

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 JACK ESLIEN,  
                   Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
                   Respondent.  
 Case No. 84-0020-PC  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

This matter is before the Commission as an appeal from a reallocation decision. At the prehearing conference, the following issue was established for hearing:

Whether or not the respondent's decision reallocating the appellant's position from ES 5 (PR 15-05) to ES 4 (PR 15-04) instead of ES 5 was correct.

Sub-Issue: Whether any assurances received by Mr. Eslie in 1979 concerning the classification of his new position as set forth in his addendum to his letter of February 2, 1984 to the Commission creates an estoppel or other legal barrier against the foregoing reallocation.

The parties agreed to the language of the primary issue, but respondent objected to the Commission's jurisdiction over the sub-issue.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the appellant has been employed by the Department of Natural Resources, West Central District, in Eau Claire.

2. In January of 1979, the appellant voluntarily transferred from his position as an Environmental Specialist 5 (ES 5) with responsibilities for monitoring the construction and operation of the private water wells to another ES 5 position with responsibilities as a water pollution biologist.

3. At the time of the transfer, appellant's new supervisor, Mr. Terry Moe, was concerned whether the appellant's new position would be properly classified at the ES 5 level because he was aware that most of the other water pollution biologist positions were classified at the ES 4 level. When the position description for the appellant's new position was sent to DNR's Bureau of Personnel in Madison for signature, Mr. Moe attached a memo summarizing a prior telephone call and raising the issue of the proper classification for the position. The Bureau of Personnel did not respond to the memo, nor is there any indication in the record that the draft position description was ever signed by the personnel manager.

4. In 1983, respondent DER, with the assistance of DNR personnel, conducted a "pocket" survey of environmental specialist positions and revised the position standards for the ES classification. As a consequence of the survey, the respondent decided to reallocate the appellant's position to the ES 4 level, effective November 13, 1983.

5. As of November of 1983, appellant's duties and responsibilities were adequately described in the position description signed by the appellant on June 15, 1982 and again initialed by him on May 17, 1983. A copy of the position description is attached hereto and is incorporated into this finding as if fully set out below.

6. The position standard for Environmental Specialist and Environmental Specialist - Management, as revised in October of 1983 reads, in part, as follows:

#### INTRODUCTION

##### 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 coordination.

## 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 1) a specialist responsible for implementation of a major environmental program in a portion of a district where program decisions are delegated from the district office; 2) a specialist in a district responsible for implementation of a major environmental program in a significant portion of a district where, while the program has not been decentralized to an area, the program decisions have been delegated to the position; 3) a specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program; 4) a specialist in the central administrative office with specific subprogram responsibility in an environmental program; or 5) an environmental scientist position performing work of limited scope, impact and complexity and/or with limited discretion.

#### 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)

Definition:

This is responsible environmental program coordinative work. Positions allocated to this class typically function as: 1) an area program specialist responsible for implementing all phases of a major environmental protection program in a portion of a district where program decisions are delegated from the district office, or an equivalent combination of responsibilities; 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; 3) a central office specialist responsible for providing central office coordination and/or guidance for segments of an environmental program being implemented on a state-wide basis; or 4) an environmental scientist performing a wide range of functions involving assessing unusual conditions; evaluating incomplete or conflicting data; choosing and adopting a variety of specific scientific principles and techniques in order to develop research conclusions; developing methods and standards; evaluating programs or proposals; planning projects; coordinating work with others; and handling conflicts or unusual situations independently. Work at this level is performed under general direction.

7. Water resources management is one of the major programs specifically described in the ES Position Standard. The water resources program is divided into four sub-programs or sections: groundwater, non-point source, water quality planning and surface water evaluation. The surface water evaluation section in turn has three primary responsibilities: ambient surface water monitoring, basin assessment survey and water quality monitoring. The 10% of appellant's duties relating to the aquatic nuisance control are outside of the scope of the water resources management program. DNR central office responsibility for aquatic nuisance control rests with the Office of Technical Services.

