

1 **BEFORE THE PERSONNEL RESOURCES BOARD**  
2 **STATE OF WASHINGTON**

3 RAY LATHAM )

4 Appellant )

5 vs. )

6 DEPARTMENT OF ECOLOGY, )

7 Respondent. )  
8

CASE NO. R-ALLO-16-014

ORDER OF THE BOARD  
FOLLOWING HEARING ON  
EXCEPTIONS TO THE  
DETERMINATION OF THE DIRECTOR

9 **Hearing on Exceptions.** This appeal came before the Personnel Resources Board, NANCY  
10 HOLLAND YOUNG, Chair; SUSAN MILLER, Vice Chair; and VICKY BOWDISH,  
11 Member, for a hearing on Appellant's exceptions to the director's determination dated  
12 November 22, 2016. The hearing was held on May 3, 2017, at Room 110 Capitol Court,  
13 1110 Capitol Way, in Olympia, Washington.

14  
15 **Appearances.** Appellant Ray Latham was present and represented by Brandon Crowley,  
16 Representative for Washington Federation of State Employees (WFSE). Respondent  
17 Department of Ecology (ECY) was present and represented by Wendy Holton, Senior  
18 Human Resource Consultant, ECY.

19  
20 **Background.** On May 29, 2014, Appellant submitted a Position Review Request (PRR)  
21 to ECY's Human Resources (HR) Office requesting reallocation from Environmental  
22 Specialist 3 (ES 3) to ES 4.

23  
24 By letter dated May 16, 2016, Respondent notified Appellant that his position was  
25 properly allocated to the ES 3 classification.

26  
27 On June 1, 2016, OFM State HR received Appellant's request for a written Director's  
28 review of ECY's allocation determination.

1 By letter dated November 22, 2016, the Director's Review Specialist notified Appellant  
2 that his position was properly allocated to ES 3.

3  
4 On December 12, 2016, the PRB received Mr. Latham's Appeal Request. In his request,  
5 Mr. Latham took exception to the Director's Review Determination Letter.

6  
7 As described in his position description (PD), Appellant provides senior regional support  
8 for Ecology's Water Quality Program through managing the Industrial and Construction  
9 Stormwater National Pollutant Discharge Elimination System (NPDES) State waste  
10 discharge permits. Appellant reports to Mark Peterschmidt, Manager, Washington  
11 Management Service.

12  
13 The review period for this allocation request was six months prior to June 1, 2016.

14  
15 **Summary of Appellant's Arguments.**

16 Appellant contends he is the regional expert on irrigation and stormwater and the duties and  
17 responsibilities of his position best fit the ES 4 job class. Mr. Latham further contends he is  
18 the only person in the Central Region that performs this type of work.

19  
20 As noted in his PRR, Appellant asserts he is the regional expert on NPDES stormwater  
21 general permits and is a Certified Professional in Stormwater Quality. Appellant maintains  
22 he provides input to Permit Implementation Teams by soliciting comments from  
23 stakeholders, permittees, environmental advocates and industry groups.

24  
25 **Summary of Respondent's Arguments.**

26 Respondent contends Appellant's duties and responsibilities meet the ES 3 job class.  
27 Appellant further contends that each ES 3 is assigned an area of expertise, with Appellant's  
28 being industrial stormwater.

1 Respondent asserts that one of the differences between the two levels is the ES 4 is assigned  
2 a specialty area by the Program Manager. Examples of specialty areas include fish biology  
3 and chemistry. Respondent states this technical expertise is not required of Appellant.  
4

5 **Primary Issue.** Whether the director's determination should be affirmed and whether  
6 Appellant should remain allocated to the Environmental Specialist 3 classification.  
7

8 **Relevant Classifications.** Environmental Specialist 3; Environmental Specialist 4.  
9

10 **Decision of the Board.** The purpose of a position review is to determine which  
11 classification best describes the overall duties and responsibilities of a position. A position  
12 review is neither a measurement of the volume of work performed, nor an evaluation of the  
13 expertise with which that work is performed. A position review is a comparison of the  
14 duties and responsibilities of a particular position to the available classification  
15 specifications. This review results in a determination of the class that best describes the  
16 overall duties and responsibilities of the position. See *Liddle-Stamper v. Washington State*  
17 *University*, PAB Case No. 3722-A2 (1994).  
18

### 19 **Environmental Specialist 3**

#### 20 **Definition**

21 Under general direction, independently performs professional level assignments and  
22 environmental reviews in one or more of the following areas: 1) Environmental permit  
23 development and review; 2) Environmental inspections and/or enforcement activities;  
24 3) Scientific studies, surveys, and/or scientific analyses; 4) Grants, contracts, and loans;  
25 5) Interpretation of policy and environmental technical assistance.  
26  
27

#### 28 **Distinguishing Characteristics**

1 This is the fully qualified professional Environmental Specialist. Positions complete the  
2 full range of assignments under general direction. Completed work is reviewed for  
3 effectiveness in producing expected results.

