



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

BOARD OF DIRECTORS  
PERSONNEL COMMITTEE MEETING

COMMITTEE MEMBERS

BRAD WAGENKNECHT – CHAIRPERSON	ERIC MAR – VICE CHAIRPERSON
SUSAN ADAMS	CAROLE GROOM
SCOTT HAGGERTY	DAVID HUDSON
CAROL KLATT	MARY PIEPHO
JIM SPERING	

MONDAY  
SEPTEMBER 22, 2014  
9:30 A.M.

4<sup>th</sup> FLOOR CONFERENCE ROOM  
939 ELLIS STREET  
SAN FRANCISCO, CA 94109

AGENDA

1. **CALL TO ORDER - ROLL CALL**

*The Committee Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Committee members.*

2. **PUBLIC COMMENT PERIOD** (*Public Comment on Non-Agenda Items Pursuant to Government Code § 54954.3*). Members of the public are afforded the opportunity to speak on any agenda item. All agendas for regular meetings are posted at Air District headquarters, 939 Ellis Street, San Francisco, CA, and on the Air District's website [www.baaqmd.gov](http://www.baaqmd.gov) at least 72 hours in advance of a regular meeting. At the beginning of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Committee's subject matter jurisdiction. Speakers will be limited to five (5) minutes each.

3. **APPROVAL OF MINUTES OF JULY 28, 2014**

**Clerk of the Boards/5073**

*The Committee will consider approving the attached draft minutes of the Personnel Committee meeting of July 28, 2014.*

4. **APPEAL OF AIR POLLUTION CONTROL OFFICER/EXECUTIVE OFFICER DECISION ON DOUGLAS W. HALL'S COMPLAINT OF VIOLATION OF THE AIR DISTRICT'S EQUAL EMPLOYMENT OPPORTUNITY POLICY**

**J. Broadbent/5052**

[jbroadbent@baaqmd.gov](mailto:jbroadbent@baaqmd.gov)

*Pursuant to the Bay Area Air Quality Management District's Administrative Code, Division III, Personnel Policies & Procedures, Section 2.3, the Committee will consider an appeal of the Air Pollution Control Officer/Executive Officer's decision finding no violation of the District's Equal Employment Opportunity Policy as alleged by Mr. Hall.*

5. **COMMITTEE MEMBER COMMENTS/OTHER BUSINESS**

*Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)*

6. **TIME AND PLACE OF NEXT MEETING:** *At the Call of the Chairperson.*

7. **ADJOURNMENT**

*The Committee meeting shall be adjourned by the Committee Chair.*

**CONTACT THE CLERK OF THE BOARDS  
939 ELLIS STREET SF, CA 94109**

**(415) 749-5073  
FAX: (415) 928-8560  
BAAQMD homepage:  
[www.baaqmd.gov](http://www.baaqmd.gov)**

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities notification to the Executive Office should be given at least 3 working days prior to the date of the meeting, so that arrangements can be made accordingly.

Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the District's offices at 939 Ellis Street, San Francisco, CA 94109, at the time such writing is made available to all, or a majority of all, members of that body.

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
939 ELLIS STREET, SAN FRANCISCO, CALIFORNIA 94109  
FOR QUESTIONS PLEASE CALL (415) 749-5016 or (415) 749-4941**

**EXECUTIVE OFFICE:  
MONTHLY CALENDAR OF AIR DISTRICT MEETINGS**

**SEPTEMBER 2014**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Executive Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i> - CANCELLED	Monday	15	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i> - CANCELLED	Wednesday	17	9:45 a.m.	Board Room
<b>Board of Directors Climate Protection Committee</b> – <i>(Meets 3<sup>rd</sup> Thursday every other Month)</i> - CANCELLED & RESCHEDULED TO MONDAY, SEPTEMBER 29, 2014 AT 9:30 A.M.	Thursday	18	9:30 a.m.	Board Room
<b>Board of Directors Personnel Committee</b> <i>(At the Call of the Chair)</i>	Monday	22	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i> - CANCELLED	Wednesday	24	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i>	Thursday	25	9:30 a.m.	Board Room
<b>Board of Directors Climate Protection Committee</b> – <i>(Meets 3<sup>rd</sup> Thursday every other Month)</i>	Monday	29	9:30 a.m.	Board Room

**OCTOBER 2014**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i> - CANCELLED	Wednesday	1	9:45 a.m.	Board Room
<b>Board of Directors Stationary Source Committee</b> <i>(Meets Quarterly at the Call of the Chair)</i>	Wednesday	1	9:30 a.m.	Board Room
<b>Advisory Council Regular Meeting</b> <i>(Meets on the 2<sup>nd</sup> Wednesday of each Month)</i>	Wednesday	8	9:00 a.m.	Board Room
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	15	9:45 a.m.	Board Room
<b>Board of Directors Executive Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i>	Monday	20	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room

## OCTOBER 2014

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i>	Wednesday	22	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i>	Thursday	23	9:30 a.m.	Board Room
<b>Board of Directors Public Outreach Committee</b> <i>(At the Call of the Chair)</i>	Thursday	30	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room

## NOVEMBER 2014

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	5	9:45 a.m.	Board Room
<b>Advisory Council Regular Meeting</b> <i>(Meets on the 2<sup>nd</sup> Wednesday of each Month)</i>	Wednesday	12	9:00 a.m.	Board Room
<b>Board of Directors Executive Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i>	Monday	17	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Nominating Committee</b> <i>(At the Call of the Chair)</i>	Wednesday	19	9:30 a.m.	Room 716
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	19	9:45 a.m.	Board Room
<b>Board of Directors Climate Protection Committee</b> – <i>(Meets 3<sup>rd</sup> Thursday every other Month)</i>	Thursday	20	9:30 a.m.	Board Room
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i>	Monday	24	9:30 a.m.	Board Room
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i>	Wednesday	26	9:30 a.m.	4 <sup>th</sup> Floor Conf. Room
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i> - CANCELLED AND RESCHEDULED TO MONDAY, NOVEMBER 24, 2014 DUE TO THANKSGIVING HOLIDAY	Thursday	27	9:30 a.m.	Board Room

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Brad Wagenknecht and Members  
of the Personnel Committee

From: Jack P. Broadbent  
Executive Officer/Air Pollution Control Officer

Date: August 27, 2014

Re: Approval of Minutes of July 28, 2014

RECOMMENDED ACTION

Approve attached draft minutes of the Personnel Committee meeting of July 28, 2014.

DISCUSSION

Attached for your review and approval are the draft minutes of the Personnel Committee meeting of July 28, 2014.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Sean Gallagher  
Reviewed by: Maricela Martinez

Attachment – Draft Minutes of the Personnel Committee Meeting of July 28, 2014

Draft Minutes – Personnel Committee Meeting of July 28, 2014

Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, California 94109  
(415) 749-5073

**DRAFT MINUTES**

Summary of Board of Directors  
Personnel Committee Meeting  
Monday, July 28, 2014

**1. Call to Order – Roll Call**

Personnel Committee (Committee) Chairperson Brad Wagenknecht called the meeting to order at 9:36 a.m.

Present: Committee Chairperson Brad Wagenknecht; Vice-Chairperson Eric Mar; and Directors Scott Haggerty, David Hudson and Carol Klatt.

Absent: Directors Susan Adams, Carole Groom, Mary Piepho and Jim Spring.

Also Present: Board of Directors (Board) Chairperson Nate Miley.

**2. Public Comment Period:** No requests received.

**CLOSED SESSION**

The Committee adjourned to Closed Session at 9:37 a.m.

NOTED PRESENT: Board Chairperson Miley and Director Haggerty were noted entering the closed session at 9:38 a.m.

