSC applied salary regulations accurately and correctly processed employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Environmental Scientist	A	B	Full Time	\$4,245

<sup>6</sup> 335 transactions.

Environmental Scientist	A	B	Full Time	\$4,245
Environmental Scientist	A	B	Full Time	\$4,245
Environmental Scientist	B	C	Full Time	\$5,116
Environmental Scientist	B	C	Full Time	\$5,116
Environmental Scientist	B	C	Full Time	\$5,372
Hazardous Substances Engineer	B	C	Full Time	\$6,624
Hazardous Substances Engineer	B	C	Full Time	\$6,757
Staff Services Analyst (General)	B	C	Full Time	\$3,824

**FINDING NO. 12 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the nine alternate range movements the DTSC made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

Government Code section 19836 authorizes CalHR to allow payments above-the minimum rate in the salary range in order to hire persons who have extraordinary qualifications. On April 1, 2005, CalHR granted delegated authority to all departments to approve HAM's for extraordinary qualifications, former legislative employees, and former exempt employees (PML, "Delegation of Personnel Management Functions," 2005-012). On September 25, 2007, CalHR also granted delegated authority for all departments to approve exceptions to the HAM criteria for extraordinary qualifications for all new state employees without prior review or approval from CalHR. However, for existing state employees, departments should obtain approval from CalHR and delegated authority does not apply (PML, "Hiring Above Minimum Standards for Extraordinary Qualifications," 2010-005).

Prior to approving a HAM under delegated authority, departments should demonstrate and document the candidate's extraordinary qualifications. The candidate's extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. The extraordinary qualifications should provide expertise in a particular area of the department's program well beyond the normal requirements of the class. The department may also consider the unique talent, ability or skill demonstrated by the candidate's previous job experience as extraordinary qualifications, but the scope and depth of such experience should be more significant than the length. The

qualifications and hiring rates of state employees already in the same class should be carefully considered. (CalHR Online Manual Section 1707) Additionally, departments must request and approve HAM's before a candidate accepts employment (*Ibid.*)

During the period under review, May 1, 2017 through January 30, 2018, the DTSC authorized two HAM requests which the CRU reviewed to determine if the DTSC correctly applied Government Code section 19836 and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Investigator	List Appointment	New to the State	Range C	\$6,463
Staff Toxicologist (Specialist)	List Appointment	New to the State	No Range	\$8,794

**FINDING NO. 13 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the two HAM requests the DTSC made during the compliance review period which satisfied civil service laws, board rules and CalHR policies and guidelines.

Red Circle Rates

A red circle rate is a rate of pay authorized for an individual above the maximum salary for his or her class. (Gov. Code, § 19837.) Departments may authorize a red circle rate in the following circumstances: management initiated change<sup>7</sup>, lessening of abilities<sup>8</sup>, downward reclassification<sup>9</sup>, split-off<sup>10</sup>, allocation standard changes<sup>11</sup>, or changes in salary setting methods<sup>12</sup> (*Ibid.*)

<sup>7</sup> Any major change in the type of classes, organizational structure, and/or staffing levels in a program.  
<sup>8</sup> Refers to an employee who, after many years of satisfactory service, no longer possess the ability to perform the duties and responsibilities of his/her position.  
<sup>9</sup> Downward reclassification is when, as a result of SPB action or a DPA staff determination, an incumbent's position is moved to a lower class without the duties being changed.  
<sup>10</sup> Split off is when one class is split into two or more classes, one of which is at a lower salary level than the original class.  
<sup>11</sup> Allocation standards for two or more classes may change to the degree that a position originally allocated to one class may be reallocated to a class with a lower salary without a change in duties.  
<sup>12</sup> Revised valuation standards applied in setting the salary for a class may result in reducing the salary of a class.

If a salary reduction is the result of split-off, changes in allocation standards, changes in salary setting methods, or a downward reclassification initiated by SPB or CalHR staff determination, the affected employee may receive a red circle rate regardless of the employee's state service total. The employee may retain it until the maximum salary of his or her class equals or exceeds the red circle rate. (Classification and Pay Guide Section 260)

If an employee is moved to a position in a lower class because of management-initiated changes, he or she may receive a red circle rate provided he or she has a minimum of ten years' state service<sup>13</sup> and has performed the duties of the higher class satisfactorily<sup>14</sup>. The length of the red circle rate resulting from a management-initiated change is based on the affected employee's length of state service. The red circle rate ends when the maximum salary of the class equals or exceeds the red circle rate or at the expiration of eligibility (*Ibid.*)

An employee whose position is blanketed into the state civil service from another public jurisdiction may receive a red circle rate regardless of the length of service in the other jurisdiction. (Cal. Code Regs., tit. 2, § 275.) The employee may retain the red circle rate until the maximum salary of the class to which the employee's position is allocated equals or exceeds the red circle rate.