8. The appellant's position is properly described as a "specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program." In addition, the appellant's position is specifically identified as a representative position for the ES 4 classification.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.44(1)(b), Stats. (1983-84).

2. The Commission has jurisdiction to consider appellant's allegation that respondent is equitably estopped from reallocating his position to a classification below that of Environmental Specialist 5.

3. Estoppel does not lie against the respondent as a result of the appellant's 1979 transfer to an ES 5 water pollution biologist position.

4. Appellant has the burden of showing that respondent's decision to reallocate his position from the ES 5 level to the ES 4 level was incorrect.

5. Appellant has failed to meet his burden.

6. Respondent's decision to reallocate the appellant's position to the ES 4 level was correct.

#### OPINION

##### Equitable Estoppel Theory

In an addendum to his letter of appeal, the appellant raised what is essentially an argument of equitable estoppel:

According to DER-PERS-122 (REV. 1-78), "the Administrator of Division of Personnel continually reviews positions in state service to ensure that they are properly classified and compensated.

In January of 1979, DNR Personnel office was advised of my ES-5 position as a transfer from sanitarian work to water quality (water resources management). They were asked if I could retain my ES-5

position while in this new line of work. Personnel indicated that there would be no problem.

Had personnel determined that my status should change to an ES-4 in 1979, I may have changed my mind and remained as a sanitarian or transferred into some other line of work as an ES-5.

This theory was reflected in the subissue established for hearing. Respondent argues that the Commission lacks the authority to consider the subissue because there was no action taken by the respondent DER within the scope of the subissue that was timely appealed.

The Commission's jurisdiction in the present case is over the 1983 reallocation decision. The decision to be reached by the Commission is one of whether or not the 1983 decision was correct, not whether the 1979 transfer was proper. However, the appellant is entitled to argue that the 1983 decision cannot upset the status quo established in 1979 under a theory of equitable estoppel. To conclude that the appellant is not entitled to advance this theory would prevent anyone from raising an equitable estoppel argument in an appeal where the preceding event (arguably generating the reliance) had occurred more than 30 days prior to date of the personnel action being appealed. §230.44(3), Stats. Having concluded that the Commission does have jurisdiction to hear the estoppel issue, the next question is whether the appellant has established the elements of estoppel. Those elements were described in Goeltzer v. DVA, 82-11-PC (5/12/82) as follows:

Equitable estoppel has been defined as "the effect of voluntary conduct of a party whereby he or she is precluded from asserting rights against another who has justifiably relied upon such conduct and changed his position so that he will suffer injury if the former is allowed to repudiate the conduct." Porter v. DOT, 78-154-PC (5/14/79). In order to establish estoppel against a state agency, "the acts of the state agency must be proved by clear and distinct evidence and must amount to a fraud or a manifest abuse of discretion. Surety Savings & Loan Assn. v. State of Wisconsin (Division of Highways), 54 Wis. 2d 438, 445, 195 N.W. 2d 464 (1972).

In the present case the evidence produced at hearing showed that appellant's supervisor was concerned enough about the classification of appellant's new position to call someone at DNR's Bureau of Personnel and to follow up with a brief memo when the new position description was sent in for signature. No response was ever received to the phone call or the memo and it was not known whether the position description was even signed by the personnel manager. The most that might be said in terms of reasonable reliance on the part of the appellant is that DNR personnel felt the appellant's position to be properly classified based on the existing position standard and the duties assigned to him. The appellant could not justifiably rely on these facts as an agreement by DER not to reallocate his position four to five years later based on a revised position standard. Otherwise, any employe whose position description was signed by the personnel manager at the time of hire could rely on an equitable estoppel theory to prevent DER from ever reallocating the position to a lower classification. Because the appellant was not justified in expecting perpetual classification at the ES 5 level, the actions by the state do not amount to a fraud or manifest abuse of discretion and equitable estoppel does not lie in this case. Therefore, it is unnecessary to address the question of whether the action or inaction of DNR can act as a basis for equitably estopping DER from reallocating a position. See Goeltzer v. DVA, 82-11-PC (5/12/82).