**3. Public Employee Performance Evaluations (Government Code Section 54957 and 54957.6) (Out of Order Agenda Item #4)**

*Pursuant to Government Code Section 54957 and 54957.6, a need existed to meet in closed session to conduct a performance evaluation of the Executive Officer.*

**4. Public Employee Performance Evaluations (Government Code Section 54957 and 54957.6) (Agenda Item #5)**

*Pursuant to Government Code Section 54957 and 54957.6, a need existed to meet in closed session to conduct a performance evaluation of the District Counsel.*

**OPEN SESSION**

The Committee resumed Open Session at 10:44 a.m. with no reportable action.

**5. Approval of Minutes of July 7, 2014 (Agenda Item #3)**

Committee Comments: None.

Public Comments: No requests received.

Committee Action:

Director Hudson made a motion, seconded by Director Haggerty, to approve the Minutes of July 7, 2014; and the motion carried by the following vote of the Committee:

AYES: Haggerty, Hudson, Klatt, Mar, Miley and Wagenknecht.

NOES: None.

ABSTAIN: None.

ABSENT: Adams, Groom, Piepho and Spering.

**6. Committee Member Comments/Other Business:** None.

**7. Time and Place of Next Committee Meeting:**

Monday, September 22, 2014, at Bay Area Air Quality Management District Headquarters, 939 Ellis Street, San Francisco, CA 94109 at 9:30 a.m.

**8. Adjournment:** The meeting adjourned at 10:45 a.m.

Sean Gallagher  
Clerk of the Boards

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

## Memorandum

To: Chairperson Brad Wagenknecht and Members  
of the Personnel Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: September 10, 2014

Re: Appeal of Air Pollution Control Officer/Executive Officer Decision on Douglas W.  
Hall's Complaint of Violation of the Air District's Equal Employment Opportunity  
Policy

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INTRODUCTION

This item is an appeal of a decision by the Air Pollution Control Officer/Executive Officer to deny an appeal of the decision made by the Air District's Equal Employment Opportunity Officer<sup>†</sup> that determined that no violations of the Air District's Equal Employment Opportunity Policy ("Policy") and Equal Opportunity Plan ("Plan")<sup>‡</sup> occurred, as alleged in a complaint filed by Air District employee Douglas Hall. (For the Committee's convenience, a copy of the Policy is attached as Attachment A; a copy of the Plan is attached as Attachment B; a copy of the Air Pollution Control Officer/Executive Officer's decision denying the appeal is attached as Attachment C, a copy of Mr. Hall's appeal of the Equal Employment Officer's decision is attached as Attachment D, a copy of the Equal Employment Officer's decision addressing Mr. Hall's complaint is attached as Attachment E, and Mr. Hall's Appeal is attached as Attachment F.)

Mr. Hall contends that the Air District has not properly implemented the Air District's Policy, because he was not selected in recent open recruitments for management positions in the Air District's Engineering Division. Mr. Hall contends that the failure to select him in these recruitments resulted from discrimination against him on the basis of both race and age. Mr. Hall does not contend that there was any deficit in the recruitment process for these two management positions. Rather, he contends that discrimination that had a "disparate impact" on him occurred in the selection of individuals to fill acting manager assignments in the Engineering Division prior to these recruitments. The Division Director's acting assignments were made on the basis of interviews, reviews of work product, and reviews of other aspects of job performance of interested candidates, rather than rotating the acting assignments among all

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<sup>†</sup> Pursuant to the Bay Area Air Quality Management District's Administrative Code, Division III, Personnel Policies & Procedures, Section 2.3 Discrimination Complaint Procedure, the Personnel Committee may consider an employee's appeal of the Air Pollution Control Officer/Executive Officer's decision regarding the District's Equal Employment Opportunity Policy.

<sup>‡</sup> The Plan generally implements the Policy. The Policy is set forth in Division III, Section 2 of the Air District's Administrative Code.



interested staff members. According to Mr. Hall, this resulted in his candidacy for the manager positions being disadvantaged because he was not selected to fill one of the acting manager roles. Mr. Hall further contends that the failure to appoint him to an acting manager position, “may appear neutral on its face, [but] is impacting the advancement of African Americans into management positions in the Engineering Division.”

At its March 24, 2014, Meeting, the Personnel Committee considered and denied Mr. Hall’s similar appeal of the issue of whether the same acting assignments in the Engineering Division constituted a violation of the Policy. Following that appeal, the Board of Directors directed staff to amend the Air District’s Administrative Code to remove the appeal of the Air Pollution Control Officer/Executive Officer’s decision on such complaints to the Personnel Committee. The Administrative Code was amended on May 21, 2014. Mr. Hall filed the present complaint before the Administrative Code was amended. Accordingly, at the Board of Directors’ direction, Mr. Hall was informed that he could choose whether or not to bring this matter before the Personnel Committee. Mr. Hall chose to do so.

Although Mr. Hall’s contentions may relate to particular recruitments, his claims can and do relate only to an alleged failure of the Air District to implement the Policy.<sup>§</sup> Therefore, neither Mr. Hall’s qualifications for the positions he sought, nor the qualifications of any other individuals, including the incumbents, are at issue in this matter. Moreover, because the issues raised by Mr. Hall cannot relate to the hiring, termination, or discipline of any employee, and particularly not an employee under the direct supervision of the Board of Directors, this matter must be considered in open session under the Brown Act.

#### RECOMMENDED ACTION:

Staff recommends that the Personnel Committee deny the appeal and take no further action, because the allegations in Mr. Hall’s complaint and subsequent appeals lack merit.

#### BACKGROUND

The Air District’s Policy and Plan have been in place since the late 1960’s. The Policy and the Plan ensure equal opportunity for all people to be recruited, employed, placed, selected for training, trained, evaluated, promoted, demoted, laid off, terminated, compensated, and otherwise treated within the workplace. As noted above, the Plan is designed to implement the Policy. The Policy and Plan have been revised several times over the years, with the latest revision occurring on September 12, 2011. The 2011 revision changed all references from “affirmative action” to “equal employment opportunity” and deleted items that referred to affirmative action plan activities, (i.e., those activities that would favor applicants or employees based on gender or ethnic status). The Policy and Plan place the responsibility for implementation with the Director of Administrative Services acting as the Equal Employment Opportunity Officer and the Air

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<sup>§</sup> Mr. Hall has styled his complaint as a “Race Discrimination and Age Discrimination” complaint referencing the Equal Employment Policy in the Air District’s Administrative Code. The Air District’s Administrative Code provides a complaint and appeal process only for alleged violations of the Policy, not for alleged acts of discrimination.

Pollution Control Officer/Executive Officer and provide that division directors are responsible for implementation within a division. Neither the Policy nor the Plan specifically addresses acting assignments.

In 2012, the Director of Engineering determined that there was a need to backfill two vacant positions with acting managers. Air District Division Directors have considerable flexibility to determine the procedures for making acting assignments. These determinations are based on the needs of the division to carry out the Air District's mission and are made in accordance with the Air District's Administrative Code and the Memorandum of Understanding between the Air District and the Air District Employee Association. Typically, the division director does not engage in any formal process and makes an acting assignment to an individual who the director believes can fill the role.

The Director of Engineering initially requested that senior staff in the Engineering Division apprise him of their interest in the acting assignments and indicated that the acting assignment might be rotated among interested staff. In many cases, Supervisor level staff members, who are immediately below managers, are considered for acting manager assignments. In this case, the Director of Engineering expanded the opportunity to undertake the acting manager assignments to Senior Engineers. After interviewing interested staff, including Mr. Hall, and considering their work performance and quality of work, the Director of Engineering determined the most qualified staff for the acting assignments. The Director of Engineering initially rotated four engineers in the acting assignments, but eventually chose to have only two engineers act on a longer-term basis, because the Director determined that those individuals were best handling the assignments and accomplishing the Engineering Division's work and the Air District's mission.

