

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 \*  
 ROBERT D. YOUNG, \*  
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                   Appellant, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 NATURAL RESOURCES and \*  
 Secretary, DEPARTMENT OF \*  
 EMPLOYMENT RELATIONS, \*  
 \*  
                   Respondent. \*  
 \*  
 Case No. 84-0251-PC \*  
 \*  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This matter is before the Commission on appellant's request that respondents reallocate his position. The parties agreed to the following issue for hearing:

Whether the respondents' denial of the request for reallocation of the appellant's position from Environmental Specialist 4 [PR15-04] to Environmental Specialist 5 (PR15-05) was correct.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the appellant has been employed within the North Central District of the Department of Natural Resources as a water pollution biologist within the Water Resource Management Unit.

2. The appellant and one co-worker, Mr. Bill Jaeger, are supervised by Mr. Larry Maltbey, Water Resource Management Unit Supervisor for the district. The Water Resource Management Unit is one of several units in the North Central District that corresponds to the bureau structure in DNR's central administration. The North Central District includes units entitled Air Management, Solid Waste, Waste Water and Water Supply, as well

as Water Resource Management. The supervisors of these units, all report to Mr. Dale Urso, Assistant District Director.

3. Mr. Jaeger works in the Water Resource Management Unit on a half-time basis.

4. As of November of 1983, appellant's duties and responsibilities were described in the position description signed by the appellant on February 16, 1983. A copy of the position description is attached hereto and is incorporated by reference as if fully set out below.

5. Appellant's primary responsibility is to develop and implement the district's Basin Assessment Plan which is also known as the Surface Water Monitoring Plan. This plan establishes a series of high priority water quality problem studies that are to be carried out within the district. The studies fall within six general categories: lake management, toxics/groundwater, stream classifications, point-source pollution, non-point source pollution and miscellaneous topics. These monitoring studies provide the data used for making policy decisions.

6. The position standard for the Environmental Specialist series reads, in relevant part, as follows:

Major Programs

Major programs as described within this specification are in the Department of Natural Resources. As of August, 1983, these include solid waste, water supply, water resources management, water regulation and zoning, wastewater, air, and environmental impact. The extensiveness and scope of these programs varies between the districts and contributes to the complexity of the program condition.

\* \* \*

II. CLASS DEFINITIONS AND REPRESENTATIVE POSITIONS

The following definitions of duties and responsibilities and listings of representative positions provide examples and patterns for both present and future position allocations. Many different environmental programs and subprograms currently exist.

This position standard does not attempt to cover every eventuality or combination of duties and responsibilities either as they currently exist or may exist in the future. Additionally, this position standard is not intended to restrict the allocation of representative positions to a specific classification level if the functions of these positions change significantly in level of complexity and/or responsibility. It is intended, rather, to be a framework within which classifications can be applied equitably to the present programs and adjusted to meet the future personnel relationships and patterns that develop as a result of changing programs and emphasis.

\* \* \*

ENVIRONMENTAL SPECIALIST 4 PR 15-04)

Definition:

This is responsible environmental specialist work. Positions allocated to this class typically function as: ...

- 3) a specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program; ....

Representative Positions:

\* \* \*

Positions Functioning Out of a District Office:

\* \* \*

Water Resources Management Specialist: this position is responsible for developing and coordinating the district's basin assessment, ambient monitoring and quality assurance programs; designing studies; collecting and interpreting data; and providing technical reports and recommendations based on needs identified by the district water resources management program.

ENVIRONMENTAL SPECIALIST 5 (PR 15-05)

This is responsible environmental program coordinative work. Positions allocated to this class typically function as...

- 2) a district specialist responsible for providing districtwide expertise and program coordination for a significant portion of a major environmental program, or an equivalent combination of responsibilities.... Work at this level is performed under general direction.

\* \* \*

Representative Positions:

\* \* \*

Positions Functioning Out of a District Office

Assistant Environmental Impact Coordinator: this position has been delegated major segments of the district environmental impact program with full authority for coordinating and certifying environmental assessments for district actions for compliance with Wisconsin Statutes, and independently conducting investigations and developing agency recommendations on assigned outside agency proposals and department environmental impact statement projects. There is a clear separation of duties with the district environmental impact coordinator and formal delegation of these responsibilities.

