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 JAMES G. VENNIE,  
                   Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
                   Respondent.  
 Case No.      92-0624-PC  
 \* \* \* \* \*

INTERIM  
 DECISION  
 AND  
 ORDER

This is a reallocation appeal. A hearing was held on February 11, 1994, before Laurie R. McCallum, Chairperson. The parties were permitted to file briefs and the briefing schedule was completed on April 21, 1994.

As the result of a survey of science-related positions, appellant's position was reallocated to the Water Resources Management Specialist (WRM Spec)-Senior classification. Appellant filed a timely appeal of this reallocation with the Commission contending that his position should have been reallocated to the WRM Spec-Advanced classification.

Appellant's position is assigned to the Department of Natural Resources, Division for Environmental Quality, Bureau of Water Resources Management, Lake Management Section. The duties and responsibilities of appellant's position during the time period relevant to the subject survey are accurately described in a position description originally signed by appellant on June 26, 1991, and may be summarized as follows:

40% Coordinate the Department of Natural Resource's (DNR) Ambient Lake Monitoring Program by establishing sampling and analytical methodologies; monitoring quality control of collected data; designing and establishing data management protocols for collected data; providing limnological interpretations of data and data trends; compiling data and interpretations into reports.

10% Provide hydrogeological consulting services to lake organizations and their engineering consultants, to other DNR staff, and to federal agencies, including designing and monitoring hydrogeological lake studies; interpreting the

limnological significance of groundwater data collected as part of the Federal Clean Lake Program and the Priority Lakes and Lake Planning grant program; designing computer models to analyze the data resulting from hydrogeological studies.

20% Provide information management expertise for the DNR's lakes program by designing and maintaining water quality data base; developing water quality data protocols and formats; providing training to DNR central office and district staffs in the use and application of this information system; and preparing graphic presentations and interpretive packages for the lakes program.

30% Provide expertise in the areas of the trophic condition of lakes and computer modeling for specific lake studies, including designing special studies, utilizing lake management principles, to isolate and identify sources and consequences of lake problems; designing lake management data interpretation strategies for specific lake projects using complex modeling techniques; analyzing and interpreting studies and data, e.g., Toxic Algae Study, and providing expert review and testimony; preparing lake management reports recommending remedial alternatives and cost summaries; reviewing professional reports and individual lake plans, providing critical review and comment, and recommending plan adoption for regulatory permit approval and implementation.

Appellant, in performing the duties and responsibilities of his position, works with the DNR Bureau of Water Resource Management's Surface Water Standards and Monitoring Section to develop standards for wastewater discharge, Non-Point Source Pollution and Land Management Section to develop standards for non-point source pollution abatement, Groundwater Section to determine lake influence on groundwater quality; the Bureau of Wastewater to determine the impact of wastewater discharges on lake quality; the Bureau of Fisheries Management to develop common data bases using the tools appellant has developed; the Bureau of Research in relation to trophic modeling and limnological information management applications to assist with groundwater evaluations and other functions; and the Bureau of Water Regulation and Zoning to assist in determining limitations on private property owners' use of lake resources; with the U.S. Geological Survey; with the U.S. Environmental Protection Agency; with industries; and with lake organizations. Appellant has been utilized as a consultant in regard to interstate and international lake management issues, particularly in the area of lake trophic state modeling, is considered one of the foremost experts in North America in regard to this issue, and serves as the Chairperson of the

Technical Committee of the North American Lake Management Society.

Positions offered for comparison purposes in the hearing record include the following:

a. Thomas Sheffy--Advanced--DNR Bureau of Water Resources Management, Surface Water Standards & Monitoring Section--this position coordinates and manages major elements of the statewide Sediment Management (In-Place Pollutant) Program including development of innovative strategies and highly technical methodologies for assessing the environmental impacts and toxicity of sediments and for eliminating or mitigating the effect of in-place pollutants in surface waters, developing department policies for in-place pollutant and sediment management program activities, selecting and monitoring activities of contractors investigating the extent and nature of contaminated sediments, managing 3 demonstration projects involving sediment remediation, and serving as department consultant on sediment management issues; develops and coordinates the preparation of the Toxic Substances Management Report for the Milwaukee River/Harbor Remedial Action Plan, coordinates the technical review and development of recommendations as related to sediment toxicants and in-place pollutants in other Remedial Action Plan areas including the Menominee River and Duluth/Supervisor harbor, coordinates activities related to implementation of recommendations from Remedial Action Plans, prepares recommendations for research and monitoring activities within the Milwaukee Harbor Area of Concern; coordinates the implementation of the DNR's Toxics Materials Management Program as related to mercury contamination, developing and updating a comprehensive technical support document reviewing the mercury problem and recommending additional study objectives and a framework for developing a management strategy, developing and implementing project management objectives, recommending changes to administrative rules relating to mercury emissions; develops strategy for evaluating and assessing the effects of the deposition of atmospheric transported contaminants on state water resources, coordinating the implementation of Water Resources Management activities to assess the extent and impacts of atmospheric contaminants on state water resources, and reviewing and developing policy recommendations related to the deposition of contaminants from the atmosphere; and coordinates the participation of the Bureau of Water Resources Management in the activities of the Acid Deposition Research Council.

