



COMPLIANCE REVIEW REPORT

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

Compliance Review Unit
State Personnel Board
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INTRODUCTION

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

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

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

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of Office of Environmental Health Hazard Assessment (OEHHA) personnel practices in the areas of examinations, appointments, EEO, and PSC's from April 1, 2013, through December 31, 2013. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Services Laws and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	No Disability Advisory Committee Was Established	Very Serious

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

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

BACKGROUND

The OEHHA is the leading state agency for the assessment of health risks posed by environmental contaminants. The OEHHA's mission is to protect human health and the environment through scientific evaluation of risks posed by hazardous substances. The OEHHA is one of six state departments within the California Environmental Protection Agency. For the 2013-14 fiscal year, the OEHHA's budget includes \$21.1 million and 125.4 staff positions.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing OEHHA examinations, appointments, EEO program, and PSC's from April 1, 2013, through December 31, 2013. The primary objective of the review was to determine if OEHHA personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

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

The review of the OEHHA 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 CRU also interviewed appropriate OEHHA staff.

All of OEHHA PSC's were selected to ensure that all types of contracted services and contract amounts were reviewed. The OEHHA contracted for transcription services,

video graphic services, website development services, and various personal services.¹ It was beyond the scope of the compliance review to make conclusions as to whether OEHHA justifications for the contracts were legally sufficient. The review was limited to whether OEHHA practices, policies, and procedures relative to PSC's complied with applicable statutory law and board regulations.

On February 3, 2015, an exit conference was held with the OEHHA to explain and discuss the CRU's initial findings and recommendations, and to provide the OEHHA with a copy of the CRU's draft report. The OEHHA was given until February 23, 2015, to submit a written response to the CRU's draft report. On February 23, 2015, the CRU received and carefully reviewed the response, which was updated on April 8, 2015, and is included in 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 a formal signed application in the office of the department or a designated appointing power within a reasonable length of time before the date of examination. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the

¹If 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.

results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the OEHHA conducted one examination. The CRU reviewed the examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Associate Toxicologist	Open	Training and Experience Evaluation ²	Continuous	41

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

The OEHHA administered one examination to create an eligible list from which to make appointments. The OEHHA published and distributed examination bulletins containing the required information. Applications received by the OEHHA were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQs) for admittance to the examination. The OEHHA notified applicants as to whether they qualified to take the examination, and those applicants who met the MQs were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the OEHHA conducted during the compliance review period. Accordingly, the OEHHA fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

² The Training and Experience 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, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

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 compliance review period, the OEHHA made 16 appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Assistant Information Systems Analyst	Certification List	Permanent	Full Time	1
Associate Toxicologist	Certification List	Permanent	Full Time	4
Information Systems Technician	Certification List	Limited Term	Intermittent	1
Research Scientist III	Certification List	Permanent	Full Time	1
Senior Toxicologist	Certification List	Permanent	Full Time	1
Scientific Aid	Temporary Authorization	Limited Term	Intermittent	6
Research Scientist I	Transfer	Permanent	Full Time	1

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

Summary: The OEHHA did not prepare, complete, and/or retain all required probationary appraisals of performance for 5 of the 16 appointment files reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. Uncompleted Prob. Reports
Accountant I (Specialist)	Certification List	1	3
Associate Toxicologist	Certification List	2	2
Research Scientist III	Certification List	1	1
Senior Toxicologist	Certification List	1	2
Total		5	8

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

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

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination

that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The OEHHA states that managers did not complete the probationary reports as instructed per Human Resources (HR) directions.

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

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the 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.) In a state agency with less than 500 employees, such as OEHHA, the EEO officer may be the personnel officer. (*Ibid.*)

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

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

members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the OEHHA EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate OEHHA staff.

FINDING NO. 3 – No Disability Advisory Committee Was Established

Summary: Although the OEHHA has invited employees to serve on a DAC, it has not yet formed its own DAC.

Criteria: 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).)

Severity: Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

Cause: The OEHHA states that they were originally part of a DAC that included all the boards, departments, and offices of the California Environmental Protection Agency. After some time the DAC became inactive. The OEHHA believed there would be a restart to the DAC. This never happened and OEHHA did not work quickly enough to restart a new DAC.

Action: The OEHHA must take appropriate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues.

It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the OEHHA must establish a DAC and submit to the SPB a written report of compliance.

Personal Services Contracts

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

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

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

During the compliance review period, the OEHHA had ten PSC's that were in effect. None of the PSC's were subject to DGS approval, and thus were not subject to CRU procedural review.

DEPARTMENTAL RESPONSE

FINDING NO 2

The OEHHA has a set system when NOPAs are generated a letter is sent to the employee's supervisor informing them to review the NOPA, and all three probationary dates are included. Additionally the top portion of the probationary report is completed for all three reporting dates and attached to the memo, along with a link to the probationary reports if they wish to have an electronic copy instead. The Personnel Specialist also keeps a tickler file. When probationary reports are not received by the due date, an email is sent to the manager to request completion. An email will be sent to the OEHHA's management team as a reminder of the importance of completing probationary reports, with the notion that this will help as a reminder to complete them for new staff.

FINDING NO 3

Following the compliance review, the OEHHA sent a request to all staff to invite them to apply to be part of the DAC. Only one application was received during the recruitment period. The OEHHA HR office did not think this was a sufficient number and brought this to the attention of the Chief of Administration to ask for Executive Office intervention to help with recruitment of additional staff. No additional applications were received. At the time of the exit conference OEHHA's HR office found out that two committee members was enough staff to establish the DAC. The HR Chief became the second member and within the week following the exit conference, a meeting was held with the two DAC members. The meeting included a discussion of recruitment efforts to obtain more members. A DAC roster, agenda, and meeting minutes were provided to the CRU. The suggestions by both members will be worked on with hopes of obtaining additional DAC membership. Also, a monthly meeting date has been established.

The OEHHA has responded above to the causes of those areas that the SPB found in violation along with the process for the probationary report completion. The focus of HR is to use the assistance of the Executive Office to move the OEHHA out of violation status by asking that they step in to emphasize the importance of following the control agency laws, rules, policies, etc. The OEHHA sees a strong start to the recently activated DAC and is working to improve the membership and ways that will keep the DAC active.

SPB REPLY

Based upon the OEHHA's written response, the OEHHA will comply with the CRU recommendations and findings. The OEHHA has provided evidence that they have recently established a DAC.

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