Additionally, a red circle rate may be authorized for a former CEA appointee who is reinstating to a civil service classification, a CEA with no prior civil service in a promotional exam and is being appointed from a list without a break in service, or a CEA appointee who is being reduced to a lower CEA salary rate (CalHR Class and Pay Guide Section 440). If an employee, with ten years of state service, has one or more years of state service under a CEA appointment, has been terminated from a CEA appointment, and the termination was not voluntary nor was it based on unsatisfactory performance, California Code of Regulations, title 2, section 599.988 mandates a red circle rate. In those cases where the employee's CEA termination was voluntary, but all of the other criteria above are met, Rule 599.988 allows the employee to be permissively granted a red circle rate. This rate is based upon the CEA salary rate received at the time of the termination. Government Code section 13332.05 limits the duration of the red circle rate to no more than 90 calendar days following termination of a CEA appointment.

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<sup>13</sup> As calculated by the State Service and Seniority Unit at CalHR. An employee with nine years' state service qualifies if the employee had been laid off or had been on a leave of absence for one or more years to reduce the effect of a layoff (CCR § 599.608).

<sup>14</sup> The latter requirement is normally satisfied by the successful completion of a probationary period, unless there is compelling evidence to suggest otherwise.

As of April 1, 2005, departments have delegated authority to approve red circle rates for general civil service employees and CEA positions for up to 90 days. (PML, “Delegation of Personnel Management Functions,” 2005-012). Current Bargaining Unit agreements also provide guidelines and rules on red circle rates that may supersede applicable laws, codes, rules and/or CalHR policies and guidelines.

During the period under review, February 1, 2017 through October 31, 2017, the DTSC authorized one red circle request. The CRU reviewed the one red circle request, listed below, to determine if the DTSC correctly verified, approved and documented the red circle authorization process:

Classification	Prior Classification	Red Circle Rate	Reason for Red Circle Rate
Senior Environmental Scientist (Supervisory)	Division Chief, CEA	\$1,788.00	Management-Initiated Change

**FINDING NO. 14 – Red Circle Rate Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the one red circle rate request the DTSC authorized during the compliance review period which 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 Scales, specifically 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, February 1, 2017 through October 31, 2017, the DTSC issued Bilingual Pay to 14 employees. The CRU reviewed 10 bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines.

**FINDING NO. 15 – Incorrect Authorization of Bilingual Pay**

**Summary:** Nine of 10 employees authorized by the DTSC did not qualify to receive bilingual pay.

Classification	Description of Finding(s)	Criteria
Environmental Scientist	The department failed to provide employee’s oral fluency exam results to certify that employee is a qualified bilingual employee.	Gov. Code, § 7296
Associate Governmental Program Analyst	The department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position.	Pay Differential 14
Environmental Program Manager I	The department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position.	Pay Differential 14
Environmental Scientist	The department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position.	Pay Differential 14
Environmental Scientist	The department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position.	Pay Differential 14
Hazardous Substances Engineer	Employee does not perform bilingual services in current position and therefore is not entitled to bilingual pay.	Pay Differential 14
Public Participation Specialist	The department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position.	Pay Differential 14
Supervising Criminal Investigator II	The department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position.	Pay Differential 14

Classification	Description of Finding(s)	Criteria
Supervising Hazardous Substances Engineer I	The department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position.	Pay Differential 14

**Criteria:** For any state agency, a “qualified” bilingual employee is someone who CalHR has tested and certified as proficient in English and non-English languages. (Gov. Code, § 7296.) Furthermore, pursuant to Pay Differential 14, an individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions.

**Severity:** Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate compensation.

**Cause:** This report found that nine of ten employees authorized by DTSC did not qualify to receive bilingual pay. Of those nine employees, one employee, a Hazardous Substances Engineer, was found to be ineligible for bilingual pay due to an inadvertent deletion of his 10% bilingual duties during his most recent duty statement revision.

An Environmental Scientist was found to be ineligible to receive bilingual pay because DTSC failed to provide a copy of this oral fluency exam results. The Environmental Scientist completed his oral fluency exam on July 10, 1991 as identified on the STD. 897; DTSC has searched extensively for copy of his oral fluency exam results and was unable to locate them. This is presumed to be a matter of misplaced document due to human error.

The remaining seven employees were found to be unqualified for bilingual pay due to “the department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position.” This was due to the STD. 897 Bilingual Pay Authorization forms being signed after the employee began

receiving bilingual pay. DTSC completed a self-audit of bilingual pay documentation in March 2018; as a result, it was determined that the STD. 897s were missing from several bilingual employee files. In order to remedy the findings from this self-audit, STD. 897s were completed and certified at that time. The missing STD. 897s are presumed to be a matter of misplaced documents due to human error.

**Action:** DTSC has corrected the duty statement that was inadvertently missing the 10% bilingual duties. The DTSC acknowledges the importance of completing and certifying the STD. 897 forms prior to the employees receiving bilingual pay. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations submit a written corrective action plan that addresses the corrections the department will implement to ensure conformity with Government Code section 7296. Copies of any relevant documentation should be included with the plan.