The Air District began recruitments to fill the two vacant Air Quality Engineering Manager positions in the Spring of 2013. Along with six other candidates, Mr. Hall applied for the open Engineering Manager positions. He was interviewed for the positions, including by the Division Director, and the Deputy Air Pollution Control Officer, but ultimately was not selected for the positions.

On October 6, 2013, Mr. Hall filed his first appeal contending that the process of making the acting manager assignments violated the Policy and Plan. Mr. Hall contended that the acting Engineering Assignments were not assigned in accordance with the Policy and Plan. According to Mr. Hall, the provision in the policy stating a commitment to "[p]rovide training to employees for positions of greater responsibility and afford employees the opportunity to demonstrate leadership and supervisory capabilities" mandates that acting assignments be distributed to all interested Air District staff, or at the least, to Mr. Hall.

As noted above, neither the Policy nor the Plan addresses acting assignments. Furthermore, nothing in the Air District Administrative Code or the Memorandum of Understanding requires that acting assignments be rotated or otherwise assigned to whomever is interested without regard to the need to accomplish the necessary work of the Air District.

Staff fully investigated Mr. Hall's allegations. Staff also retained a licensed investigator to assist with the investigation. Based on the findings of the investigation, there was no merit to Mr.

Hall's allegations. The investigation concluded that there was no evidence that the Director of Engineering violated any Air District policy based on the manner in which acting assignments were made as outlined above. The investigation further concluded that there was no evidence that acting assignments in the Engineering Division violated the Policy or the Plan. Furthermore, the investigation concluded that there is no evidence that race, ethnicity, or any other legally protected factor has played any role in acting assignments in the Engineering Division. In short, there was no evidence that the Air District violated the Policy or the Plan.

On the basis of the investigation, after following all appropriate procedures, on October 24, 2013, the Air District's Equal Employment Opportunity Officer responded to Mr. Hall's complaint and informed Mr. Hall that it had been determined by an independent investigator that there had been no violation of the Policy or Plan as alleged by Mr. Hall. On November 6, 2013, Mr. Hall appealed that decision to the Air Pollution Control Officer/Executive Officer. On November 26, 2013, the Air Pollution Control Officer/Executive Officer denied Mr. Hall's appeal and confirmed the findings of the Equal Employment Opportunity Officer. On December 18, 2013, Mr. Hall filed an appeal of the decision to the Personnel Committee. On March 24, 2014, the Personnel Committee heard a presentation by Mr. Hall, and considered and denied his appeal.

## DISCUSSION

On December 17, 2014, Mr. Hall filed a separate complaint alleging a violation of the Plan and the Policy in which he contends that the acting assignments in the Engineering Division have led to "disparate impacts" discrimination against him on the basis of race and age, because those assignments went to individuals who later were successful in the recruitments for the Engineering Manager positions filled in the Summer and Fall of 2014, and Mr. Hall was not. In Mr. Hall's words, "[t]hese discriminatory acts occurred on the 'practice field' before the 'game' or job announcement." According to Mr. Hall, the Director of Engineering had a plan to award the acting assignments to his favorites, provide tenure and training in those acting roles, and ultimately to hire those individuals into the permanent Engineering Manager positions. In Mr. Hall's words, the "appearance of a properly run recruitment process and employment selection procedure were only a disguise to cover up this subtle discrimination, as the hiring process was only perfunctory."

As with Mr. Hall's prior complaint, Air District staff fully investigated Mr. Hall's claims. Also, as with Mr. Hall's prior complaint, the Air District hired an independent outside attorney investigator to investigate Mr. Hall's claims. (The investigator hired to investigate Mr. Hall's December 17, 2014 complaint is different from the prior investigator to ensure independence of conclusions.) The investigation of Mr. Hall's claims concluded that there is no evidence of any violation of the Policy and Plan in the recruitment process for the Engineering Manager positions. The investigation further concluded that race, age, or any other protected factor did not play any role in the decisions to promote the incumbents to the Engineering Manager positions.

On the basis of the investigation, on April 22, 2014, following applicable procedures, the Director of Administrative Services, acting as the Air District's Equal Employment Opportunity Officer, informed Mr. Hall that on the basis of the investigation into Mr. Hall's complaints the

Air District had concluded that there was no employment-related civil rights violated in the recruitment for and appointment of qualified individuals to the permanent Engineering Manager positions. On May 5, 2014, Mr. Hall appealed that determination to the Air Pollution Control Officer/Executive Officer. On May 22, 2014, the Air Pollution Control Officer/Executive Officer affirmed the decision of the Director of Administrative Services. On June 12, 2014, Mr. Hall appealed the Air Pollution Control Officer/Executive Officer's decision to the Personnel Committee. Mr. Hall was informed that the Administrative Code no longer provided for such appeals, but because his initial complaint was filed before the Administrative Code was amended, he could elect to proceed with his appeal. Mr. Hall decided to go forward with his appeal to the Personnel Committee.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Brian C. Bungler  
Reviewed by: Rex Sanders

Attachments: Attachment A - Air District's Equal Employment Opportunity Policy  
Attachment B - Air District's Equal Opportunity Plan  
Attachment C - The Air Pollution Control Officer's decision denying an Appeal  
Attachment D - Mr. Hall's Appeal of the Equal Employment Officer's Decision  
Attachment E - The Equal Employment Officer's decision addressing Mr. Hall's  
complaint  
Attachment F - Mr. Hall's Appeal

## SECTION 2      **EQUAL EMPLOYMENT OPPORTUNITY POLICY** (Revised 10/5/11)

The Board of Directors of the Bay Area Air Quality Management District affirms its policy to provide equal employment opportunities for all persons to be recruited, employed, placed, selected for training, trained, evaluated, promoted, demoted, laid off, terminated, compensated, assigned work and otherwise treated without regard to race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, age or sexual orientation.

The District is committed to maintaining a meaningful Equal Employment Opportunity Plan. It is the responsibility of the Human Resources Office, under the direction of the Director of Administrative Services and under the general direction of the Executive Officer/Air Pollution Control Officer, to ensure the spirit and intent of the Equal Employment Opportunity Plan is carried out.

### 2.1      **OBJECTIVES. (Revised 10/5/11)**

- (a) The District will insure that each employee and applicant is afforded an equal opportunity in all aspects of the employment process without regard to race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, age or sexual orientation.
- (b) The District will analyze its work force and the population of the Bay Area.
- (c) The District will focus its equal opportunity efforts on enhanced outreach and training programs.
- (d) The District will establish and administer programs for employment, training and promotion of all employees without regard to race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, age or sexual orientation.
- (e) The District will be responsible for Equal Employment Opportunity Plan and designate an Equal Employment Opportunity Officer.
- (f) The District is committed to making a good faith effort to successfully achieve Equal Employment Opportunity.
- (g) Sexual harassment is contrary to basic standards of conduct between individuals and is prohibited by EEOC regulations. The District will therefore insure that the workplace is free from sexual harassment. Sexual harassment is defined in EEOC regulations, and includes, but is not limited to, the following: unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when such conduct is made explicitly or implicitly a term or condition of employment, is used as a basis for employment decisions, or has the purpose or effect of interfering with work performance or creating an otherwise offensive working environment.
- (h) The District will insure that no qualified person will be discriminated against on the basis of a disability. All qualified persons that can perform the essential functions of the job, with or without reasonable accommodation that does not create "undue hardship" for the District, shall be provided an equal opportunity for employment and promotion. All terms used in this section are defined in the regulations implementing the Federal Americans with Disabilities Act.

### 2.2      **RESPONSIBILITY FOR EQUAL EMPLOYMENT OPPORTUNITY. (Revised 10/5/11)**

- (a) The Air Pollution Control Officer of the District has the overall responsibility to the Board of Directors for actions by the staff in planning, coordinating, implementing, evaluating and reporting on all phases of the Equal Employment Opportunity Plan.