#### Merits

The merits of the reallocation appeal appear to be dictated by the express language of the position standards. The appellant was responsible for much (but not all) of the surface water evaluation section or sub-program for DNR's West Central District. The one portion of surface water

evaluation that is not within the appellant's responsibility is water quality modelling. Surface water evaluation is just one of four sections or sub-programs within the water resources management program, which is a major program as that term is used in the ES position standard.

The distinction between ES 4 and ES 5 that is relevant to this appeal is that ES 4 includes "a specialist in a district responsible for planning, coordinating, and implementing a specialized aspect of an environmental program" while ES 5 includes "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." The personnel specialist who audited the appellant's position testified that the appellant could not be classified at the 5 level because his responsibilities covered something less than one of the four sub-programs or sections within the water resources management program. In contrast, a comparison position of water supply specialist sanitarian for "private" water supplies in DNR's Lake Michigan District, classified at the ES 5 level, has district-wide responsibilities for all of one of two sub-programs or sections in the water supply program. The personnel specialist testified that where there are three or more sub-programs or sections within a major environmental program, a district level employe would have to be responsible for one complete section plus some portion(s) of another section or sections in order to be classified at the ES 5 level.

In addition to the language in the definition portions of the position standard, the ES 4 representative position of water resource management specialist in a district office closely resembles the appellant's responsibilities. The primary distinction between the appellant's position and



the representative position is that the appellant spends 10% of his time directing aquatic nuisance control for the district. This 10% time allocation is not enough to take the appellant's position beyond the scope of the representative position specified in the position standard. It should be remembered that the reallocation being reviewed was effective in November of 1983, just one month after the ES position standard was revised.

The revised position standard includes the following language:

[T]his 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.

Given the fact that the appellant's position was reallocated immediately after the ES position standard was revised, there were no changes in programs or emphasis that would permit the Commission to allocate the position of a water resources management specialist in a district office to anything other than the ES 4 level.

For the reasons set out above, the reallocation decision must be affirmed.

ORDER

Respondent's reallocation decision is affirmed and the appeal is dismissed.

Dated: Aug 1, 1984 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

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JPDO4

  
LAURIE R. McCALLUM, Commissioner

  
DENNIS P. MCGILLIGAN, Commissioner

Parties:

Jack Eslien  
DNR, Call Box 4001  
Eau Claire, WI 54702

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.	3 Agency No.
	ES Survey Update	370

4 NAME OF EMPLOYEE <b>John J. Eslien</b>	5. DEPARTMENT, UNIT, WORK ADDRESS <b>Department of Natural Resources West Central District Headquarters 1300 West Clairemont Avenue Call Box 4001 Eau Claire, Wisconsin 54702-4001</b>
6 CLASSIFICATION TITLE OF POSITION <b>Environmental Specialist &amp; 4</b> <b>REALLOCATION</b> 11/13/83	
7 CLASS TITLE OPTION (To be Filled Out By Personnel Office)	8. NAME AND CLASS OF FORMER INCUMBENT <b>Thomas R. Schuler - NRS 4</b>
9 AGENCY WORKING TITLE OF POSITION <b>Water Quality Biologist</b>	10 NAME AND CLASS OF EMPLOYEES PERFORMING SIMILAR DUTIES <b>Lee Liebenstein - ES 5, Ronald Martin - ES 5 Joe Kurz - ES 4, William Wawrzyh - ES 4</b>
11. NAME AND CLASS OF FIRST-LINE SUPERVISOR <b>Terry A. Moe Natural Resources Supervisor 3</b>	12 FROM APPROXIMATELY WHAT DATE HAS THE EMPLOYEE PERFORMED THE WORK DESCRIBED BELOW? <b>February 1, 1979</b>
13 DOES THIS POSITION SUPERVISE SUBORDINATE EMPLOYEES IN PERMANENT POSITIONS?      Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> IF YES, COMPLETE AND ATTACH A SUPERVISORY POSITION ANALYSIS FORM (DER-PERS-84).	