### 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 (CalHR Classification and Pay Manual Section 230).

California State Civil Service Pay Scales (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 unit 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, February 1, 2017 through October 31, 2017, the DTSC issued pay differentials<sup>15</sup> to 25 employees. The CRU reviewed seven of these pay differentials to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Pay Differential	Monthly Amount
Staff Information Systems Analyst (Specialist)	Pay Differential 13	5%
Staff Information Systems Analyst (Specialist)	Pay Differential 13	5%
Executive Assistant	Pay Differential 52	1.5 Salary Steps
Investigator	Pay Differential 244	\$125
Investigator	Pay Differential 244	\$125
Supervising Criminal Investigator I	Pay Differential 244	\$125
Supervising Criminal Investigator II	Pay Differential 245	2%

**FINDING NO. 16 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the seven Pay Differentials that the DTSC authorized during the compliance review period. Pay Differentials were authorized 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>16</sup> and most rank and file employees, out of class 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.)

According to CalHR’s 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

<sup>15</sup> For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.

<sup>16</sup> “Excluded employee” means an employee as defined in section 3572(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.

MOU provisions and DPA Rule 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 DPA regulation. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Section 375)

During the period under review, February 1, 2017 through October 31, 2017, the DTSC issued out-of-class pay<sup>17</sup> to one employee. The CRU reviewed the one out-of-class assignment to ensure compliance with applicable CalHR policies and guidelines, which are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Information Technology Supervisor II	S01	CEA B	03/2/17-5/2/17

**FINDING NO. 17 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the one out of class (OOC) pay assignment that the DTSC authorized during the compliance review period. OOC pay was issued appropriately to one employee 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**

Actual Time Worked

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. Time is accrued by months so that the immediate prior 12-calendar months are the ones used to count the 194 working days. ATW includes; any

<sup>17</sup> Excluding bilingual and arduous pay.

day on which the employee physically worked, regardless of the length of time worked on that day<sup>18</sup>, any day for which the employee is on paid absence<sup>19</sup>, any holiday for which the employee receives either full or partial pay. If the employee works on the holiday, the day is counted only once regardless of the rate of pay<sup>20</sup>.

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. Therefore, departments must monitor the actual number of days worked in order to ensure that they do not exceed 194 in any 12-consecutive month period. (Personnel Management Policy and Procedures Manual Sections 330.2-330.4.)

At the time of the review, the DTSC had three employees on ATW. The CRU reviewed all three of those ATW appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines.

Classification	Position #	Time Base	Time Frame	No. of Days on ATW
Environmental Chemistry Laboratory	810-358-1931-901	Intermittent	3/28/17 - 2/28/18	236
Scientific Aid	810-358-1931-901	Intermittent	12/19/16 - 12/18/17	229

**FINDING NO. 18 – Actual Time Worked (ATW) Employee Exceeded the Nine Months in Any Twelve Consecutive Months Limitation**

**Summary:** The DTSC did not monitor two of three ATW employees’ actual number of days worked in order to ensure the employee did not exceed the 194 days in any 12-consecutive month period. (

**Criteria:** If any employee is appointed to an intermittent time base position on a TAU basis, there are two controlling time limitations that must be considered. The first controlling factor is the constitutional limit of 9 months in any 12 consecutive months for temporary appointments that cannot be extended for any reason. (Cal. Const., art VII, § 5). The nine month period may be computed on a calendar or actual

<sup>18</sup> For example, two hours or ten hours counts as one day.  
<sup>19</sup> For example, vacation, sick leave, compensating time off, etc.  
<sup>20</sup> For example, straight time, time and one-half, double time, etc.

basis. When computing time worked, 194 days equals nine months. (CalHR Online Manual, section 1202).<sup>21</sup>

**Severity:** Technical. The DTSC failed to comply with Article VII, section 5 of the California Constitution which limits the amount of time an individual may work in a temporary appointment for the state civil service. TAU appointments are distinguished from other appointments as they can be made in the absence of an appropriate employment list. Intermittent appointments are not be used to fill full-time or part-time positions. Such use would constitute illegal circumvention of these eligible lists.

**Cause:** The Transactions team did not track the number of days worked by two employees in a timely manner due to human error.

**Action:** DTSC has updated its transactions procedures. DTSC now emails both the employee and supervisor at the beginning of each month advising them of the employee's current days' count and clearly stating the number of days available to work in the current month. DTSC has also started providing employees and supervisors more training regarding the limit on days worked. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations submit a copy of the updated transactions procedures to ensure conformity with CalHR Online Manual Section 1202.