- (b) The responsibilities of the Equal Employment Opportunity Officer are listed in the Equal Employment Opportunity Plan.

2.3

**DISCRIMINATION COMPLAINT PROCEDURE (Revised 10/5/11)**

Unlawful discrimination refers to discrimination based on race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, age, or sexual orientation.

An employee or group of employees who believes an incident involving a violation of the District's equal employment opportunity policy has arisen, may submit the complaint (in writing) to the Equal Employment Opportunity Officer.

- STEP 1 The written complaint must be received by the Equal Employment Opportunity Officer within 30 days of the alleged discrimination and must specify the particulars of the alleged discrimination, including specific acts and/or statements. Although the specific act must have occurred within 30 days, supplementary or background information supporting the complaint may be included. If a complaint is received in an incomplete form, the Equal Employment Opportunity Officer will advise the complainant that help in its preparation can be arranged. A group of employees filing at the same time must allege acts of similar nature to be considered for class action.
- STEP 2 The Equal Employment Opportunity Officer will evaluate the complaint and, if necessary, conduct an investigation.
- STEP 3 Discrimination complaints found by the Equal Employment Opportunity Officer to be valid will be forwarded to the APCO for appropriate action. Complaints found by the Equal Employment Opportunity Officer to be invalid may be appealed to the APCO within ten (10) working days of the Equal Employment Opportunity Officer's decision. Any complaint decision forwarded or appealed to the APCO shall be acted upon within ten (10) working days of receipt. If the employee is not satisfied with the action of the APCO, the employee may request the complaint be heard by the Personnel Committee of the Board of Directors. The employee will submit the complaint to the Personnel Committee within fifteen (15) working days of the action of the APCO.

**EQUAL EMPLOYMENT OPPORTUNITY PLAN**

for

**Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109  
(415) 749-4980**

**EEO Contact:** Human Resources Officer  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
939 Ellis Street  
San Francisco, CA 94109  
(415) 749-4980

**EQUAL EMPLOYMENT OPPORTUNITY PLAN  
FOR BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

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## **BACKGROUND**

The Bay Area Air Quality Management District (Air District) is a regional government agency responsible for improving air quality in the San Francisco Bay Area. The Air District employs approximately 350 full-time employees in a variety of jobs ranging from Air Quality Engineers and Inspectors, to clerical and administrative support staff. Most of the Air District's employees work in the main office located in San Francisco, California.

The Air District affirms its policy to provide equal employment opportunities for all persons to be recruited, employed, placed, selected for training, trained, evaluated, promoted, demoted, laid off, terminated, compensated assigned work and otherwise treated without regard to race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, age or sexual orientation.

To affect its policy of equal employment opportunity, the Board commits itself and the Air District to implementing an Equal Employment Opportunity Plan. The plan is designed to analyze the Air District's workforce and the population of the Bay Area and to set forth specific plans and procedures to ensure equal employment opportunity.

## APPLICABLE REGULATIONS

The Air District's Equal Employment Opportunity Plan has been prepared according to the Air District's Administrative Code Division 3, Section 2: Equal Employment Opportunity Policy.

Federal and State equal employment opportunity laws and regulations include Title VII of the Civil Rights Act, the Equal Pay Act, the Americans with Disabilities Act, the Genetic Information Non-Discrimination Act, the California Fair Employment and Housing Act.

For purposes of the Equal Employment Opportunity Plan, the Air District collects data on gender, race or ethnic groups.

## EQUAL EMPLOYMENT OPPORTUNITY PLAN

### CHAPTER 1: COMMITMENT TO EQUAL EMPLOYMENT OPPORTUNITY

The Bay Area Air Quality Management District reaffirms its commitment to a policy of equal employment opportunity. The Air District will continue to administer its personnel policies and conduct its employment practices in a manner that treats each employee and applicant for employment on the basis of merit, experience, and other work related criteria, without regard to race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sex, age, or sexual orientation.

The Air District is committed to maintaining a meaningful, result-oriented Equal Employment Opportunity Plan. It is the responsibility of the Human Resources Office, under the general direction of the Executive Officer/Air Pollution Control Officer, to ensure the spirit and intent of the Equal Employment Opportunity Plan is carried out.

The Air District will designate the Human Resources Officer to also serve as the Equal Employment Opportunity Officer, and will focus its equal employment opportunity efforts on enhanced outreach and training programs. The Air District is committed to making a good faith effort to successfully achieve equal employment opportunity.

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(Signature)

Jack P. Broadbent  
Executive Officer/Air Pollution Control Officer

## EQUAL EMPLOYMENT OPPORTUNITY PLAN

### CHAPTER 2: ORGANIZATIONAL PROFILE

#### Workforce Analysis/Lines of Progression

The Air District conducts a workforce analysis to identify employees by gender and race/ethnicity in each job title. The data is collected from payroll records.

Job titles are listed by organizational unit. Job titles are listed from lowest to highest paid. The list includes all job titles, including departmental supervision, exempt, and nonexempt titles.

For each job title, the lower threshold of the salary range is provided, as well as the EEO Category to which the title is assigned. For each job title, the Air District identifies the total number of employees, the number of male and female employees, the total number of White, Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native employees, and the male and female employees within each of these race/ethnic groups.

#### Lines of Progression

In conjunction with the workforce analysis, the Air District develops lines of progression. Lines of progression (career ladders/career paths) identify the job titles through which an employee can move to the top of a line. For each line of progression, applicable departments are identified. These are the departments that employ persons in the job titles in the specified line of progression. Some lines of progression are limited to only one department, while others are found throughout several departments.

The lines of progression provide useful information regarding patterns of vertical and horizontal movement throughout our workforce. These patterns are evaluated to ascertain whether they provide to our employees the optimum career mobility and opportunities for advancement.

## EQUAL EMPLOYMENT OPPORTUNITY PLAN

### CHAPTER 3: JOB GROUP ANALYSIS

The Air District conducts the workforce analysis individually for every job title. The job titles are grouped for the comparison of incumbency to availability. There are several reasons for grouping jobs.

Many job titles are similar in content such that handling them individually in the Equal Employment Opportunity Plan is not necessary. Grouping together these very similar titles is appropriate for the comparison of incumbency to availability.

For many job titles, there is limited data available and the same data must be used for several related jobs. Therefore, grouping these related titles together is logical.

Many job titles have few incumbents. A meaningful comparison is conducted by grouping several similar titles and increasing the number of employees involved.

The most critical guideline in creating job groups is that job titles discuss "similar" or "related" jobs. Above all, the job titles placed into a job group must be more similar or related to each other than the job titles in other job groups.

Listed below are the guidelines that are followed in developing the job groups.

#### Job Grouping Guidelines

1. The content of the jobs in a group must be similar. Similar content refers to job responsibilities and requisite skills required.
2. The wage or salary rate for the jobs in a group must be similar. Pay rates are considered in conjunction with job content. Large apparent differences in pay, when associated with differences in job title and/or location within an organization, suggest an unacceptable job grouping.
3. Job titles placed in a job group should be similar in opportunity. Opportunity refers to the ability to take advantage of training, transfers, promotions, mobility to desirable situations, and other employment benefits. Ideally, each job within a job group should have opportunities similar to other job titles within the same job group.
4. The groups should not include jobs with clearly different representation patterns. For example, jobs predominately filled with males should not be combined in the same group with jobs predominately filled with females.
5. Many job groups, if appropriately constructed, should cut across departmental or organizational units, but not across EEO Categories.