b. Linda Talbot--Advanced--DNR Bureau of Water Resources Management, Surface Water Standards & Monitoring Section--this position is responsible for: developing and implementing statewide strategies and techniques for assessing and monitoring contaminated sediment impacts on surface water quality and biological organisms and communities, providing project planning and oversight for personnel conducting sediment

biomonitoring projects, developing policies for operation of the program including application and implementation of biological standards for sediments, evaluating project results, providing expertise to the department on the monitoring and ecosystem impacts of contaminated sediments, recommending changes in administrative rules; directing the collection of chemical, physical, and biological data relating to contaminated sediment including standardization and quality control of data collection and report preparation, directing the analysis of data and preparing reports, developing sampling methodologies and laboratory protocols to document the extent of contaminants in the sediments of surface waters, evaluating and assessing sampling and laboratory results to assure consistency of results, providing technical review and editing of reports, investigating problem substances and pollution sources associated with contaminant levels in sediments, providing assistance to other DNR staff involved in sediment related projects; coordinating DNR sediment activities with related activities of other state and federal agencies; coordinating reviews of environmental impacts reports, project proposals, WPDES permits and water quality certification for sediment management and dredging projects.

c. Thomas P. Janisch--Advanced--DNR Bureau of Water Resources Management, Surface Water Standards and Monitoring Section--this position develops and implements sediment quality criteria for toxic and conventional substances, coordinates and reviews the application of these criteria to contaminated sediment sites, develops and recommends contaminated sediment cleanup strategies, establishes methodologies for assessing sediment quality and establishing sediment quality criteria, develops administrative rules incorporating sediment quality criteria, interprets sediment chemistry results; develops statewide inventory of contaminated sediment sites and prioritization system based on the potential hazardous nature of the in-place pollutants present and resources available; develops strategies and methodologies for assessing the environmental impacts and toxicity of sediments through sample collection and toxicity testing of sediment, evaluates and assesses sampling and laboratory results to assure consistency, develops or reviews methodologies for eliminating or mitigating the effect of in-place sediment toxicants in surface waters, develops procedures for application of standards to sediments and surface waters, writes reports of assessment results; develops statewide prioritization system for use in selecting state remedial demonstration projects, evaluates and recommends selected remedial measures at the demonstration site, develops monitoring strategies at the site, evaluates results and prepares reports that establish clean-up levels; coordinates the department review of Superfund and Wisconsin Environmental Fund project documents related to water quality and sediment, develops procedures to assess environmental impacts from contaminated sediments for these projects, develops and recommends sediment cleanup criteria for these projects, and develops strategy to evaluate the proposed remedial option for these projects; coordinates for DNR

the statewide evaluation of contaminated sediment data in Wisconsin's Great Lakes Area of Concern through the Remedial Action Planning process; reviews WPDES industrial wastewater permits for dredging projects to assure compliance with state water quality and sediment quality standards, participates in preparation of final water quality certifications and/or dredging project permit conditions to assure those conditions minimize water quality impacts, provides consultation to district staff in review of local dredging projects.

d. Joseph Ball--Advanced--Bureau of Water Resources Management, Surface Water Standards and Monitoring Section--this position is responsible for designing, coordinating, and conducting statewide surface water quality monitoring activities to evaluate the physical, chemical, and biological characteristics of lakes and streams, requiring significant expertise in water quality and aquatic ecosystem monitoring and data interpretation, especially community ecology of fish and other aquatic life; planning, directing and coordinating special aquatic ecosystem monitoring projects that may be beyond the scope of district staffs; coordinating the development and implementation of monitoring and data interpretation procedures; developing and managing contracts with outside consultants who provide monitoring and research services, assisting in the planning of projects and development of long-range strategies and policies relating to surface water quality monitoring activities, and serving as a liaison with EPA on surface water monitoring program activities and issues.