\* \* \*

ENVIRONMENTAL SPECIALIST 6 (PR 15-06)  
ENVIRONMENTAL SPECIALIST 6 - MANAGEMENT (PR 1-14)

Definition:

This is very responsible professional environmental program coordinative work. Positions allocated to this class typically function as 1) a district staff specialist responsible for planning, coordinating, and implementing a major district environmental program;

7. The central administrative office of the Water Resources Management Bureau is divided into five sections: Groundwater Management Section; Surface Water Standards and Monitoring Section; Evaluation and Special Projects Section; Nonpoint Source and Land Management Section; Water Resources Planning and Policy Section. Each district has considerable discretion in determining the district organizational structure for carrying out the Water Resources Management responsibilities as well as other district responsibilities that correspond to the other central office bureaus.

8. In the North Central district, most of the work corresponding to the Groundwater Management Section is done by other units, e.g. Water Supply or Solid Waste, within the district. However, some groundwater activities are included within the Surface Water Monitoring Plan that is prepared by the appellant.

9. The appellant performs the bulk of the work falling within the scope of the Surface Water Standards and Monitoring section that is performed in the North Central district. However, Mr. Jaeger's responsibilities for small stream classification and waste load allocations also fall within this section, indicating that the appellant is not responsible for the entire section without exception.

10. For the most part, the responsibilities in the North Central district for the Evaluation and Special Projects section are also part of the appellant's authority. While other districts may have conducted a large variety of special projects, in the North Central district, the Exxon project is the only project identified. In that project, the appellant is responsible for macro-invertebrates. His responsibility includes the writing of the macro-invertebrate portion of the Environmental Impact Statement.

11. Within the North Central district, the only activities performed with respect to the Nonpoint Source and Land Management section are performed as part of the Basin Assessment Plan which is the appellant's responsibility.

12. In the North Central district, a person who reports directly to Ms. Urso (the assistant district director) has the responsibility for all duties falling within the Water Resources Planning and Policy section.

13. Looking at the five sections of the Water Resources Management bureau as a group and in terms of the organization utilized by the North Central district, the appellant was responsible for all of one section (Nonpoint Source and Land Management) and the bulk of two more sections (Surface Water Standards and Monitoring; Evaluation and Special Projects).

14. The appellant's position is responsible for providing districtwide expertise and program coordination for a significant portion of the Water Resources Management Program. For that reason, the appellant's position is better classified at the ES 5 level.

#### CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(b), Stats.

2. The appellant has the burden of proving that the respondent's decision not to reallocate his position from ES 4 to ES 5 was incorrect.

3. The appellant has met that burden of proof.

4. The respondent's decision not to reallocate the appellant's position to the ES 5 level was not correct.

#### OPINION

The ES 4 definition includes positions occupied by a specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program. The Water Resources Management Specialist is the position identified as representing this definition. In contrast, the ES 5 definition refers to "a district specialist responsible for providing districtwide expertise and program coordination for a significant portion of a major environmental program." Much of the testimony at the hearing in this matter related to the question of whether appellant's responsibilities constituted a specialized aspect or a significant portion of the Water Resources Management program in the North Central district. Respondent's personnel specialist testified that respondent has interpreted "significant portion" to mean that the position in question must be responsible for district level duties corresponding to a majority of the various sections of the central office bureau. For

example, the Bureau of Water Supply has two sections, private water and public water. In order to be classified at ES 5 level at the district level for performing Water Supply duties, respondent requires the incumbent to be responsible for either private water or public water. For a bureau such as Water Resources Management which includes five sections, respondent's would require the incumbent to be responsible for all of the activities found in 3 of the 5 sections (i.e., a majority) contained in the Bureau and carried out at the district level.

The Commission cannot agree with the respondents interpretation of the phrase "significant portion" as requiring an absolute majority. The position standards simply makes no mention of requiring that the ES 5 be responsible for a majority of a major environmental program (such as Water Resources Management) at the district level. In some situations there may be little or no practical result of substituting the word "majority" for the phrase "significant portion." In the present case, however, there is a tangible effect.

Testimony established that the appellant is responsible for carrying out all of one of the five Water Resources Management sections (Non-point Source and Land Management) and the bulk of the two more sections (Surface Water Standards and Monitoring; Evaluation and Special Projects) within the North Central district. The appellant's responsibilities, when viewed in the context of the five sections within the Bureau, clearly comprise more than a "specialized aspect" of the Water Resources Management program and are best described at the ES 5 level.