6. Employers with over 150 employees should not use EEO occupational categories as the only job groups in an Equal Employment Opportunity Plan. EEO categories are generally much too broad for proper availability analysis purposes. However, jobs placed in a group should generally belong to the same EEO Category.
7. Employers with less than 150 employees may use EEO categories as the only job groups.
8. The size of the employer's workforce is a major factor in determining how well the criteria above can be met in creating job groups.
  - A. Job groups must have enough incumbents to permit meaningful comparisons of incumbency to availability. No minimum size has been established for this purpose, however, since it is dependent not only on the size of the job group, but also on the size of the availability percentage.

Although the Air District recognizes that it is not possible to adhere to every guideline above when creating job groups, the Air District does not combine job titles with different content, wages, or opportunities.

## **EQUAL EMPLOYMENT OPPORTUNITY PLAN**

### **CHAPTER 4: PLACEMENT OF INCUMBENTS IN JOB GROUPS**

Each job group appears on a Job Group Report with a job group name and number. The report lists each job title in the job group. For each job title, the worksheet provides the following information: EEO reporting category, pay grade, job title, employee headcounts for each job title, and overall percentages by gender and race/ethnicity.

## EQUAL EMPLOYMENT OPPORTUNITY PLAN

### CHAPTER 5: DETERMINING AVAILABILITY

"Availability" is an estimate of the proportion of each sex and race/ethnic group available and qualified for employment at the Air District for a given job group in the relevant labor market during the life of the Equal Employment Opportunity Plan. Availability indicates the approximate level at which each race/ethnic and sex group could reasonably be expected to be represented in a job group if the Air District's employment decisions are being made without regard to gender, race, or ethnic origin. Correct comparisons of incumbency to availability depend on competent and accurate availability analyses. With valid availability data, we can compare the percentages of those who could reasonably be expected to be employed versus our current employment (from the workforce analysis).

#### Steps in Comparison of Incumbency to Availability

##### Identify Availability Factors

The following availability factors are for consideration when developing availability estimates for each job group:

1. External Factor: The external requisite skills data comes from the most recent Census of Population.
  - a. Local labor area: An employee residence zip code analysis was conducted to identify the local labor areas.
  - b. Reasonable labor area: National: 100.0%
2. Internal Factor: The percentage of employees promotable, transferable, and trainable within the Air District.

Assign Internal and External Factor Weights: Weights are assigned to each factor for each job group. A combination of historical data and experience are used to determine the weights. Weights are never assigned in an effort to hide or reduce problem areas.

Identify Final Availability: Weights are multiplied by the component-specific data to produce weighted data for each component. Weighted data for each component are summed. This produces a final availability estimate for each sex and race/ethnic group.



## **EQUAL EMPLOYMENT OPPORTUNITY PLAN**

### **CHAPTER 6: COMPARING INCUMBENCY TO AVAILABILITY**

Availability estimates are made for each job group. The Air District compares the percentage of incumbents in each job group to their corresponding availability. A comparison is made between the percentage and that group's final availability.

## EQUAL EMPLOYMENT OPPORTUNITY PLAN

### CHAPTER 7: DESIGNATION OF RESPONSIBILITY

The Executive Officer/Air Pollution Control Officer of the Air District has the overall responsibility to the Board of Directors for actions by the staff in planning, coordinating, implementing, evaluating and reporting on all phases of the Equal Employment Opportunity Plan. The Executive Officer/Air Pollution Control Officer or his designee reports to the Board of Directors on the progress and objectives of the plan.

The Executive Officer/Air Pollution Control Officer designates the Human Resources Officer to also serve in the role of Equal Employment Opportunity Officer and be responsible to ensure that the equal employment policies and programs are implemented.

Division Directors are responsible to implement the Equal Employment Opportunity Plan within a division, including informing all supervisory personnel of the Air District's Equal Employment Opportunity policy and ensuring hiring, promotion, and employee development are consistent with program objectives.

It is the responsibility of Management to ensure that the workplace is free of sexual harassment and that the Air District takes corrective action when an employee is determined to have violated the Equal Employment Opportunity Plan's objective regarding harassment.

#### **Equal Employment Opportunity Officer**

The responsibilities of the Equal Employment Opportunity Officer will include:

1. Reviewing the Air District's personnel policies to ensure they are consistent with the equal opportunity laws and the Air District's Equal Employment Opportunity Plan.
2. Reviewing, evaluating, and updating the Equal Employment Opportunity Plan as necessary, and with the approval of the Executive Officer/Air Pollution Control Officer.
3. Providing assistance to divisions in implementing the Equal Employment Opportunity Plan.
4. Reporting progress of equal employment opportunity programs to the Executive Officer/Air Pollution Control Officer.
5. Advising divisions on training needs and encouraging development of training programs.
6. Recommending revision of job description forms when necessary so forms accurately reflect duties, responsibilities, and qualifications required for each job.

## **Human Resources Officer**

The responsibilities of the Human Resources Officer will include:

1. Disseminating the Equal Employment Opportunity Plan to all employees and other interested parties.
2. Providing all recruiting and hiring data to aid in monitoring the equal employment opportunity program, including the number hired, the number of terminations, the number of promotions, the number of persons trained, the number of persons interviewed, and other relevant data.
3. Providing the liaison between the Air District and school, community, and professional organizations, both inside and outside the Air District.
4. Providing the liaison between the Air District and compliance agencies.
5. Developing and implementing training programs that support the Equal Employment Opportunity Plan.
6. Reviewing all recruiting procedures, to ensure that they conform to equal opportunity and employment practice guidelines.
7. Providing various training programs.
8. Advising employees on availability of training inside and outside the Air District with emphasis on individual career development and training.
9. Submitting employment pattern reports to the Executive Officer/Air Pollution Control Officer.
10. Reviewing hiring and promotion procedures to ensure equal employment opportunity-guidelines are followed.
11. Reviewing the desirable qualifications on job descriptions to ensure that job requirements are non-discriminatory.
12. Reviewing the effectiveness of the Equal Employment Opportunity Plan from time to time and suggest changes as necessary.

## EQUAL EMPLOYMENT OPPORTUNITY PLAN

### CHAPTER 8: ACTION-ORIENTED PROGRAMS

The following programs have been developed to meet the Air District's Equal Employment Opportunity Plan:

#### A. SELECTION PROCESS

1. Review all class descriptions to ensure that they accurately reflect the position functions and contain the essential functions of the position in order to conform with the Americans With Disabilities Act.
2. Review the qualifications for each class to determine that the qualifications are job-related and nondiscriminatory.
3. Distribute class descriptions to management staff involved in recruiting, screening, selection, and promotion process.
4. Train all personnel involved in a selection process.
5. Evaluate selection tests to ensure that they are based on valid job-related criteria.

#### B. RECRUITMENT PROCEDURES

1. Maintain an extensive recruitment list of state and local community and professional organizations, state and local organizations representing persons with disabilities, state employment development departments, state vocational agencies, local sheltered workshops, college placement offices, and state and local educational institutions.
2. Actively encourage employees to refer applicants.
3. Make employees available for participation in Career Days, Job Fairs, and related activities in the community.
4. Maintain active interest file of applicants and distribute position announcements.
5. Contact community and professional organizations representing persons with disabilities for referrals.
6. Remain active in community organizations and encourage Air District employees to participate.
7. Advertise in various Bay Area newspapers and publications.
8. Continue recruitment efforts at colleges and schools. Provide brochures, conduct

informational presentations, and participate in career day activities.

9. Participate in career fairs.

#### PROMOTIONAL OPPORTUNITIES AND TRAINING

1. Post job announcements for promotional opportunities on bulletin boards, electronic bulletin boards, and distribute to all personnel.
2. Provide training to employees for positions of greater responsibility and afford employees the opportunity to demonstrate leadership and supervisory capabilities.
3. Inform employees about the Air District's Educational Reimbursement Program and Leave Policy for educational purposes.
4. Provide educational courses that will aid employees in obtaining mobility through promotions.
5. Provide career counseling to employees.
6. Continue to offer speech classes to employees who are non-native speakers of English.