14 POSITION SUMMARY - PLEASE DESCRIBE BELOW THE MAJOR GOALS OF THIS POSITION

**See attached**

5 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**

**RECEIVED**

**JUN 15 1984**

**Personnel  
Commission**

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 attachments)

Signature of first line supervisor

**Terry A. Moe TAM 5/17/83**

Date

**June 15, 1982**

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 employee

**John J. Eslien**

Date

**6-15-82**

18 Signature of Personnel Manager

**[Signature]**

Date

**11/9/83**

Respondent's Exhibit # **1**

Position Summary

This position is responsible for evaluation and reporting of water quality at specific sites within the West Central District and/or a designated basin which leads to water quality improvement and documentation of achieved improvement. This position directs the District Aquatic Nuisance Control Program and coordinates the ambient monitoring program. By coordinating waste load assimilation studies and conducting and reporting small stream classifications, this position is an integral part of the District effluent limit setting program. This position is a part of the West Central District Water Resources Management Unit and reports to the Water Resources Management Supervisor.

Goals and Worker Activities

- 48% A. Evaluation of surface water quality through the conduct of assigned intensive studies under the basin assessment survey program.
  - A1. Initiate technical planning and organization for intensive study field sampling.
  - 10% A2. Conduct intensive study sample collection on basin surface waters to assemble water quality data.
  - A3. Monitor return of data to insure completeness and validity.
  - 15% A4. Identify biological samples to develop biotic indices for water quality determinations.
  - 20% A5. Interpret data obtained and formulate intensive study reports to identify basin water quality.
  - A6. Maintain supplies, equipment, and records for District water quality evaluation activities.
  
- 10% B. Direction of District aquatic nuisance control program
  - B1. Respond to public inquiries regarding aquatic nuisance problems and program.
  - B2. Perform field investigations to evaluate surface water nuisance problems and make recommendations.
  - B3. Review and act upon permit applications.
  - B4. Schedule, supervise, and initiate billing for chemical treatment of surface waters upon request.
  - B5. Perform required program administration including case and reference file maintenance, annual application mailing, waiver treatment card return monitoring, annual treatment/-activity report, and pesticide certification maintenance.
  
- 8% C. Coordination of waste load assimilation field investigations within the West Central District.
  - C1. Monitor stream flow to determine acceptable conditions for conducting WLA studies.

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- C2. Organize and assemble all preliminary equipment and logistic needs.
  - C3. Collect physical and qualitative field data and sample for laboratory analysis.
  - A3.
  - C4. Collate and provide data to Central Office for stream modeling.
- 12% D. Coordination of ambient surface water monitoring program.
- D1. Schedule submission of water samples to the Laboratory of Hygiene.
  - D2. Assemble field equipment necessary for collection of samples.
  - D3. Collect field data and water samples for laboratory analysis.
  - A3.
  - D4. Edit annual data tabulations for accuracy prior to publication.
  - D5. Evaluate station locations and data to determine adequate periods of record and need for new locations.
- 3% E. Participation in small stream classifications for effluent limit setting and water quality standards revision.
- E1. Conduct seasonal evaluations of selected small streams including electrofish sampling, completion of stream system habitat rating forms, and other sampling/documentation associated with the classification.
  - E2. Prepare stream classification recommendation report in conjunction with District water quality and fishery personnel.
- 4% F. Participation in attainability analysis effluent limit setting pilot project.
- D2.
  - F1. Collect physical data and qualitative field data and samples associated with the waste load assimilation study element of project.
  - F2. Conduct seasonal electrofish samplings associated with stream classification element of project.
- 2% G. Collection of District priority watershed biotic index resamples for program evaluation.
- D2.
  - G1. Collect aquatic macroinvertebrate samples at sites selected for resampling.
  - G2. Complete field evaluation sheets for each sample site.
  - G3. Pick and preserve macroinvertebrates at the laboratory to prepare for identification.