4  
5 Positions at this level are characterized by assignments in one or more of the following  
6 areas:

7  
8 1) Environmental permit development and review: Reviews environmental permit  
9 applications for technical accuracy and compliance with regulatory requirements;  
10 negotiates permit conditions; develops or reviews technical plans and makes decisions  
11 regarding the scientific merit of the proposal; conducts conflict resolution; and prepares  
12 final permit evaluation/report for approval.

13  
14 2) Environmental inspections and enforcement activities: Conducts inspections or field  
15 investigations in order to respond to complaints/violations relating to environmental  
16 regulations; participates with higher level environmental staff in negotiating  
17 agreements/settlements; imposes on-site enforcement action as necessary; performs  
18 follow-up inspections to ensure corrective action is implemented; oversees contractor or  
19 consultant services for compliance and certifies performance; participates in clean-up  
20 activities and mitigation efforts at large oil spills or other hazardous waste spills;  
21 represents the agency in public meetings, hearings, and workshops; interprets and  
22 explains environmental regulations and requirements; and works directly with local  
23 municipalities and the public to promote environmental improvements.

24  
25 3) Scientific studies, surveys, and/or scientific analyses: Plans, develops, researches, and  
26 oversees or conducts data collection; utilizes computer modeling or other scientific  
27 analyses to determine effective methods and practices relating to toxic waste cleanup,  
28 resource management, or policy or regulation development; reviews technical plans for

1 accuracy and makes scientific recommendations regarding the development, coordination,  
2 and implementation of environmental technical assistance programs involving pollution  
3 prevention or control or natural resource management. Makes recommendations to senior  
4 staff regarding new or modified sampling and analytical testing methods, best  
5 management practices, and technical operating procedures.

6  
7 4) Grants, contracts, and/or loans: Provides technical environmental assistance and  
8 administrative guidance to grant/contract/loan recipients in the planning, design,  
9 construction and/or implementation of environmental protection projects. Recommends  
10 course of action to resolve issues or meet contract requirements.

11  
12 5) Interpretation of policy and technical assistance: Under general direction, responds to  
13 complex inquiries or requests for technical assistance requiring a high degree of technical  
14 scientific background and understanding.

## 15 16 **Environmental Specialist 4**

### 17 18 **Definition**

19 Serves as a senior environmental section specialist in program specific environmental  
20 laws, environmental regulations, and related activities in order to protect, preserve, and  
21 enhance air, land, and water resources; or serves as a senior environmental specialist in  
22 specific environmental public health programs in order to protect public health due to  
23 environmental factors. In either option, positions make decisions involving multiple  
24 stakeholders and that have significant public health, environmental protection, economic,  
25 and political consequences. Assigned areas of responsibility involve environmental  
26 assessments and protection actions that regularly require evaluation and coordination of  
27 interrelated environmental impacts on multiple specialty areas;

1 OR

2  
3 Manages all the environmental regulatory and analyses functions of an agency.

4  
5 **Distinguishing Characteristics**

6 Positions at this level use in-depth knowledge of the program area to carry out  
7 assignments, function independently, and require only general direction from the  
8 supervisor. Assignments are carried out using policies and program objectives and the  
9 work is planned and organized based on program priorities and deadlines.

10  
11 In addition, positions functioning as a senior environmental specialist are characterized by  
12 one or more of the following assignments which comprise the majority of the position:

- 13
- 14 • As a senior environmental section specialist, responds to highly complex inquiries  
15 for technical assistance requiring an advanced scientific knowledge;
- 16 • Develops, negotiates, implements, and monitors terms of agreements for  
17 environmental mitigation efforts, remedial actions, grants and loans, and other  
18 environmental actions. Gains consensus from multiple stakeholders and interest  
19 groups;
- 20 • Represents the agency as a senior environmental section specialist in enforcement  
21 actions, hearings, and legal proceedings. Provides testimony in cases involving  
22 the approval, denial, or conditioning of permits; the imposition of civil penalties;  
23 or in cases which form the basis for precedent-setting interpretations of agency  
24 jurisdiction and regulatory authority;
- 25 • Reviews, analyzes, develops and recommends policies, guidelines, and  
26 regulations governing assigned area of responsibility. Accepts stakeholder input,  
27 evaluates concerns, and recommends actions to management. Analyzes  
28 legislative bills for potential impacts on program administration. Reviews,

1 analyzes, and evaluates previous litigation, permits, and other data in order to  
2 develop effective regulatory guidelines;