## **EQUAL EMPLOYMENT OPPORTUNITY PLAN**

### **CHAPTER 9: INTERNAL AUDIT AND REPORTING**

To assure that the Air District's Equal Employment Opportunity Plan is fully implemented, the following internal audit system has been established.

1. The Human Resources Office will maintain and monitor accurate records of all employment activities, including, but not limited to, applicants, hires, promotions, transfers, and terminations.
2. The Executive Officer/Air Pollution Control Officer will review reports provided by the Equal Employment Opportunity Officer to ensure that the Air District's Equal Employment Opportunity program is being carried out.
3. The Human Resources Officer will file an EEO-4 Report as required by the federal guidelines.
4. The Executive Officer/Air Pollution Control Officer or his designee will present the Equal Employment Opportunity Plan to the Executive Committee of the Board of Directors.
5. The Equal Employment Opportunity Plan will be provided to interested parties upon request.
6. The reporting and auditing system will be utilized to measure the status and effectiveness of the Air District's Equal Employment Opportunity Plan.

**CONFIDENTIAL****OFFICE MEMORANDUM  
May 22, 2014**

TO: Douglas Hall, Supervising Air Quality Engineer

FROM: Jack Broadbent, Executive Officer/Air Pollution Control Officer

SUBJECT: Response to Race and Age Discrimination

This is in response to your memo of May 5, 2014 in which you appeal the determination of your claim of discrimination in the appointments for Air Quality Engineering Manager Positions in the Engineering Division. In your appeal you request that I refer your complaint back to the Equal Employment Opportunity (EEO) Officer, Mr. Colbourn for additional investigation.

First, I would like to point out, that, contrary to your assertion that no African American employees have been appointed to District management positions, in fact three of the current District managers are African American. The District has been and continues to be committed to promoting individuals of all racial and ethnic background and gender based on their demonstrated skills and potential for successful job performance.

I have reviewed the EEO Officer's response to you along with various investigation related materials. Much of the investigative material was produced by an outside attorney the District retained to conduct a thorough, professional, and objective investigation into the allegations you raised concerning acting manager assignments made by Engineering Division Director, Jim Karas, and the subsequent permanent appointments.

Based on the investigator's findings regarding acting assignments and your non selection for permanent appointment to an Air Quality Engineering Manager position in the Engineering Division, the investigator concluded that no employment related civil rights were violated and that these appointments were made in a manner that is consistent with sound management principles and practices.

For the reasons above, I decline to take any further action and affirm the response previously proved by the EEO Officer to your December 17, 2013 Age and Race Discrimination complaint.

However, we fully support continuing efforts by our staff to acquire the skills and knowledge to increase their potential for advancement. We would like to invite you to work with the Human Resources staff to explore training programs which may help you to achieve your career goals. I ask that you contact Mr. Colbourn to schedule a discussion regarding the types of programs which may be of value to you as you continue to pursue your career objectives.

Cc: Jack M. Colbourn, Director of Administrative Services Division/EEO Officer/HRO

May 5, 2014

To: Executive Officer/Air Pollution Control Officer

From: Douglas W. Hall, Supervising Air Quality Engineer

Subject: Age and Race Discrimination Complaint

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In the April 23, 2014 email, the Equal Employment Opportunity (EEO) Officer responded back to my filed complaint on December 17, 2013 where I asserted a complaint of age and race discrimination. I am troubled that discrimination is in America today. I thought growing up as a country boy in Louisiana that if I was highly educated and worked hard I could become a person that could make a difference in any organization. I thought management would applaud and acknowledge the overachievers. I have erred in my judgment as I have hit the proverbial glass ceiling. This ceiling means no matter how hard I work I will be locked out of the elite class of management. Even though this is apparently the case, I will continue to fully support the mission of the District, and give more than a 120 %.

Why file the appeal?

I am now appealing the decision of the EEO Officer to the Executive Officer. The impetus for appealing this complaint is fueled, primarily, by injuries that two Air Quality Engineering Managers in the Engineering Division suffered at the hands of the Director of Engineering. One was downgraded to a lower classification and the other transferred to another division because of injustices administered by the Director of Engineering. Many others in the Engineering Division have been unjustly harmed.

Why file an age and race discrimination complaint?

I have many reasons but here are a few. To my knowledge, there has been no Black professional in the history of the District ever promoted into management. When I was hired 27 years ago, I was the only Black professional in the Engineering Division. At this moment, I am the only Black professional in the Engineering Division. I am now noticeably being held back from entering into management and have been stripped of my challenging programs. I have been denied opportunities given freely to others. The two people I supervised in my tenure with the District have now been promoted. The two new managers are younger than me by a decade or more and did senior-level work. Something is not right here in this division. I hope the Executive Officer will take this matter seriously and take appropriate action to protect a person civil rights in the area of employment.

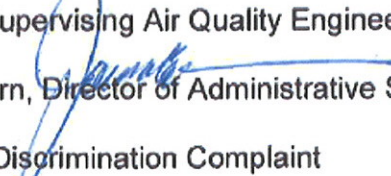
What do you want the Executive Officer to do?

I would like the Executive Officer to remand the case back to the EEO Officer for further review and look into the disturbing nature of the Director of Engineering.



**OFFICE MEMORANDUM****April 22, 2014**

**TO:** Douglas Hall, Supervising Air Quality Engineer

**FROM:** Jack M. Colbourn,  Director of Administrative Services Division

**SUBJECT:** Age and Race Discrimination Complaint

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This memo is in response to your memo of December 17, 2013 in which you allege that the effects of recent appointments to the position of Air Quality Engineering Manager in the Engineering Division discriminate against you on the basis of age and race.

In response to your complaint the District retained an outside attorney to conduct a thorough investigation into the allegations you raised concerning acting manager assignments made by Engineering Division Director, Jim Karas. The investigator also explored Mr. Karas' recommendation that two other individuals be promoted to the vacant Engineering Manager position. We note that the investigator used in this instance was a different individual from the one used previously in order to assure you that the charges were impartially investigated without influence from prior investigations.

After interviewing numerous individuals and reviewing a voluminous amount of documentation relating to acting assignments, the Engineering Manager recruitment, and other recent recruitments in the Division, the investigator concluded that District policy grants Mr. Karas broad discretion in making acting assignments and there is no evidence to suggest that Mr. Karas has abused that discretion or that his decisions concerning acting manager assignments or that the permanent appointments violated your employment based civil rights.

The investigator concluded that Mr. Karas did not abuse his discretion in recommending other qualified employees for the permanent positions of Engineering Manager. According to the investigator, Mr. Karas credibly explained his reasons for appointing others to these positions. While Mr. Karas did consider tenure as acting manager in his recommendations for the promotion, that was not the only reason for his recommendations. Further, Mr. Karas' belief that other candidates were the most qualified for the positions is a sentiment which was corroborated by others who were involved in the recruitment process.

Based on the investigator's findings regarding acting assignments and your non selection for permanent appointment to the Air Quality Engineering Manager positions in the Engineering Division, we have concluded that no employment related civil rights were violated and that these appointments were consistent with management principles and practices.