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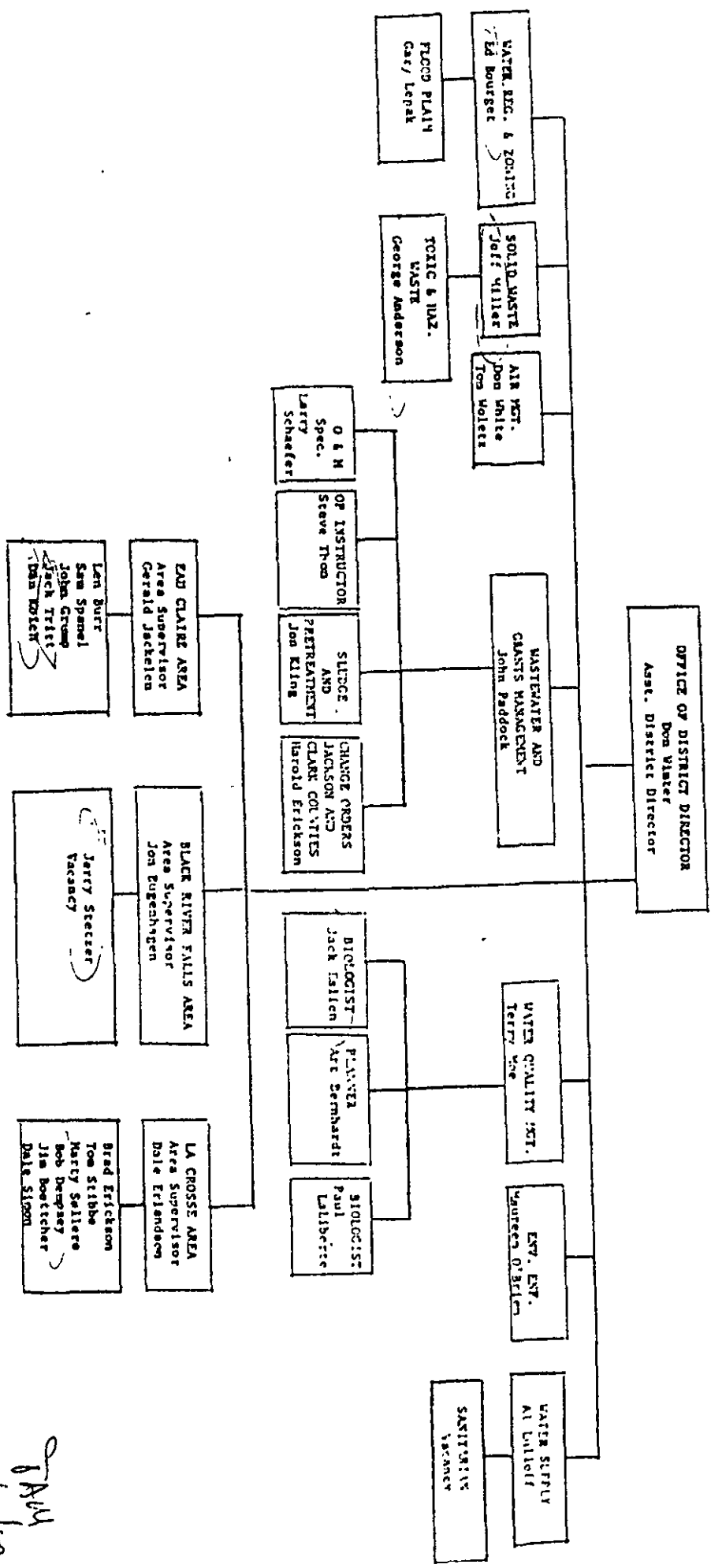
- 8% H. Accomplishment of activities related to program development and management, environmental emergencies, and Department cooperation such as time, travel, car, and narrative reporting, work planning, spill response, and assistance to other Department programs.
- 3% I. Maintenance of personal professional development program in technical and administrative areas through activities ranging from literature review to formal training courses.
- 2% J. Provision of water quality information, education and technical assistance to the general public, students, interest groups, media, consultants, industries, and other governmental units and agencies.

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WEST CENTRAL DISTRICT  
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