### Administrative Time Off

Administrative Time Off (ATO) is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. 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. Additionally, ATO may be granted when employees need time off for any of the following: donating blood, extreme weather that makes getting to work impossible, and/or, when employees need time off to attend special events. Any ATO requests lasting over 30 days must be submitted and approved by CalHR. Approval

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<sup>21</sup> California Code of Regulations section 265.1 became effective July 1, 2017, and did not apply at the time of these appointments. The current regulation sets forth the method for counting time for temporary appointments.

will generally be given in 30 calendar day increments and any extension must be approved prior to the expiration of the 30 calendar days. Departments must properly document and track ATO for any length of time. (PML, “Administrative Time Off (ATO) – Policy, Procedure and Documentation Requirements”, 2012-008)

Employees may also be granted a paid leave of absence of up to five days by their appointing power when the employee works or resides in a county where a state of emergency has been proclaimed by the Governor. (Cal. Code Regs., § 599.785.5.)

During the period under review, November 1, 2016 through October 31, 2017, the DTSC placed 106 employees on ATO. The CRU reviewed 15 of these ATO appointments to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Time Frame	No. of Days on ATO
Associate Governmental Program Analyst	12/1/16	1
Associate Governmental Program Analyst	3/27/17	1
Engineering Geologist	11/8/16	1
Environmental Scientist	6/29/17	1
Environmental Scientist	6/6/17	1
Hazardous Substances Engineer	10/9/17 – 10/11/17	3
Laboratory Technician - Chemical Analysis	11/8/16 – 11/9/16	2
Senior Engineering Geologist	6/20/17	1
Senior Environmental Scientist (Supervisory)	6/14/17	1
Senior Environmental Scientist (Supervisory)	3/28/17 – 3/30/17	3
Senior Environmental Scientist(Specialist)	5/3/17	1
Senior Environmental Scientist(Specialist)	6/20/17	1
Senior Health Physicist	11/8/16	1
Staff Services Analyst (General)	6/12/17	1

Classification	Time Frame	No. of Days on ATO
Staff Services Analyst (General)	2/15/17 - 2/17/17	3

**FINDING NO. 19 – Administrative Time Off (ATO) Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found no deficiencies in the 15 employees placed on ATO during the compliance review period. The DTSC 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.)

Additionally, in accordance with CalHR Online Manual Section 2101, departments must create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. 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. Attendance records shall be corrected by the pay period following the pay period in which the error occurred. Accurate and timely attendance reporting is required of all departments and is subject to audit.

During the period under review, August 1, 2017 through October 31, 2017, the DTSC reported 94 units comprised of 1000 active employees during the August 2017 pay period, 94 units comprised of 1009 active employees during the September 2017 pay period, and 93 units comprised of 998 active employees during the October 2017 pay period. The pay period and timesheets reviewed by the CRU are summarized as follows:

Timesheet Leave Period	No. of Units Reviewed	No. of Employees	No. of Timesheets Reviewed	No. of Missing Timesheets
October 2017	14	326	326	0

**FINDING NO. 20 – Department Has Not Implemented a Monthly Internal Audit Process to Verify Timesheets are Keyed Accurately and Timely**

**Summary:** The DTSC failed to implement a monthly internal audit process to verify time worked is keyed accurately and timely. In one instance, the DTSC did not document corrections made to one of 26 timesheets in one unit on the Leave Activity and Correction Certification form. Furthermore, the DTSC did not complete Leave Activity and Correction Certification forms by the following pay period for 13 of 14 units reviewed in the October 2017 pay period.

**Criteria:** 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.) CalHR also directs that departments identify and record all leave errors found using a Leave Activity and Correction Certification form. Moreover, CalHR requires that departments certify that all leave records for the unit/pay period identified on the certification form have been reviewed regardless of whether errors were identified.

**Severity:** Serious. The DTSC failed to key the correct amount of hours an employee worked at the conclusion of the pay period, which affected employee compensation. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post audit purpose, the completions of Leave Activity and Correction forms demonstrates compliance with CalHR policies and guidelines.

**Cause:** Due to human error, DTSC did not audit the October 2017 pay period timesheets on a timely basis. Additionally, DTSC's Human Resources Office recently implemented an extensive new timekeeping system, Tempo. As a result, all of DTSC's internal audit and reconciliation processes for payroll and timekeeping had to be amended to account for the logistics of using the new system.

**Action:** DTSC's HRO has adopted a comprehensive procedure for reviewing the accuracy of all timesheets in the new timekeeping system on a timely basis. It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations submit a copy of the comprehensive timekeeping procedures to ensure conformity with California Code of Regulations section 599.665.

### Leave Reduction Efforts

Departments must comply with the regulations and CalHR policies that require a leave plan for every employee with vacation or annual leave hours over the maximum amount permitted. (Cal. Code Regs., tit. 2, § 599.742.1 and applicable Bargaining Unit Agreements). Bargaining Unit Agreements and California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. For instance, according to California Code of Regulations, title 2, section 599.737, if a represented employee does not use all of the vacation to which he or she is entitled in a calendar year, “the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than” the established limit as stipulated by the applicable bargaining unit agreement<sup>22</sup>. Likewise, if an excluded employee does not use all of the vacation to which he or she is entitled in a calendar year, the “employee may accumulate the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days.” (Cal. Code Regs., tit. 2, § 599.738.)