June 12, 2014

To: Brad Wagenknecht – Chairperson and Personnel Committee Members

From: Douglas W. Hall, Supervising Air Quality Engineer

Subject: Appeal of Race and Age Discrimination Complaint to Personnel Committee

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I am filing an appeal of a race and age discrimination complaint to be heard before the Personnel Committee in accordance with the Administrative Code, Section 2.3, Step 3, which was in effect at the time of filing per the following:

STEP 3        Discrimination complaints found by the Equal Employment Opportunity Officer to be valid will be forwarded to the APCO for appropriate action. Complaints found by the Equal Employment Opportunity Officer to be invalid may be appealed to the APCO within ten (10) working days of the Equal Employment Opportunity Officer's decision. Any complaint decision forwarded or appealed to the APCO shall be acted upon within ten (10) working days of receipt. **If the employee is not satisfied with the action of the APCO, the employee may request the complaint be heard by the Personnel Committee of the Board of Directors.** The employee will submit the complaint to the Personnel Committee within fifteen (15) working days of the action of the APCO.

I filed my complaint on December 17, 2013 and followed the complaint resolution process. I have attached to this appeal a copy of my correspondences detailing the complaint and the District's reply for your benefit. In addition, I have attached a copy of my job qualifications to let you know that this is not a frivolous matter but a serious matter of discrimination that deserves the attention of the Personnel Committee. I realize that the Personnel Committee is not a trier of fact, like a judge and jury, and the Committee's allegiance is to the Executive Officer; however, as it stood at the time of filing, the Personnel Committee has a right to know of these discriminatory complaints as part of the last step in the appeal process.

I will not belabor you with the details of this complaint on race and age discrimination beyond the facts already provided in the attachments. However, I would like to meet with you briefly for the Personnel Committee to hear the essence of my appeal of the race and age discrimination complaint.

December 17, 2013

To: Equal Employment Opportunity Officer

From: Douglas W. Hall, Supervising Air Quality Engineer

Subject: Race Discrimination and Age Discrimination

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I am filing a complaint as permitted under Section 2 of the Equal Employment Opportunity Policy:

“An employee or group of employees who believes an incident involving a violation of the District's equal employment opportunity policy has arisen, may submit the complaint (in writing) to the Equal Employment Opportunity Officer.”

I believe that the Director of Engineering has discriminated against me in the process of hiring two new Air Quality Engineering Managers in the Engineering Division in the area of race and age. These discriminatory acts did not originate during the recruitment process nor the selection process, which was overseen by the Human Resources Department. These discriminatory acts occurred on the “practice field” before the “game” or Job announcement. The Director of Engineering had a plan to: 1) select his two favorites for an acting managerial assignment, 2) give them tenure in that management role (aggregating close to a year in a 15 month window prior to hiring), 3) provide on-the-job training by the hiring manager (Director of Engineering) for their growth and development and 4) offer them finally the management position at the conclusion of the hiring process. The appearance of a properly run recruitment process and employment selection procedure were only a disguise to cover up this subtle discrimination, as the hiring process was only perfunctory.

**Race Discrimination [Disparate Impact]**

In United States employment law, the doctrine of disparate impact holds that employment practices may be considered discriminatory and illegal if they have a disproportionate "adverse impact" on members of a minority group. Under the doctrine, a violation of Title VII of the 1964 Civil Rights Act may be proven by showing that an employment practice or policy has a disproportionately adverse effect on members of the protected class as compared with non-members of the protected class. The doctrine prohibits employers "from using a facially neutral employment practice that has an unjustified adverse impact on members of a protected class. A facially neutral employment practice is one that does not appear to be discriminatory on its face; rather it is one that is discriminatory in its application or effect. The practice of allowing employees to hold acting managerial assignments for extended periods prior to the hiring process, in essence, hands the position over to them. For example, the hiring manager has stated the importance of this acting managerial assignment in the announcement of the two new hires.

### Pam

I have selected Pamela Leong for Air Quality Engineering Manager in the Engineering Division. Pam demonstrated that she has the most relevant experience and qualifications to perform the duties of this position... She also has been acting as Air Quality Engineering Manager for the past 6 months ...

### Sanjeev

I have selected Sanjeev Kamboj for Air Quality Engineering Manager in the Engineering Division... For the past eleven months, Sanjeev has been Acting Manager of the Permit Systems Section.

This process which may appear to be neutral on its face is impacting the advancement of African Americans into management positions in the Engineering Division. When the Director of Engineering justifies the promotion of Pam Leong by having **"the most relevant experience and qualifications"**, there is key evidence that the seemingly neutral practice of promoting employees with "acting manager" experience is in fact having a disparate impact. Also, when I was hired in 1987, I was the only Black professional ever hired, to my knowledge, in the Engineering Division (back then the Permit Services Division). Today, I am the only Black professional presently in the Engineering Division. This practice of giving the Director of Engineering full discretion to run his division unfettered is having an adverse impact on Black Professionals in the Division.

Also, I believe race discrimination occurred through disparate impact when the Director of Engineering manipulated the "temporary promotional" process by putting his favorites in the acting managerial positions and foregoing the rotational process he professed. The Director of Engineering put out an announcement to attract all interested engineers (senior level and higher) for the opportunity to hold an acting managerial assignment in the Engineering Division. See the Attachment I for the opportunity for an acting managerial assignment. Later, he held meetings to discuss this opportunity with each of the interested engineers. He never went through with his plan. He scrapped the planned rotational process, which would have provided fair and equitable treatment for all. Instead, for all intent and purposes, he appointed two of his favorites for the two acting managerial assignments.

The Director of Engineering exercised a bad management practice, which hurts Blacks in breaking the proverbial glass ceiling for attaining management positions. A good management practice, in sync with the Equal Employment Opportunity Policy, would be to identify all engineers having promotional potential and recognize those engineers with personal desires for advancement so that those individuals may be given full opportunities for training, transfers or mentoring to gain the skills needed for the promotion. The Division directors should encourage a balancing of the operational work demands of the District with employee development needs and be a champion for promoting employment equity practices.

### Age Discrimination

The Age Discrimination In Employment Act (ADEA) of 1967 states, "it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training." When individuals are 40 years old or older and the targets of harmful employment decisions, it could rise to the level of illegal age discrimination. Age discrimination in the workplace affects the Air District and the older worker. An agency that fails to value older workers is missing an opportunity to hire loyal

and dedicated people with years of experience. Younger workers do not have an opportunity to learn from older workers when discrimination eliminates experienced employees from the ranks.

I believe I have been discriminated against because of my age in being denied a promotion for the position of Air Quality Engineering Manager. Three of the primary reasons for this claim are presented as follows:

### **Assignments**

Even though the Director of Engineering is older than me, he prefers younger engineers over older ones. In the engineering hierarchy, supervisors are ranked higher than seniors and are one notch below that of the manager. Supervisors are, on average older, than the seniors. In the Engineering Division, the statistics may show that supervisors are at least, on average, a decade older or more. The three supervisors in the Permit Evaluation Section are all in their sixties. I am one of those supervisors. The two engineers promoted to the management positions are probably in their mid-forties. When Barry Young appointed one of the supervisors around my age to be acting manager in his absence, the Director of Engineering objected and chose a younger engineer in the Section (Sanjeev Kamboj). Even though I was available and had served as acting manager for the manager when he was out, the Director of Engineering bypassed me for the younger person. Eventually, he was promoted into management.

### **Hiring Younger Employees**

I was turn down for the two management positions in the Engineering Division. It was given to two less-qualified younger employees. Sanjeev Kamboj in his capacity as acting manager did not do the budget for his Section during his reign. It was prepared by acting manager Pam Leong. Sanjeev Kamboj did not write a policy during his time as acting manager nor did he work on any major lead project prior to his assignment or during his assignment. Sanjeev Kamboj had not supervised anyone prior to his "temporary promotion" to management. For all practical purposes, Pam Leong and Sanjeev Kamboj leapfrogged from the senior position directly into management bypassing the more qualified class of older supervisors.