- 3 • As a senior environmental section specialist, represents the program in an  
4 assigned specialty area; provides scientific and technical consultation to other  
5 agency staff, local and federal agencies on environmental impacts of various  
6 activities. Develops partnerships with communities, businesses, and interest  
7 groups in order to identify and respond to environmental issues affecting the  
8 common interest. Develops and enhances environmental protections and oversees  
9 implementation of changes;
- 10 • Assesses adverse environmental conditions and makes decisions that impact large  
11 numbers of the public (e.g. makes voluntary and mandatory wood stove burning  
12 curtailment decisions for the program);
- 13 • Responds to high priority and complex threats to the environment and human  
14 health emergencies. Coordinates all phases of a response with the appropriate  
15 private, local, state, and federal representatives and directs environmental  
16 response contractors. Conducts operations to control, contain, and clean up  
17 threats to the environment and human health; investigates the causes of the threat  
18 and recommends and takes appropriate response actions, including enforcement;
- 19 • Assesses the impacts of pollution on natural resources, gathers legally defensible  
20 data, develops damage estimates, and solicits and recommends appropriate  
21 restoration proposals;
- 22 • Plans, develops, designs and conducts professional research studies in order to  
23 determine the scientific validity of environmental enhancement efforts and  
24 impacts on interrelated natural resources. Provides scientific and technical  
25 assistance to other professional staff in environmental planning, regulation, and  
26 mitigation efforts.

1 In *Norton-Nader v. Western Washington University*, PRB Case No. R-ALLO-08-020  
2 (2008), the Personnel Resources Board (Board) stated that the following standards are the  
3 hierarchy of primary considerations in allocating positions:

- 4 a) Category concept (if one exists).
- 5 b) Definition or basic function of the class.
- 6 c) Distinguishing characteristics of a class.
- 7 d) Class series concept, definition/basic function, and distinguishing characteristics of  
8 other classes in the series in question.

9  
10 There is no class series concept for the Environmental Specialist series, so the Board next  
11 looked at the definition of the ES 3 and ES 4.

12  
13 The ES 4 job class speaks to those positions that “serve[s] as senior environmental  
14 section specialist[s] in program specific environmental laws, regulations and related  
15 activities...” The majority of Appellant’s duties and responsibilities do not appear to fit  
16 with this section of the definition.

17  
18 The ES 4 job class definition says positions “...make decisions involving multiple  
19 stakeholders and that have significant public health, environmental protection, economic,  
20 and political consequences...” ES 5s at ECY Headquarters and Appellant’s supervisor  
21 provide oversight and guidance to Appellant and handle issues that have a higher degree  
22 of impact.

23  
24 The ES 4 definition also states, “...Assigned areas of responsibility involve  
25 environmental assessments and protection actions that regularly require evaluation and  
26 coordination of interrelated environmental impacts on multiple specialty areas...” The  
27 duties assigned Appellant’s position do not regularly require work in multiple specialty  
28 areas.



1  
2 Another option for an ES 4 is the management of ...”all environmental regulatory and  
3 analyses functions of an agency.” Appellant is not assigned all environmental regulatory  
4 and analyses functions of ECY.

5  
6 The ES 3 job class speaks specifically to inspection and permit work. Appellant’s work  
7 involves conducting compliance inspections 80% of the time; reviewing, evaluating and  
8 approving engineering and technical documents; taking necessary actions to achieve  
9 permit compliance, including issuing penalties and administrative orders; negotiating,  
10 writing and administering stipulated agreements with permittees to achieve compliance;  
11 participating on the Industrial Stormwater Permit Implementation Team to provide  
12 guidance on writing/revising permit language; and interpreting and applying permit  
13 conditions to site specific issues. The options laid out in the definition of ES 3 are  
14 exemplified in the distinguishing characteristics.

15  
16 Most positions within the civil service system occasionally perform duties that appear in  
17 more than one classification. However, when determining the appropriate classification  
18 for a specific position, the duties and responsibilities of that position must be considered  
19 in their entirety and the position must be allocated to the classification that provides the  
20 best fit overall for the **majority of the position’s duties and responsibilities.** (emphasis  
21 added) See *Dudley v. Dept. of Labor and Industries*, PRB Case No. R-ALLO-07-007  
22 (2007).

23  
24 The majority of Appellant’s duties are consistent with the options in the definition of ES  
25 3.

26  
27 In a hearing on exceptions, the appellant has the burden of proof. WAC 357-52-110.  
28 Appellant has failed to meet his burden of proof.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Ray Latham is denied and the director's determination dated November 22, 2016, is affirmed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

WASHINGTON PERSONNEL RESOURCES BOARD

\_\_\_\_\_  
NANCY HOLLAND YOUNG, Chair

\_\_\_\_\_  
SUSAN MILLER, Vice Chair

\_\_\_\_\_  
VICKY BOWDISH, Member

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29