e. Ronald Martin--Advanced--Bureau of Water Resources Management, Water Resources Policy and Planning Section--this position develops and directs state monitoring programs for water quality and sediment to assess the environmental effect of remedial actions (undertaken as part of the Remedial Action Plans) in the Great Lakes, participates in coordination with federal agencies in drafting a comprehensive monitoring and surveillance program for the Great Lakes, reviews and evaluates monitoring data to assess the effectiveness of remedial measures and reviews monitoring strategies, prepares technical evaluation of monitoring results and effectively recommends changes in remediation strategies; develops system of classifying surface water resources for the state's antidegradation program, coordinates field staff and district staff water resource classifications for consistency, effectively recommends changes to administrative rules to designate waters for inclusion in the antidegradation classification; develops implementation strategy for department antidegradation policy and reviews requests for all increased wastewater discharges for consistency with antidegradation policy; coordinates the development and implementation of the department's aquatic nuisance control program as it relates to zebra mussels and other nonindigenous species, develops and updates a technical support document reviewing problems and recommending additional studies and a framework for developing an effective management program for

aquatic nuisance species, coordinating department zebra mussels investigations with other agencies, developing and distributing information materials relating to the environmental impact of zebra mussels, and preparing administrative rules and legislation relating to the control and management of zebra mussels and other aquatic nuisance species.

f. Patricia Trochlell--Advanced--Bureau of Water Resources Management, Surface Water Standards & Monitoring Section--this position serves as the wetland ecology expert for the Bureau and coordinates the development and application of NR 103, Wis. Adm. Code, governing the water quality standards for wetlands, including designing and reviewing the results of water quality assessment projects and developing and recommending mitigative measures based on these results; serves as department expert in establishing the location of wetland boundaries, assessing project impacts to wetlands, evaluating wetland management options, and assessing wetland functional values; develops and defends new or revised state surface water quality standards, policies, or administrative rules and coordinates review by department management, advisory committees, and legislative committees; serves as department expert for water quality issues related to the cranberry industry and works with the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, other state agencies, other DNR units, and DNR district and area offices; coordinates the Bureau of Water Resources Water Quality Certification program, including assisting in the development and revision of administrative rules, monitoring field office certification activities to assure consistency with requirements, and reviewing and recommending for action certification decisions for all projects which require a WPDES permit or which necessitate action by the Bureau of Water Resources Management.

g. Carolyn Betz--Senior--Bureau of Water Resources Management--this position is responsible for directing, coordinating, implementing, and evaluating the DNR's volunteer lake monitoring program which utilizes citizen volunteers to collect certain data from state lakes, including developing quality assurance plans for collected data; developing acceptable quality assurance guidelines and criteria for chlorophyll, dissolved oxygen, pH, temperature, phosphorus, water clarity, and other limnological parameters; recommending changes in program procedures; preparing a program evaluation report; determining lake data collection needs, schedules, parameters, and methods; interpreting lake data to determine statewide trends in lake water quality; assisting lake management staff in interpreting lake specific data to determine lake trophic status, achievement of water quality standards, comparison to surrounding lakes, and trends in lake quality; assisting lake management staff in identifying lake specific management needs; developing citizen volunteer training manuals; preparing program newsletters, press releases, technical articles.

h. Richard Wedepohl--Engineering Specialist--Advanced 2--Bureau of Water Resources Management, Evaluation & Special Projects Section--this position is responsible for developing the technical engineering aspects of a statewide lake management program, including developing general engineering design criteria for lake restoration and protection projects, establishing data collection and study design standards for projects, preparing project reports and draft legislation and rules based on project results; obtaining, managing, and directing the use of state and federal grants for lake protection and improvement projects, including directing the conduct of funded projects to ensure that sound engineering principles and practices are applied, setting engineering design standards for studies, and reviewing the technical adequacy of reports and data submitted by retained consultants; providing engineering consultation to lake organizations and their technical consultants, other DNR staff, and federal agencies for lake studies and implementation projects; serving as the department expert on the engineering aspects of complex lake water quality and management issues, including evaluating and utilizing complex mathematical models which describe and predict lake conditions under altered conditions.

In regard to the DNR's lake management program and the "lake team" which it coordinates in concert with the UW-Extension, Wisconsin Association of Lakes, lake organizations and citizens, the Wedepohl position provides the engineering expertise; the appellant's position the physical, chemical, biological, and hydrogeological expertise; and a planner position the planning expertise. Appellant's position's responsibilities overlap those of the Wedepohl position in relation to designing lake sampling techniques, computer modeling, developing water quality improvement practices, and providing technical assistance to lake associations, municipalities, and other public and private entities. Both appellant's position and the Wedepohl position function in uncharted scientific areas where there are few applicable standard methodologies.

The classification specification for the Water Resources Management Specialist series states as follows, in pertinent part:

**WATER RESOURCES MANAGEMENT SPECIALIST, SENIOR**

Positions allocated to this level include senior level Water Resources Management Specialists. Positions at this level differ from lower level positions in that the specialist develops and follows broadly defined work objectives and review of the work is limited to administrative evaluation by the supervisor. Positions at this level have extensive authority in carrying out their

assigned responsibilities. This involves independently implementing the assigned duties and having developed an expertise in the field. The work performed at this level requires a high degree of interpretation and creativity in exercising independent scientific judgment. The Water Resources Management Specialist at this level may be considered an expert in a segment of the program. Positions at this level typically function as: . . . (4) a program specialist responsible for the implementation of a program which is smaller in scope and complexity and does not have the interaction and policy development that is found at higher levels. In order to be designated at this level positions must be differentiated from the objective level by their depth and extent of program involvement, the number and complexity of the program(s) managed, and the complexity and uniqueness of the program in the assigned area.