In accordance with CalHR Online Manual Section 2124, 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.

As of December 2017, 116 DTSC employees exceeded the established limits of vacation or annual leave. The CRU reviewed 18 of those employees’ leave reduction plans to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Attorney III	R02	534.75	Yes
Deputy Chief, Administrative Services, CEA B	M01	1,310.00	Yes
Chief Information Officer, Office of Environmental Information Management, CEA B	M01	534.00	Yes

<sup>22</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and bargaining unit 5 the established limit is 816 hours.

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Chief Deputy Director	E99	513.50	Yes
Division Chief, Department of Toxic Substances Control, CEA	M09	816.00	Yes
Environmental Program Manager I (Supervisory)	S10	616.00	Yes
Environmental Program Manager I (Supervisory)	S10	616.00	Yes
Office Technician (Typing)	R04	361.35	Yes
Senior Engineering Geologist	U09	835.00	Yes
Senior Environmental Scientist (Specialist)	R10	519.25	Yes
Senior Environmental Scientist (Supervisory)	S10	511.00	Yes
Senior Hazardous Substances Engineer	R09	545.00	Yes
Senior Hazardous Substances Engineer	R09	551.00	Yes
Staff Information Systems Analyst (Specialist)	R01	286.00	Yes
Supervising Engineering Geologist	S09	921.50	Yes
Supervising Hazardous Substances Engineer I	S09	1,760.75	Yes
Supervising Industrial Hygienist	M10	659.50	Yes
Supervising Toxicologist	S10	699.00	Yes
<b>Total</b>		<b>12,589.60</b>	

**FINDING NO. 21 – Leave Reduction Plans Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU reviewed employee vacation and annual leave to ensure that those employees who have significant “over-the-cap” leave balances have a leave reduction plan in place

and are actively reducing hours. In addition, the CRU reviewed the department's leave reduction policy to verify its compliance with applicable rule and law, and to ensure its accessibility to employees. Based on our review, the CRU found no deficiencies in this area.

### State Service

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>23</sup> (Cal. Code Regs., tit. 2, § 599.608.)

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 additional qualifying monthly pay period as defined in section 599.608, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. 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. Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (Cal. Code Regs., tit. 2, § 599.739.) On the first day following a qualifying monthly pay period, excluded employees<sup>24</sup> shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent Intermittent employees earn vacation according to the preceding schedule for each increment of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period are not counted or accumulated.

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<sup>23</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.

<sup>24</sup> As identified in Government Code sections 19858.3(a), 19858.3(b), or 19858.3(c) as it applies to employees excluded from the definition of state employee under section Government Code 3513(c), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

During the period under review, February 1, 2017 through October 31, 2017, the DTSC had 16 employees with 715 transactions<sup>25</sup>. The CRU reviewed 16 715 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

Type of 715 Transaction	Time base	Number Reviewed
Qualifying Pay Period	Full-Time	11
Non-Qualifying Pay Period	Full-Time	5

**FINDING NO. 22 – 715 Transactions Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU determined that the DTSC 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. Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. Personal relationships for this purpose include but are not limited to, association by blood, adoption, marriage and/or cohabitation. In addition, there may be personal relationships beyond this general definition that could be subject to these policies. Overall, departmental nepotism policies should aim to prevent favoritism or bias based on a personal relationship when recruiting, hiring or assigning employees. Departments have the discretion, based on organizational structure and size, to develop nepotism policies as they see fit. (CalHR Online Manual Section 1204)

**FINDING NO. 23 – Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

<sup>25</sup> 715 transaction code is used for: temporary leaves of 30 calendar days or less (per SPB Rule 361) resulting in a non-qualifying pay period; used for qualifying a pay period while on NDI; used for qualifying a pay period while employee is on dock and furlough.

After reviewing the DTSC's nepotism policy in effect during the compliance review period, the CRU verified that the policy was disseminated to all staff and emphasized the DTSC's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the DTSC'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 as outlined in CalHR's Online Manual Section 1204.

### Workers' Compensation

Pursuant to California Code of Regulations, title 8, section 9880, employers shall provide to every new employee 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. This notice shall also contain a form that the employee can use to pre-designate their personal physician or medical group as defined by Labor Code section 4600. Additionally, employers shall also provide a claim form and notice of potential eligibility to their employee within one working day of notice or knowledge that the employee has suffered a work related injury or illness. (Labor Code, § 5401.)

According to Labor Code section 3363.5, public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. Workers' compensation coverage is not mandatory for volunteers as it is for employees. This is specific to the legally uninsured state departments participating in the Master Agreement. Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (SCIF) office to discuss the status of volunteers (PML, "Workers' Compensation Coverage for Volunteers," 2015-009). Those departments that have volunteers should have notified or updated their existing notification to the SCIF by April 1, 2015, whether or not they have decided to extend workers' compensation coverage to volunteers. In this case, the DTSC did not employ volunteers during the compliance review period.