### **Favoritism**

Favoritism happens when managers dole out the benefits based on whom they like, rather than who is doing the best job for the company. It is very frustrating to work for an agency that allows favoritism to flourish as in the Engineering Division. Favoritism hurts morale, diminishes performance and productivity, and leads to lower retention rates, as employees whose good work goes unrecognized decide to move on to better opportunities. Favoritism is bad management, but is it illegal? The law doesn't prohibit poor management practices or general unfairness. However, favoritism crossed the line in my case because of the practice of age discrimination. Age discrimination or any discrimination is in total opposition to the District's policy on equal employment opportunity.

### **Fact**

The younger employees were given the best assignments and job opportunities for advancement. This favoritism has been extended to Pam Leong and Sanjeev Kamboj. Another younger person being showered with favoritism and is on the rise is Fred Tanaka. Proposition 209 bans favoritism or preferential treatment. It stresses a purely merit-based system without preferential treatment. At my age and with my past accomplishments and achievements, I am well prepared and eager to compete with anyone purely on a merit-based system. However,

because I am well within my retirement age, I am out of favor by the Director of Engineering. However, I still have a lot to offer as a long-time loyal and dedicated employee of the District. The District should not allow for age discrimination to become the norm in the Engineering Division.

### **Recommendation**

I recommend that an investigation be launched to determine the severity of these alleged infractions, which denied an elderly Black employee an opportunity to join the elite management team at the Air District. If my charges of race and age discrimination are found to have merit and to be as I have declared, appropriate action should be taken immediately by the Equal Employment Opportunity Officer to eradicate race and age discrimination in employment practices in the Engineering Division. I have proposed a satisfactory remedy below.

### **Remedy**

To be intolerant to race and age discrimination at the District, and to compensate the aggrieved party for the harm that has befallen him, and to send a strong message to the Director of Engineering to provide fair and equitable treatment to all staff, I recommend that the fourth management position in the Engineering Division that was lost because of the 3<sup>rd</sup> DAPCO position be restored. The District has grown immensely in the number of management positions over the years. The Engineering Division is the only major division at the District which has not grown in the number of managers since I joined the Air District (more than 26 years ago). It is rich with minorities and females and is fertile ground to increase workplace diversity. Furthermore, to eliminate a management position in the Engineering Division would be regressive, in my opinion. It would stagnate opportunities for promotional advancement into the management field for minorities and females, which are already few and in between.

Also, once restored, I recommend that Juan Ortellado be reassigned his old position as Manager of Permit Operations where he excelled. Presently, Pam is managing that section along with Engineering Projects. Further, I recommend that I become the new manager of the Permit Evaluation Section filling the vacancy left by Juan. My entire time at the District has been in the Permit Evaluation Section and I am well qualified to perform the duties and responsibilities of that management class. My hiring selection can follow the same process as the promotion for Sanjeev Kamboj (chosen by the hiring manager from the list of finalist in the recent management recruitment for the division).

## ATTACHMENT

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**From:** Douglas Hall  
**Sent:** Monday, September 10, 2012 4:21 PM  
**To:** Sa Sa Kotovsky  
**Subject:** FW: Interest in Acting Manager

Sa Sa,

I am interested in the two vacant Manager positions. Please arrange an appointment for me to discuss this opportunity with Jim.

Thanks,

Doug

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**From:** Jim Karas  
**Sent:** Tuesday, September 04, 2012 5:01 PM  
**To:** Juan Ortellado; Barry Young; Pamela Leong; Joseph Slamovich  
**Subject:** RE: Interest in Acting Manager

Clarification:

Senior staff includes senior engineers and above.

Please have interested staff contact SaSa by Friday, September 14<sup>th</sup>.

JimK

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**From:** Jim Karas  
**Sent:** Tuesday, September 04, 2012 4:54 PM  
**To:** Juan Ortellado; Barry Young; Pamela Leong; Joseph Slamovich  
**Subject:** Interest in Acting Manager

Managers,

As you know, we have two vacant Manager positions. Please have any interested senior staff make an appointment with SaSa to discuss this opportunity with me.

JimK

Jim Karas

Director of Engineering

Bay Area Air Quality Management District

[jkaras@baaqmd.gov](mailto:jkaras@baaqmd.gov)

[www.baaqmd.gov](http://www.baaqmd.gov)



# Douglas W. Hall

## Education, Experiences and Accomplishments

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### Summary of Qualifications

Supervising Air Quality Engineer with 24 years of supervisory and lead experience, a Bachelor's degree in Mechanical Engineering, Master's degree in Management and 12.5 years as a Research Engineer at Chevron Research Company.

- Extensive knowledge of Air Pollution and control equipment.
- Proven ability to supervise and train staff.
- Expertise in the Title V Program, refinery operations, engine program, NSR permitting program and much more.
- Proven ability to see the whole picture and do what needs to be done.

### Professional Experience

BAAQMD

March 1990 – Present

- Supervised 21 engineers, many new hires, over the past 23 years as a supervisor, in permitting routine and complex permit applications for which nearly ½ have become seniors or supervisors.
- Reviewed and edited more than 5000 engineering evaluations over 23 years as a supervisor for clarity, conciseness, soundness and accuracy.
- Managed the Title V program for 7 years and timely issued 41 of the 43 Title V renewals on the Our Children's Earth (OCE) list prior to the deadline.
- Interpreted and enforced for 27 years the District regulatory requirements on permitting existing, new and modified sources of air pollution.
- Led, as Project Leader, the Engineering Division in the interdivisional Flare Minimization Plan (FMP) efforts involving Engineering, Enforcement and Legal.
- Amended regulation and revised data forms to allow the permitting of portable equipment and pre-certified sources.
- Provided technical expertise as District representative on the CAPCOA and ARB portable equipment registration program.

- Represented Air District and reported directly to APCO on Locomotive Emissions Advisory Committee (LEAC).
- Taught and trained 19 Interns and 2 temporary employees to carry out the business of the Air District.
- Conducted many outside recruitments and hired two engineers into the Engineering Division.
- Acted as Acting Manager for an aggregate of 6 months when the Manager was away and was the Acting Director of the Permit Services Division for 3 days.
- Improved public speaking skills through numerous presentations before the District's Personnel Committee, Budget and Finance Committee and Board of Directors.
- Helped develop and write policies on Enhanced Enforceability of Permit Conditions Committee (Engineering, Enforcement and Technical).
- Spoke before the Hearing Board on plants in non-compliance.

BAAQMD

January 1987-February 1990

Reviewed and evaluated numerous permit applications for permitting stationary sources of air pollution. The evaluation process involved assessing the nature of the equipment, quantifying the source emissions, verifying compliance, and imposing enforceable permit conditions.

Chevron Research Company

August 1973 – September 1986

Planned, organized and managed projects related to fuel impacts on air quality in response to governmental regulations, such as gasoline RVP, vehicle evaporative emissions, diesel exhaust emissions and gasoline octane quality.

Developed Nationwide control measure for reducing NOx from diesel engines (retard injection timing by 4 degrees to reduce NOx by 40%), which became BACT for NOx at the District.

Demonstrated the deleterious effect of engine deposits on vehicle emissions and fuel consumption, which gave rise to a gasoline additive (TECHRON) which is now blended into the gasoline to help restore and maintain the original manufacturers' emission performance levels.

## Education

B.S. Mechanical Engineering, 1973  
Southern University, Baton Rouge, Louisiana  
M.B.A., Management, 1979  
Golden Gate University, San Francisco, CA

## Selected Publications

“Current Regulations Impacting Exhaust Emissions from Stationary Internal Combustion Engines”, D.W. Hall, BAAQMD, presented at the American Society of Mechanical Engineers Technical Conference in San Antonio, Texas, October 1988.

“Carburetor Deposits – Are Clean Throttle Bodies Enough?”, D. W. Hall and L. M. Gibbs, Society of Automotive Engineers, Paper #760752, Presented at F and L meeting, Dearborn, Michigan, October 1976.