

California Environmental Laboratory Accreditation Program

Environmental Laboratory
Technical Advisory Committee (ELTAC) Meeting

May 11, 2016





EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

Division of Drinking Water

NOTICE OF ENVIRONMENTAL LABORATORY TECHNICAL ADVISORY COMMITTEE (ELTAC) MEETING

REVISED

**May 11, 2016
10:00 a.m. – 5:00 p.m.
(or until completion of business)**

Location 1

California Environmental
Protection Agency Building
1001 I Street, Room 2540
Sacramento, CA 95814

Location 2

Metropolitan Water District of Southern
California
700 N. Alameda Street, Room US2-456
Los Angeles, CA 90012

The Environmental Laboratory Accreditation Program (ELAP) will host a meeting of its technical advisory committee, as noted above. The notice and agenda for this meeting and others can be found at www.waterboards.ca.gov/elap. For further information regarding this agenda, see below or contact ELAP at elapca@waterboards.ca.gov or (916) 323-3431.

This meeting is available via teleconference and webcast. Connection information is located at the bottom of this notice.

AGENDA

ITEM #1 - Call to Order/Roll Call

ITEM #2 - Public Comments on Items Not on Agenda
(The Committee will not take any action but will consider placing any item raised on the agenda at a future meeting.)

ITEM #3 – Approval of Minutes from March 25, 2016 Meeting

ITEM #4 – DELAPO Report

1. Resolution to fund training contract
2. Staffing updates
3. **Bagley-Keene Open Meeting Act**

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

ITEM #5 – Committee Reports

1. Field of Testing Worksheet Review
2. ELTAC Mission Statement

INFORMATIONAL ITEM

1. 1,2,3 Trichloropropane Detection Limit for Reporting

ITEM #6 – Unfinished Business

1. Discussion of Laboratory Accreditation Standards

ITEM #7 – New Business

1. ELTAC Constituency Contacts/By-Laws Expectations
2. Auditor Checklists
- ~~3. 1,2,3 Trichloropropane Detection Limit for Reporting~~
3. Draft Regulations on Fee Structure

ITEM #8 – Close

1. Review Action Items

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the ELTAC Chair and may be taken out of order. The meeting will be adjourned upon completion of the agenda, which may be at a time earlier or later than posted in this notice.

In accordance with the Bagley-Keene Open Meeting Act, all meetings of ELTAC are open to the public.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by ELTAC prior to ELTAC taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before ELTAC, but the ELTAC Chair may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before ELTAC to discuss items not on the agenda; however, ELTAC can neither discuss nor take official action on these items at the time of the same meeting [Government Code sections 11125 and 11125.7(a)].

The meeting locations are accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Katelyn McCarthy at (916) 323-3431 or emailing katelyn.mccarthy@waterboards.ca.gov. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Connection Information

Webcast	www.calepa.ca.gov/broadcast
Web Meeting	https://stateofcaswrcbweb.centurylinkccc.com/CenturylinkWeb/KatelynMcCarthy
Dial-in option	1-877-279-0026, Passcode 675535#



**ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM
ELTAC MEETING**

Wednesday, May 11, 2016 – 10:00 a.m.
1001 I Street
Sacramento, CA 95814
And
700 N. Alameda Street, Room US2-456
Los Angeles, CA 90012

Meeting Agenda

TIME	AGENDA ITEM	PRESENTER(S)
10:00am	Item #1 - Call to Order <i>Objective: Roll call.</i>	Andy Eaton, Chairperson
10:05am	Item #2 - Public Comments on Items not on Agenda	Open
10:10am	Item #3 – Approval of Minutes from March 25, 2016 Meeting <i>Objective: Amend or approve minutes.</i>	Andy Eaton
10:15am	Item #4 – DELAPO Report 1. Resolution to fund training contract 2. Staffing updates 3. Bagley-Keene Open Meeting Act <i>Objective: Update members on recent developments and review procedural requirements.</i>	Christine Sotelo, DELAPO
10:30am	Item #5 – Committee Reports 1. Field of Testing Worksheet Review 2. ELTAC Mission Statement <i>Objective: Provide updates on committee work.</i>	Andy Eaton, Katelyn McCarthy