### **FINDING NO. 24 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

After reviewing the DTSC's workers' compensation process that was in effect during the compliance review period, the CRU verified that when the DTSC 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 DTSC 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, departments 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 48 permanent DTSC employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations and CalHR policy and guidelines.

### **FINDING NO. 25 – Performance Appraisals Were Not Provided to All Employees**

**Summary:** The DTSC failed to provide performance appraisals to four of 48 employees reviewed at least once in each twelve calendar months after the completion of the employee’s probationary period.

Classification	Date Performance Appraisals Due
Attorney	11/9/2017
Environmental Scientist	1/27/2018
Office Technician (Typing)	10/24/2017
Staff Services Manager III	9/10/2017

**Criteria:** Departments are required to “prepare performance reports and keep them on file as prescribed by department rule.” (Gov. Code, § 19992.2.) Each supervisor “shall make an appraisal in writing and 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, subd. (c).)

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

**Cause:** The report found that 92% of DTSC’s employees in the sample that were audited received performance appraisals; however, four DTSC

employees did not. DTSC's human resources office uses several methods to inform and remind supervisors of the requirements to complete performance appraisals for all eligible employees; however, absolute compliance with this requirement is difficult to achieve for various reasons.

**Action:** DTSC will implement a procedure for all supervisors regarding the completion of performance appraisals which will require each program to identify a month in which performance appraisals for all eligible employees will be completed and submitted. HR will track all submissions to ensure compliance with California Code of Regulations section 599.798 (c). It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DTSC must submit a copy of the new implemented procedures.

#### **FINDING NO. 26 – Unsigned and/or Undated Performance Appraisals**

**Summary:** 14 of 44 performance appraisals were not dated and/or signed by the employee.

**Criteria:** Each employee shall be given a copy of the written appraisal covering the employee's own performance and is privileged to discuss it with the appointing power before it is filed. (Cal. Code Regs., tit. 2, § 599.798, subd. (e).)

**Severity:** Technical. Due to the lack of employees' signature and date on the performance appraisals reviewed, the CRU cannot verify whether employees discussed their performance appraisals with their supervisors/managers in a timely manner.

**Cause:** The 14 performance appraisals were unsigned and/or undated due to human error.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the DTSC must submit a written corrective action plan that addresses the corrections the department will implement to ensure conformity with California

Code of Regulations section 599.798, subdivision (e). Copies of any relevant documentation should be included with the plan.

**DEPARTMENTAL RESPONSE**

The DTSC's departmental response is attached as Attachment 1.

**SPB REPLY**

It is further recommended that the DTSC comply with the afore-stated recommendations and submit documentation to the CRU within 60 days that shows all corrective actions have been implemented.



## Department of Toxic Substances Control

*Matthew Rodriguez*  
Secretary for  
Environmental Protection

Barbara A. Lee, Director  
1001 "I" Street  
P.O. Box 806  
Sacramento, California 95812-0806

*Edmund G. Brown Jr.*  
Governor

September 26, 2018

Ms. Suzanne M. Ambrose, Executive Officer  
State Personnel Board  
801 Capitol Mall, Suite 1200  
Sacramento, CA 95814

### **Response to Draft Compliance Review Report (September 2018)**

Dear Ms. Ambrose:

The California Department of Toxic Substances Control (DTSC) is in receipt of the draft State Personnel Board (SPB) Compliance Review Report. The Department recognizes the importance of these evaluations to ensure personnel practices are properly applied and adhered to in accordance with civil service laws, rules and regulations.

The DTSC acknowledges the findings in the September 2018 SPB Compliance Report. Detailed below are the non-compliant findings, along with the DTSC's explanation and resolution.

#### **Finding NO. 3 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

Cause: DTSC's Human Resources Office uses several methods to inform and remind supervisors of the requirement to complete probationary evaluations for all probationary employees; however, absolute compliance with this requirement is occasionally difficult to achieve for various reasons.

DTSC Proposed Remedy: The DTSC Human Resources Office will implement a procedure intended to achieve a 100% compliance rate from all supervisors regarding the completion of probationary reports. This procedure includes a series of reminders the Human Resources staff will send to the supervisor. Reminders will be sent when an employee begins a probationary period, before the second probationary report is due, and before the final probationary report is due. HR will address non-compliance by elevating missed/late probationary reports to the second level supervisor.

#### **Finding NO. 4 – Equal Employment Opportunity (EEO) Questionnaires Were Not Separated from Applications**

Cause: DTSC staff that are responsible for reviewing STD. 678 employment applications have been instructed to remove EEO questionnaires in order to prevent inappropriate disclosure of protected class information. In the 691 applications reviewed, DTSC removed the EEO Questionnaire from 99.6% of the applications; however, three applications had the EEO Questionnaire attached. This .4% error rate can be attributed to human error.