#### **WATER RESOURCES MANAGEMENT SPECIALIST, ADVANCED**

Positions allocated to this level include advanced Water Resources Management Specialists. Positions typically serve as: (1) department expert for a significant segment of the water resources management program . . . The area of responsibility will normally cross program boundaries, require continually high level and complex contacts with a wide variety of government entities, business, industry, and private citizens regarding highly sensitive and complex water resources management issues and have significant programwide policy impact. The area of expertise will represent an important aspect of the program, involve a significant portion of the position's time and require continuing expertise. The knowledge required at this level includes a broader combination than that found at the Water Resources Management Specialist-Senior level. Positions at this level develop and follow broadly defined work objectives with the review of work being limited to broad administrative review. Positions have extensive authority to deal with top officials, both within and outside the department, especially in highly sensitive and complex statewide, interstate and/or national issues. These positions are responsible for developing, implementing, monitoring and evaluating statewide policies and programs and function under general supervision, work independently, and are considered to be the statewide expert in their assigned program area. In order to be designated at this level, the position must be easily distinguishable from positions at the senior level by the scope and complexity of the responsibilities.

According to the classification specification and the classification experts, the primary distinction between the Senior and Advanced classifications rests upon the breadth, complexity, and impact of the area of assigned program responsibility; the extent of assigned policy and program



authority; the level of required scientific expertise and the availability of comparable expertise in the department.

Based on these considerations, appellant's position's responsibilities in the areas of lake trophic state modeling (30%) and hydrogeology (10%) are Advanced level responsibilities, i.e., they are highly complex scientific areas; much of the work in the lake trophic state modeling area is in uncharted scientific areas; appellant's responsibilities in these areas have significant impact on the department's water quality program; appellant serves as the department expert in both of these areas; and appellant functions independently and has broad program and policy authority in these areas. Although respondent argues that appellant does not have policy and program authority in these areas comparable to that of other Advanced positions, a closer examination of the Advanced positions offered for comparison purposes in the hearing record, other than the Trochlell position, shows that policy and program authority consists mainly of authority to make decisions as to study and project design and analysis strategies and methodologies and as to program procedures, and participation in the establishment of water standards based on study or project results (See, e.g., Ball position, above). This is the type of authority appellant's position is assigned in the areas of hydrogeology and lake trophic state modeling. It should also be noted that appellant shares this type and level of expertise in these two areas with no one else in the department (except Mr. Wedepohl to an extent) whereas certain of the Advanced positions (See Sheffy, Talbot, and Janisch, above) have expertise and program responsibilities which overlap with, if not duplicate, each other's.

The difficulty in this case arises in determining whether and what part of the remainder of appellant's position's duties satisfy the criteria for classification at the Advanced level. Prior to 1990, appellant's responsibilities in the Ambient Lake Monitoring Program paralleled Ms. Betz's responsibilities in the Volunteer Lake Monitoring Program, i.e., responsibility for day-to-day program activities as well as quality assurance, data and trend analysis, and program evaluation. Since that time, the percentage of time devoted by appellant's position to this program has been reduced and the responsibility for day-to-day program activities assigned to an WRM-Spec Objective level position. Appellant's remaining responsibilities in this program area are quality assurance, data and trend analysis, and program evaluation. Although data and trend analysis is the type of implementation duty contemplated by the

Senior level classification, both quality assurance and program evaluation are Advanced level type responsibilities and, combined with appellant's other program responsibilities in the lake management and groundwater areas, demonstrate that, for a majority of appellant's time, his position shows the program breadth and complexity, the program and policy authority, and the level of scientific expertise required for classification at the Advanced level. Appellant and his witnesses very convincingly demonstrated that appellant's program responsibilities have a broad impact on the state's water quality program and are highly complex, and that the scientific expertise required of appellant to carry out these program functions is unique in the department and recognized nationally and internationally.

The conclusion that appellant's position is more appropriately classified at the Advanced level is bolstered by a comparison of the duties and responsibilities of his position with those of the Betz position. If it is accepted that the Betz position is correctly classified at the Senior level, the fact that appellant's position is assigned the higher level duties of a parallel program and, in addition, is assigned, for 40% of his time, highly complex hydrogeological and trophic lake state modeling duties, militate against a conclusion that appellant's position and the Betz position are comparable from a classification standpoint.


Order

The action of respondent is rejected and this matter is remanded for action in accordance with this decision.

Dated: May 27, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:lrn

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

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NOTICE  
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served

and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)