11:15am	Informational Item 1. 1,2,3 Trichloropropane Detection Limit for Reporting <i>Objective: Provide information to committee.</i>	Bill Draper, Drinking Water Radiation Laboratory
12:00	Out to Lunch	
1:15pm	Item #6 – Unfinished Business 1. Discussion of Laboratory Accreditation Standards <i>Objective: Work toward formalizing recommendation to ELAP.</i>	Facilitated by Gita Kapahi, Office of Public Participation
3:00pm	Item #7 – New Business 1. ELTAC Constituency Contacts/By-Laws Expectations 2. Auditor Checklists 3. Draft Regulations on Fee Structure <i>Objective: Discussion of new committee business.</i>	Christine Sotelo; Andy Eaton
4:45pm	Item #8 – Close 1. Review Action Items.	Andy Eaton
5:00pm	Adjourn	



**ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM
ELTAC MEETING**

Wednesday, May 11, 2016– 10:00 a.m.
1001 I Street
Sacramento, CA 95814
And
700 N. Alameda Street, Room US2-456
Los Angeles, CA 90012

MEETING PACKET

AGENDA ITEM #1

Call to Order/Roll Call

Name	Affiliation	Type	Present
Christine Sotelo	ELAP	DELAPO	
Katelyn McCarthy	ELAP, Scribe	Scribe	
Mindy Boele	CWEA	Rep	
Jill Brodt	Brelje and Race Laboratories	Rep	
Bruce Burton	Division of Drinking Water	SRAE	
Gail Cho	CA Dept. of Fish and Wildlife	SRAE	
Stephen Clark	Pacific EcoRisk	Rep	
Ronald Coss	CWEA	Rep	
Huy Do	CASA	Rep	
Andy Eaton,	Eurofins Eaton Analytical	Rep	
Miriam Ghabour	Metropolitan Water District of Southern California	Rep	
Bruce Godfrey	ACIL	Rep	
Anthony Gonzales	CAPHLD	Rep	
Rich Gossett	Physis Environmental	Rep	
David Kimbrough	Pasadena Water and Power	Rep	
Mark Koekemoer	Napa Sanitation District	Rep	
Bruce LaBelle	Dept. of Toxic Substances Control	SRAE	
Allison Mackenzie	Babcock Laboratories	Rep	
Gilda Neshvad	Positive Lab Service	Rep	
Renee Spears	State Water Resources Control Board	SRAE	

Abbreviation	Member Type
DELAPO	Designated ELAP Officer, nonvoting
Scribe	Minutes (non-member)
SRAE	State Regulatory Agency Employee, nonvoting
Rep	Representative Member, voting

AGENDA ITEM #2

Public Comments on Items Not on Agenda

Members of the public may address the Environmental Laboratory Technical Advisory Committee (ELTAC) regarding items that are not contained in the meeting agenda at this time.

However, ELTAC may not discuss or take action on any item raised during this public comment session, except to decide whether to place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].

AGENDA ITEM #3

Approval of Minutes from March 23, 2016 Meeting

The Environmental Laboratory Technical Advisory Committee (ELTAC) is asked to review and approve the March 23, 2016 Meeting Minutes.

Attachment:

Draft Minutes from March 23, 2016 ELTAC Meeting

Proposed Edit by Member Boele:

Motion: Stephen Clark moved to request ELAP present information on Options 1 and 2 ~~and 3~~ to ELTAC at next meeting

Seconded by: David Kimbrough

Amendment Proposed: David Kimbrough moves to add formal request for extension of deadline for standard selection, add request that ELAP present information on all three standard options as 3 webinars to public before next ELTAC meeting.

AGENDA ITEM #4

Designated ELAP Officer (DELAPO) Report

1. Resolution to fund training contract

AGENDA ITEM #4

2. Staffing Updates

AGENDA ITEM #4

3. Bagley-Keene Open Meeting Act

Attachment:

A Handy Guide to the Bagley Keene Open Meeting Act of 2004

AGENDA ITEM #5

Committee Reports

1. Field of Testing Worksheet Review

Attachments:

Issues to consider on FOTs for CA-ELAP, Andy Eaton

AGENDA ITEM #5

2. ELTAC Mission Statement

Attachments:

ELTAC Draft Mission Statement

INFORMATIONAL ITEM

1. **1,2,3 Trichloropropane Detection Limit for Reporting** – *Bill Draper, Drinking Water Radiation Laboratory*

Unfinished Business

1. Discussion of Laboratory Standards

Attachments:

White Paper #1: Accreditation Standards for ELAP, *David Kimbrough*

White Paper #2: The Impact of TNI on Florida Laboratories, *David Kimbrough*

White Paper #3: In Support of California Adoption of the TNI Standard, *Allison Mackenzie*

AGENDA ITEM #7

New Business

1. ELTAC Constituency Contacts/By-Laws Expectations

Attachments:

Environmental Laboratory Technical Advisory Committee By-Laws

2. Auditor Checklists

AGENDA ITEM #7

3. Draft Regulations on Fee Structure

Attachments:

Laboratory Accreditation Work Group letter, April 28, 2016

AGENDA ITEM #8

Close

1. Review Action Items

**CALIFORNIA ENVIRONMENTAL LABORATORY TECHNICAL ADVISORY COMMITTEE (ELTAC)
COMMITTEE MEETING MINUTES
March 23, 2016**

More information on the Environmental Laboratory Accreditation Program (ELAP) and previous ELTAC meetings can be found at <http://www.waterboards.ca.gov/elap>.

CALL TO ORDER

DELAPO Christine Sotelo called the meeting to order on March 23, 2016 at 9:10 a.m. at the California Environmental Protection Agency Headquarters, 1001 I Street, Conference Room 2540, Sacramento, CA.

COMMITTEE MEMBERS PRESENT

DELAPO: Christine Sotelo

Representatives:

Mindy Boele
Jill Brodt
Stephen Clark
Ronald Coss
Huy Do
Andy Eaton
Miriam Ghabour
Bruce Godfrey
Anthony Gonzelz
Rich Gossett
~~Dave~~ David Kimbrough
Mark Koekemoer
Allison Mackenzie
Guilda Neshvad

State Regulatory Agency Employees:

Gail Cho
Bruce LaBelle

OTHER STAFF PRESENT

Scribe: Katelyn McCarthy

PDREU: Maryam Khosravifard

PDREU: Bert Davis

Office of Public Participation: Gita Kapahi

Office of Chief Council: Catherine Ewing

ANNOUNCEMENT

- *Evacuation information in case the fire alarm goes off during the meeting.*
- *The Committee meeting is being webcasted and recorded.*

COMMITTEE MEETING

PUBLIC FORUM

Any member of the public may address and ask question of the Committee relating to any matter within ELTAC's scope provided the matter is not on the agenda, or pending before the Advisory Committee.

No Action Taken

Commenter

Josie Teller, City of Davis

COMMITTEE BUSINESS

ITEM #1 - Call to Order/Roll Call

ITEM #2 - Public Comments on Items Not on Agenda

(The Committee will not take any action but will consider placing any item raised on the agenda at a future meeting.)

No Action Taken

ITEM #3 – Welcome

No Action Taken

1. Division of Drinking Water Executive Staff remarks
 - **Kurt Souza, Assistant Deputy Director, Southern California Field Operations Branch, gave opening remarks.**
2. Designated ELAP Officer remarks
3. Introductions of committee members

ITEM #4 - Procedural Review

No Action Taken

1. Establish ground rules for all meetings
2. Review By-Laws to clarify the role of ELTAC
3. Discuss development of Mission Statement
4. Review Bagley-Keene Open Meeting Act requirements
 - **Catherine Ewing, Attorney, gave a detailed presentation of Bagley-Keene Open Meeting Act requirements.**
5. Review Robert's Rules of Order
6. ELTAC Members' roles and responsibilities
7. Reporting procedures

ITEM #5 – Laboratory Accreditation Standard

- **Facilitated by Gita Kapahi, Office of Public Participation**

1. Presentation and discussion of the three laboratory accreditation standard options in the Expert Review Panel report

Motion: Stephen Clark moved to request ELAP present information on Options 2 and 3 to ELTAC at next meeting

Seconded by: David Kimbrough

Amendment Proposed: David Kimbrough moves to add formal request for extension of deadline for standard selection, add request that ELAP present information on standard options as 3 webinars to public before next ELTAC meeting

Amendment Seconded by: Rich Gossett

Call for Vote on Amendment: Rich Gossett

Call for Vote Seconded: David Kimbrough

AMENDMENT CARRIED.

Aye: All
Nay: None
Absent: None
Abstain: None

Call for Vote on Motion: Mindy Boele
Call for Vote Seconded: Rich Gossett

Aye: All
Nay: None
Absent: None
Abstain: None
MOTION CARRIED.