DTSC Proposed Remedy: DTSC has reiterated to staff who review STD. 678 employment applications the importance of separating EEO questionnaires.

#### **Finding NO. 6 – Union Was Not Notified in a Timely Manner**

Cause: DTSC follows the direction of Government Code section 19132, which states that a personal services contract (PSC) shall not be executed until the state agency has notified all organizations that represent state employees who perform the type of work to be contracted. There is no requirement within the Government Code or its corresponding regulations and no guidance from the SPB regarding an agency's notice requirements in instances where the state agency cannot identify a state classification to perform the type of work to be contracted.

Additionally, DTSC has authority to contract for removal or remedial action when there is an imminent or substantial endangerment to the public health or welfare or to the environment. In these cases, DTSC must enter into a PSC with urgency, and, due to human error, unions are sometimes notified after the fact and/or union notification documentation is misplaced.

DTSC Proposed Remedy: DTSC understands that unions must be notified of impending PSCs to ensure they are aware of proposed PSCs for work that their members could perform. Immediately following this report, DTSC updated its procedures and now notifies all 13 employee organizations (representing 21 bargaining units) of potential PSCs. In cases of human error, DTSC has reiterated to PSC staff the importance of properly documenting adherence to Government Code section 19132 and notifying unions before entering into a PSC, regardless of the contract's urgency.

#### **Finding NO. 7 – Insufficient and/or Incomplete Written Justifications**

Cause: DTSC is committed to adhering to Government Code section 19130 (b); however, human error resulted in four PSCs having unsigned or undated justifications. Additionally, nine PSCs were missing detailed factual information in the justifications. This was due to a combination of human error and unintentional failure to include necessary information in the justification.

DTSC Proposed Remedy: Through additional training and policy review, DTSC has reiterated to staff the importance of: 1) certifying written justifications with a signature, 2) including pertinent information within the body of the written justification of each PSC. DTSC

now has procedures in place for obtaining written justification from DTSC Contract Managers prior to execution of PSCs. Contract Managers have the required knowledge and expertise to provide detailed factual information regarding the services provided and how the PSC satisfies one or more of the conditions. Justifications are reviewed by analysts prior to contract execution to ensure proper detail has been provided and the justifications have been signed/dated.

### **Finding NO. 8 – Ethics Training Was Not Provided for All Filers**

Cause: DTSC's Office of Training uses several methods to inform and remind employees of the requirement to complete the Ethics Training for State Officials provided by the Department of Justice (DOJ); however, follow-up to ensure these employees have completed this training is inconsistent.

DTSC Proposed Remedy: The Office of Training recently implemented the inclusion of the ethics training expiration date on the Department's learning management system home page. For each employee, this screen indicates if s/he is required to file Form 700 and the date the certificate expires or an error message (#N/A) indicating the training has not been completed. Supervisors are also able to view their employees' User Record to see when their training expires.

DTSC will generate regularly scheduled reports and notifications to increase compliance with this mandatory training requirement. Specifically, DTSC will:

- Produce a monthly report listing all employees out of compliance with the requirement. This report will be provided to the senior leadership team;
- Follow up with new hires/appointments and their supervisors at 30 and 60 days to remind them of the requirement; and
- Provide a monthly email to employees and their supervisors indicating they are out compliance the requirement and reminding them to complete the ethics training.

### **Finding NO. 9 – Supervisory Training Was Not Provided for All Supervisors**

Cause: Since 2013, DTSC has provided supervisors and managers with in-house supervisory training related to employee performance management, leadership and soft skills. This mandatory training consists of a series of courses that are offered on a periodic basis. If all the courses are completed, the participant receives 120-128 hours of supervisory training; accordingly, DTSC uses this in-house training program to satisfy and exceed the requirements set forth by Government Code section 19995.4. A participant does not receive any credit for completing the training until all courses are completed. At times, this results in a new supervisor or manager having completed the required number of training hours, but still not receiving any credit due to not yet completing the entire 120-128 hour series.

DTSC Proposed Remedy: Recently, CalHR issued revised requirements in relation to Government Code section 19995.4. The requirements stipulate that only CalHR provided training will fulfill the 80-hour new supervisor and 40-hour new manager training requirements. Going forward and to comply with this new requirement, DTSC will ensure all new supervisors and managers attend the CalHR training within the prescribed timeframe.

**Finding NO. 10 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

Cause: DTSC's Office of Training uses several methods to inform and remind employees of the requirement to complete Sexual Harassment Training; however, follow-up to ensure these employees have completed this training is inconsistent.

DTSC Proposed Remedy: The Office of Training recently modified the sexual harassment training tracking on the Department's learning management system home page to help ensure compliance with Government Code section 12950.1 which mandates new supervisors complete two hours of sexual harassment training within six months of appointment and all supervisors complete sexual harassment training every two years.

