

February 27, 2014

Debbie Raphael, Director
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Via USPS

Re: Interference with Promotional Opportunity (CAPS o/b/o BU10 Employees at DTSC)

Director Raphael:

The California Association of Professional Scientists (CAPS) files this Merit Issue Complaint pursuant to SPB Rule 66.1. 2 CCR §66.1. This complaint alleges that the Department of Toxic Substances Control (DTSC) has been, and currently is, interfering with the promotional opportunity of CAPS-represented employees at the DTSC.

The DTSC has been, and currently is, interfering with the promotional opportunity of CAPS-represented employees at the DTSC by:

- 1) failing to timely administer an examination for the Senior Environmental Scientist (Specialist) class for approximately eight months;
- 2) failing to establish and maintain an appropriate promotional list to facilitate the filling of positions to the Senior Environmental Scientist (Specialist) class in violation of Ca. Gov. Code §18950¹;
- 3) failing to authorize the retention of DTSC's Senior Hazardous Substances Scientist list for an indefinite period of time as permitted by Ca. Gov. Code §18901.5² as there was a lack of unreasonable denial of a competitive opportunity for applicants from the DTSC to compete for the Senior Environmental Scientist (Specialist) position at the DTSC;
- 4) informing its employees that it intends to use the hiring lists of *other* agencies to fill Senior Environmental Scientist (Specialist) vacancies at the DTSC; and

¹ Ca. Gov. Code §18950 provides, in relevant part, as follows, "Vacancies in positions shall be filled insofar as consistent with the best interests of the state from among employees holding positions in appropriate classes, and *appropriate promotional lists shall be established* to facilitate this purpose, except as provided in Section 18930." (Emphasis added.)

² Notwithstanding subdivision (a) of Section 18901, the department may authorize the retention of eligibles on an employment list for an indefinite period of time based on the following factors: (d) The lack of unreasonable denial of a competitive opportunity for potential applicants..."

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- 5) by informing its employees that the only way they can be considered for a Senior Environmental Scientist (Specialist) vacancy at the DTSC is to take *other agencies'* Senior Environmental Scientist (Specialist) exams and score high enough to be considered. This puts DTSC scientists at a distinct disadvantage for vacancies in its own department.

Facts and Argument

On or about November 21, 2013, Karl Jaeger, DTSC-HR, sent an email to all DTSC employees that stated as follows:

Senior Environmental Scientist (Specialist): CalHR is almost halfway through its job analysis for this classification. They have not announced an examination release date. In the absence of an eligibility list, DTSC will consider using an appropriate list from another department, such as the Water Resources Control Board, to make appointments to existing vacancies. (Emphasis in original).

Enclosed. The substance of this email was repeated by Andrew Collada (Collada), Deputy Director of Administrative Services - DTSC, during the DTSC February "All Staff" meeting on or about mid-February 2014. During that meeting, Collada stated as follows:

Last Spring, after the list expired, we also suggested that staff take Environmental Scientist exams at other state agencies, including the Water Board's. Our purpose for recommending that staff take exams at other departments was we were going to use the other department's list as an appropriate list for our own department...³

First, neither Collada nor DTSC as an institution suggested any such thing to DTSC scientists, to CAPS, or to anyone else.

Second, Collada's encouraging (or "suggesting") that DTSC employees take the exams of other departments', such as the Water Board's, places DTSC employees at a tremendous disadvantage. For example, the Water Board's exam will focus on Water Board issues. Thus, DTSC employees, many of whom have spent their entire career at DTSC, will be forced to learn Water Board issues, take and score well on an exam that focuses on Water Board issues, and compete against Water Board employees, just to be eligible for a position that is not at the Water Board. This scenario is not only an unreasonable hurdle to promotion at the DTSC but it also violates the spirit of California Government Code section 18900(a).⁴

³ Collada's full statement can be viewed at the following web address <https://www.youtube.com/watch?v=T8CUhUkM-8M&feature=youtu.be>. The statement quoted above can be found at the 1:39:00 mark.

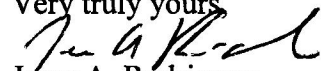
⁴ "Eligible lists shall be established as a result of free *competitive* examinations open to persons who lawfully may be appointed to any position within the class for which these examinations are held and who meet the minimum qualifications requisite to the performance of the duties of that position as prescribed by the specifications for the class or by rule." West's Ann.Cal.Gov.Code § 18900(a) (emphasis added).

CAPS, therefore, requests the DTSC to immediately:

- 1) take all steps necessary to promptly administer a Senior Environmental Scientist (Specialist) exam,
- 2) notify CAPS and DTSC employees that it will not make a single promotional appointment to the Senior Environmental Scientist (Specialist) class until it has created its own eligibility list; and
- 3) if necessary, temporarily fill Senior Environmental Scientist (Specialist) class positions with DTSC scientists as an out of class appointment until the exam has been administered and an eligibles list has been created.

Please feel free to call me at (818) 246-0629 if you would like to discuss or have any questions.

Very truly yours,



Jesse A. Rodríguez
CAPS Legal Counsel

Enclosure

CC: Christopher Hartung, DTSC Labor Relations Officer (*via email*)

Jesse Rodriguez

Subject: FW: Examination Update

From: noreply-HR
Sent: Thursday, November 21, 2013 5:48 PM
To: noreply-HR
Subject: Examination Update

DTSC Colleagues,

This is to provide you the status of several examinations currently undergoing development.

Environmental Scientist: CalHR is in the final stages of its job analysis for the Environmental Scientist. After this is complete, CalHR will begin examination development. They have not announced a projected release date for this exam. Upon release of the new Environmental Scientist exam, the existing eligibility list will be abolished. This will mean that individuals will need take the new exam in order to have list eligibility.

Senior Environmental Scientist (Specialist): CalHR is almost halfway through its job analysis for this classification. They have not announced an examination release date. In the absence of an eligibility list, DTSC will consider using an appropriate list from another department, such as the Water Resources Control Board, to make appointments to existing vacancies.

Senior Environmental Scientist (Supervisor): CalHR has combined development of this examination with the Senior Environmental Scientist (Specialist). CalHR has not identified a release date for this examination. In the absence of a new list, DTSC will continue to use the existing Supervising Hazardous Substances Scientist I eligibility list to fill vacant Senior Environmental Scientist (Supervisory) vacancies.

Environmental Program Manager I and II: CalHR anticipates beginning work on the job analyses for the Environmental Program Manager I and II on December 2, 2013. CalHR has not identified a release date for this examination. In the absence of a new examination, DTSC will continue to utilize the existing Supervising Hazardous Substances Scientist II list to fill vacancies in the Environmental Program Manager I (Supervisory) classification.

Hazardous Substances Engineer Series: DTSC expects CalHR to release examinations for this series shortly.

Engineering Geologist Series: CalHR has projected a release of January 2014.

To learn more about current and future examinations, please visit [this Sharepoint page](#).

Sincerely,

Karl Jaeger, M.A.
Staff Services Manager I
Dept. of Toxic Substances Control
916-322-0445