ITEM #6 - Field of Testing Lists

No Action Taken

1. Presentation of revised FOT lists

ITEM #7 – Future ELTAC Planning

No Action Taken

1. Alignment with Work Plan
2. Discuss ELTAC advisory plan
3. Meeting dates and agenda items

ITEM #8 - Chairperson Nomination process

- *Members Eaton, Gossett, and Kimbrough volunteered to be Chairperson.*
- *Voting members filled out anonymous ballots and returned to ELAP.*

ITEM #9 - Close

1. Review action items

ADJOURNMENT

The Committee adjourned at 3:15pm.



A Handy Guide
to
The Bagley-Keene Open Meeting Act 2004

California Attorney General's Office

INTRODUCTION

The Bagley-Keene Open Meeting Act (“the Act” or “the Bagley-Keene Act”), set forth in Government Code sections 11120-11132¹, covers all state boards and commissions. Generally, it requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session. Following is a brief summary of the Act’s major provisions. Although we believe that this summary is a helpful road map, it is no substitute for consulting the actual language of the Act and the court cases and administrative opinions that interpret it.

If you wish to obtain additional copies of this pamphlet, they may be ordered or downloaded via the Attorney General’s Home Page, located on the World Wide Web at <http://caag.state.ca.us>. You may also write to the Attorney General’s Office, Public Inquiry Unit, P.O. Box 944255, Sacramento, CA 94244-2550 or call us at (800) 952-5225 (for callers within California), or (916) 322-3360 (for callers outside of California); the TTY/TDD telephone numbers are (800) 952-5548 (for callers within California), or (916) 324-5564 (for callers outside of California).

PURPOSE OF THE ACT

Operating under the requirements of the Act can sometimes be frustrating for both board members and staff. This results from the lack of efficiency built into the Act and the unnatural communication patterns brought about by compliance with its rules.

If efficiency were the top priority, the Legislature would create a department and then permit the department head to make decisions. However, when the Legislature creates a multimember board, it makes a different value judgment. Rather than striving strictly for efficiency, it concludes that there is a higher value to having a group of individuals with a variety of experiences, backgrounds and viewpoints come together to develop a consensus. Consensus is developed through debate, deliberation and give and take. This process can sometimes take a long time and is very different in character than the individual-decision-maker model.

Although some individual decision-makers follow a consensus-building model in the way that they make decisions, they’re not required to do so. When the Legislature creates a multimember body, it is mandating that the government go through this consensus building process.

When the Legislature enacted the Bagley-Keene Act, it imposed still another value judgment on the governmental process. In effect, the Legislature said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. (§ 11120.) By reserving this place for the public, the Legislature has provided the public with the ability to monitor and participate in the decision-making process. If the body were permitted to meet in secret, the public’s role in the decision-making process would be negated. Therefore, absent a specific reason to keep

¹All statutory references are to the Government Code.

the public out of the meeting, the public should be allowed to monitor and participate in the decision-making process.

If one accepts the philosophy behind the creation of a multimember body and the reservation of a seat at the table for the public, many of the particular rules that exist in the Bagley-Keene Act become much easier to accept and understand. Simply put, some efficiency is sacrificed for the benefits of greater public participation in government.

BODIES COVERED BY THE ACT: General Rule

The general rule for determining whether a body is covered by the Act involves a two part test (§ 11121(a)):

First, the Act covers multimember bodies. A multimember body is two or more people. Examples of multimember bodies are: state boards, commissions, committees, panels, and councils. Second, the body must be created by statute or required by law to conduct official meetings. If a body is created by statute, it is covered by the Act regardless of whether it is decision-making or advisory.

■ Advisory Bodies

The Act governs two types of advisory bodies: (1) those advisory bodies created by the Legislature and (2) those advisory bodies having three or more members that are created by formal action of another body. (§11121(c).) If an advisory body created by formal action of another body has only two members, it is not covered by the Bagley-Keene Act. Accordingly, that body can do its business without worrying about the notice and open meeting requirements of the Act. However, if it consists of three people, then it would qualify as an advisory committee subject to the requirements of the Act.

When a body authorizes or directs an individual to create a new body, that body is deemed to have been created by formal action of the parent body even if the individual makes all decisions regarding composition of the committee. The same result would apply where the individual states an intention to create an advisory body but seeks approval or ratification of that decision by the body.