The position standards set forth a relatively specific "Representative Position" for a Water Resources Management Specialist at the ES 4 level. That describes a position responsible for developing and coordinating the

district's basin assessment, ambient monitoring and quality assurance programs; designing studies; collecting and interpreting data; and providing technical reports and recommendations based on needs identified by the district water resources management program.

The position summary portion of appellant's position description provides:

Under direction of the Water Resources Management Supervisor, this position has District-wide responsibility and final authority for the Basin Assessment, Ambient Monitoring and Quality Assurance program segments. Plan and implement Exxon Project environmental studies and other water pollution related investigations of streams and lakes.

A comparison of appellant's position description and the Water Resources Management Specialist representative position certainly supports respondent's testimony that appellant's position description provided the language used to describe the representative position. However, the appellant offered testimony to the effect that the North Central district basin assessment plan was more inclusive than the more "traditional" basin assessment plans that were arguably contemplated within the language of the representative position. Appellant's witnesses indicated that the basin assessment plan concept has been expanded to include such areas as toxics, ground water impacts on surface waters and the study of sediments. This testimony was unrebutted. These additional areas represent a significant portion of the various activity areas covered by the appellant's basin assessment plan and indicate a significant change in the level of complexity and responsibility from the traditional notion of basin assessment plan that was apparently used in the ES 4 representative position.

This result is not inconsistent with the Commission's decision in Eslien v. DER, 84-0020-PC (4/1/84). In Eslien, the Commission affirmed respondent's decision to classify the appellant's position at the ES 4 level rather than the ES 5 level. There, the appellant was responsible for

much but not all of the surface water evaluation subprogram which, in that case, was shown to be one of four subprograms in the water resources management program. The Commission found that the ES 4 representative position of the Water Resources Management Specialist closely resembled Mr. Eslien's position, that the appellant spent 10% of his time in a program other than water resources management, and that less than one subprogram of four was not a significant portion of the water resources management program.

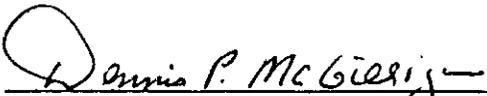
Even if one concludes that there is no significant distinction between the representative position and the appellant's actual duties, we are left with a representative position that, in this case, would result with a classification decision that is inconsistent with the definition portions of the ES 4 and 5 standards. Such an inconsistency should be resolved by relying on the definition portion of the position standards, rather than on someone's interpretation of that definition, i.e., the assignment of a "representative" position to a particular classification.

The Water Resources Management Specialist representative position does not specify the scope of the basin assessment plan developed and implemented by the incumbent. Here, the scope of appellant's plan is inconsistent with the ES4 definition statement and consistent with the ES5 definition statement. Under these facts, the respondent's decision must be reversed.

ORDER

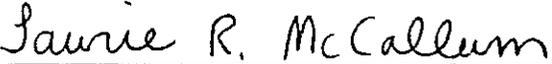
Respondents' decision not to reallocate appellant's position to the Environmental Specialist 5 level is reversed and this matter is remanded for action in accordance with this decision.

Dated: November 21, 1985 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

KMS:jmf  
ID4/2  
Attachments

  
LAURIE R. McCALLUM, Commissioner UC

Parties:

Robert D. Young  
Box 818  
Rhinelander, WI 54501

Carroll Besadny  
Secretary, DNR  
P. O. Box 7921  
Madison, WI 53707

Howard Fuller  
Secretary, DER  
P. O. Box 7855  
Madison, WI 53707

**POSITION DESCRIPTION**

DER-PERS-10 (Rev 1-78)  
 State of Wisconsin  
 Department of Employment Relations  
 DIVISION OF PERSONNEL

1. Position No	2. Cert/Reclass Request No. 830069	3. Agency No. 370
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4. NAME OF EMPLOYEE Robert D. Young	5. DEPARTMENT, UNIT, WORK ADDRESS Department of Natural Resources NCD Water Resources Management Unit Box 818 Rhineland, WI 54501
6. CLASSIFICATION TITLE OF POSITION Environmental Specialist <i>34 3-20-83</i>	
7. CLASS TITLE OPTION (To be Filled Out By Personnel Office)	8. NAME AND CLASS OF FORMER INCUMBENT None
9. AGENCY WORKING TITLE OF POSITION District Water Pollution Biologist	10. NAME AND CLASS OF EMPLOYEES PERFORMING SIMILAR DUTIES Jack J. Eslien, ES-5
11. NAME AND CLASS OF FIRST-LINE SUPERVISOR Larry Maltbey, <i>NRS 3</i> ES-6	12. FROM APPROXIMATELY WHAT DATE HAS THE EMPLOYEE PERFORMED THE WORK DESCRIBED BELOW? May 1982
13. DOES THIS POSITION SUPERVISE SUBORDINATE EMPLOYEES IN PERMANENT POSITIONS? AND ATTACH A SUPERVISORY POSITION ANALYSIS FORM (DER-PERS-84). Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> IF YES, COMPLETE	