**Finding NO. 15 – Incorrect Authorization of Bilingual Pay**

Cause: This report found that nine of ten employees authorized by DTSC did not qualify to receive bilingual pay. Of those nine employees, one employee, a Hazardous Substances Engineer, was found to be ineligible for bilingual pay due to an inadvertent deletion of his 10% bilingual duties during his most recent duty statement revision.

An Environmental Scientist was found to be ineligible to receive bilingual pay because DTSC failed to provide a copy of his oral fluency exam results. The Environmental Scientist completed his oral fluency exam on July 10, 1991 as identified on the STD. 897; DTSC has searched extensively for a copy of his oral fluency exam results and was unable to locate them. This is presumed to be a matter of a misplaced document due to human error.

The remaining seven employees were found to be unqualified for bilingual pay due to "the department failed to certify that the position requires the use of bilingual skills prior to the employee receiving bilingual pay in this position." This was due to the STD. 897 Bilingual Pay Authorization forms being signed after the employee began receiving bilingual pay. DTSC completed a self-audit of bilingual pay documentation in March 2018; as a result, it was determined that the STD. 897s were missing from several bilingual employee files. In order to remedy the findings from this self-audit, STD. 897s were completed and certified at that time. The missing STD. 897s are presumed to be a matter of misplaced documents due to human error.

DTSC Proposed Remedy: DTSC has corrected the duty statement that was inadvertently missing the 10% bilingual duties. DTSC acknowledges the importance of completing and certifying the STD. 897 form prior to the employee receiving bilingual pay and is committed to following this procedure.

**Finding NO. 18 – Actual Time Worked (ATW) Employees Exceeded the Nine Month in any Twelve Consecutive Months Limitation**

Cause: The Transactions team did not track the number of days worked by two employees in a timely manner due to human error.

DTSC Proposed Remedy: DTSC has updated transactions procedures to prevent this from occurring in the future. DTSC now emails both the employee and the supervisor at the beginning of each month advising them of the employee's current days' count, clearly stating the number of days available to work in the current month. DTSC has also started now provides employees and supervisors to provide more training regarding the limit on days worked.

**Finding NO. 20 – Department Has Not Implemented a Monthly Internal Audit Process to Verify Timesheets are Keyed Accurately and Timely**

Cause: Due to human error, DTSC did not audit the October 2017 pay period timesheets on a timely basis. Additionally, DTSC's Human Resources Office recently implemented an extensive new timekeeping system, Tempo. As a result, all of DTSC's internal audit and reconciliation processes for payroll and timekeeping had to be amended to account for the logistics of using the new system.

DTSC Proposed Remedy: DTSC is committed to keeping complete and accurate time and attendance records for each employee and officer employed by the Department as specified in California Code of Regulations Title 2, section 599.665. As such, the DTSC Human Resources Office has adopted a comprehensive procedure for reviewing the accuracy of all timesheets in the new timekeeping system on a timely basis.

**Finding NO. 25 – Performance Appraisals Were Not Provided to All Employees**

Cause: The report found that 92% of DTSC's employees in the sample that were audited received performance appraisals; however, four DTSC employees did not. DTSC's Human Resources Office uses several methods to inform and remind supervisors of the requirement to complete performance appraisals for all eligible employees; however, absolute compliance with this requirement is difficult to achieve for various reasons.

DTSC Proposed Remedy: The DTSC Human Resources Office will implement a procedure intended to achieve a 100% compliance rate from all supervisors regarding the completion of performance appraisals. This procedure requires each program to identify a month in which performance appraisals for all eligible employees will be completed and submitted to HR. HR will track all submissions to ensure compliance.

## **Finding NO. 26 – Unsigned and/or Undated Performance Appraisals**

Cause: The 14 performance appraisals that SPB reported as unsigned and/or undated were in fact never sent as part of the audit response at all. The 14 performance appraisals were not provided because the performance appraisals that DTSC has on file for the 14 employees were not completed within the specified time frame identified by SPB. DTSC consistently takes steps to remind supervisors and managers, through regular performance management training and reminders, the benefits for both the employee and supervisor of annual performance appraisals, and the importance of remaining in compliance with applicable laws. Despite this, there is occasional noncompliance and DTSC is addressing this (see remedy to Finding NO. 25).

DTSC Proposed Remedy: DTSC requests that the SPB remove this finding from the report as none of the performance appraisals submitted were actually "unsigned/undated". The DTSC requests that the 14 performance appraisals cited in in this finding be included with Finding NO. 25 "Performance Appraisals Were Not Provided To All Employees".

Thank you again for the opportunity to discuss and respond to the Draft Compliance Review Report. If you have any questions, please contact me directly.

Sincerely,



Joanne Haas, Personnel Officer  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812  
Phone: 916.322.0276  
Email: joanne.haas@dtsc.ca.gov