14. POSITION SUMMARY - PLEASE DESCRIBE BELOW THE MAJOR GOALS OF THIS POSITION  
 Under direction of the Water Resources Management Supervisor, this position has District-wide responsibility and final authority for the Basin Assessment, Ambient Monitoring and Quality Assurance program segments. Plan and implement Exxon Project environmental impact studies and other water pollution related investigations of streams and lakes.

15. DESCRIBE THE GOALS AND WORKER ACTIVITIES OF THIS POSITION (Please see sample format and instructions on back of last page)

- GOALS: Describe the major achievements, outputs, or results List them in descending order of importance
- WORKER ACTIVITIES: Under each goal, list the worker activities performed to meet that goal
- TIME %: Include for goals and major worker activities.

(Continue on attached sheets)

TIME %	GOALS AND WORKER ACTIVITIES
	(See attached page)

16. SUPERVISORY SECTION - TO BE COMPLETED BY THE FIRST LINE SUPERVISOR OF THIS POSITION (See Instructions on Back of last page)

- a. The supervision, direction, and review given to the work of this position is [ ] close [ ] limited [x] general
- b. The statements and time estimates above and on attachments accurately describe the work assigned to the position (Please initial and date attachment)

Signature of first-line supervisor Larry D. Maltbey Date 2/11/83

17. EMPLOYEE SECTION - TO BE COMPLETED BY THE INCUMBENT OF THIS POSITION

I have read and understand that the statements and time estimates above and on attachments are a description of the functions assigned my position (Please initial and date attachments.)

Signature of employe Robert D. Young Date 2/11/83

18. Signature of Personnel Manager [Signature] Date 2/11/83

Plan X      Goals and Worker Activities

- 65%      A.    Development and coordination of the Basin Assessment program segment of the District Water Resources Management Program.
- A1.    Review water quality assessment needs for the entire North Central District.
- 10%      A2.    Develop the annual NCD Water Quality Monitoring Plan document (WQMP).
- 20%      A3.    Design and implement water quality studies identified in the WQMP.
- 30%      A4.    Interpret study data and prepare technical reports with recommendations for action.
- 10%      B.    Development and coordination of the Ambient Monitoring program segment of the District Water Resources Management Program.
- B1.    Develop the annual NCD Ambient Monitoring work plan.
- B2.    Implement collection of federal and state ambient monitoring samples for the entire North Central District.
- B3.    Compile data for all NCD sites and submit monthly flow summary to Madison.
- 10%      C.    Development and coordination of the Quality Assurance program segment of the District Technical Services Program.
- C1.    Serve as the District Quality Assurance Coordinator.
- C2.    Develop the annual NCD Quality Assurance work plan.
- C3.    Develop the statewide Quality Assurance Manual with other district Quality Assurance Coordinators and other members of the state Quality Assurance Committee.
- C4.    Implement Quality Assurance procedures in the NCD by conducting informational meetings and training sessions, and distributing Quality Assurance materials to District staff.
- C5.    Serve as District liaison to the State Laboratory of Hygiene (SLH).
- C6.    Schedule all routine NCD Headquarters analytical needs with the SLH weekly and, as needed, on a District-wide basis for special sampling. Order sample bottles and materials from the SLH, as needed.
- 15%      D.    Development and implementation of other water quality related investigations.
- D1.    Develop plans for and implement environmental impact verification studies related to water quality impacts of the Exxon mining project. Review and recommend changes in environmental impact reports from the Exxon mining project, as related to water quality impacts.
- D2.    Respond to emergency spills of water pollutants.
- D3.    Respond to general water pollution complaints and inquiries and present written and oral information to the public.
- D4.    Purchase water quality equipment for the NCD within current budget limitations.
- D5.    Supervise the orderly use of the E.P. laboratory.
- D6.    Supervise the permitted application of aquatic nuisance control chemicals.
- D7.    Conduct sanitary surveys of lakeshores.

20% 2/11/53  
25% 2/14/53