Finally, the body will probably be deemed to have acted by formal action whenever the chair of the body, acting in his or her official capacity, creates an advisory committee. Ultimately, unless the advisory committee is created by staff or an individual board member, independent of the body's authorization or desires, it probably should be viewed as having been created by formal action of the body.

■ **Delegated Body**

The critical issue for this type of body is whether the committee exercises some power that has been delegated to it by another body. If the body has been delegated the power to act, it is a delegated committee. (§ 11121(b).) A classic example is the executive committee that is given authority to act on behalf of the entire body between meetings. Such executive committees are delegated committees and are covered by the requirements of the Act.

There is no specific size requirement for the delegated body. However, to be a body, it still must be comprised of multiple members. Thus, a single individual is not a delegated body.

■ **Commissions Created by the Governor**

The Act specifically covers commissions created by executive order. (§ 11121(a).) That leaves open two potential issues for resolution with respect to this type of body. First, what's an executive order as opposed to other exercises of power by the Governor? Second, when is a body a "commission" within the meaning of this provision? There is neither case law nor an Attorney General opinion addressing either of these issues in this context.

■ **Body Determined by Membership**

The next kind of body is determined by who serves on it. Under this provision, a body becomes a state body when a member of a state body, in his or her official capacity, serves as a representative on another body, either public or private, which is funded in whole or in part by the representative's state body. (§ 11121(d).) It does not come up often, but the Act should be consulted whenever a member of one body sits as a representative on another body.

In summary, the foregoing are the general types of bodies that are defined as state bodies under the Bagley-Keene Act. As will be discussed below, these bodies are subject to the notice and open meeting requirements of the Act.

MEMBERS-TO-BE

The open meeting provisions of the Act basically apply to new members at the time of their election or appointment, even if they have not yet started to serve. (§ 11121.95.) The purpose of this provision is to prevent newly appointed members from meeting secretly among themselves or with holdover members of a body in sufficient numbers so as to constitute a quorum. The Act also requires bodies to provide their new members with a copy of the Act. (§ 11121.9.) We recommend that this Handy Guide be used to satisfy that requirement.

WHAT IS A MEETING?

The issue of what constitutes a meeting is one of the more troublesome and controversial issues under the Act. A meeting occurs when a quorum of a body convenes, either serially or all together, in one place, to address issues under the body's jurisdiction. (§ 11122.5.) Obviously, a meeting would include a gathering where members were debating issues or voting on them. But a meeting also includes situations in which the body is merely receiving information. To the extent that a body receives information under circumstances where the public is deprived of the opportunity to monitor the information provided, and either agree with it or challenge it, the open-meeting process is deficient.

Typically, issues concerning the definition of a meeting arise in the context of informal gatherings such as study sessions or pre-meeting get-togethers. The study session historically arises from the body's desire to study a subject prior to its placement on the body's agenda. However, if a quorum is involved, the study session should be treated as a meeting under the Act. With respect to pre-meeting briefings, this office opined that staff briefings of the city council a half hour before the noticed city council meeting to discuss the items that would appear on the council's meeting agenda were themselves meetings subject to open meeting laws.² To the extent that a briefing is desirable, this office recommends that the executive officer prepare a briefing paper which would then be available to the members of the body, as well as, to the public.

■ Serial Meetings

The Act expressly prohibits the use of direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body outside of an open meeting. (§ 11122.5(b).) Typically, a serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members. For example, a chain of communications involving contact from member A to member B who then communicates with member C would constitute a serial meeting in the case of a five-person body. Similarly, when a person acts as the hub of a wheel (member A) and communicates individually with the various spokes (members B and C), a serial meeting has occurred. In addition, a serial meeting occurs when intermediaries for board members have a meeting to discuss issues. For example, when a representative of member A meets with representatives of members B and C to discuss an agenda item, the members have conducted a serial meeting through their representatives acting as intermediaries.

²42 Ops.Cal.Atty.Gen. 61 (1963); see also 32 Ops.Cal.Atty.Gen. 240 (1958).

In the *Stockton Newspapers* case, the court concluded that a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting.³ In that case, the attorney individually polled the members of the body for their approval on a real estate transaction. The court concluded that even though the meeting was conducted in a serial fashion, it nevertheless was a meeting for the purposes of the Act.

An executive officer may receive spontaneous input from board members on the agenda or on any other topic. But problems arise if there are systematic communications through which a quorum of the body acquires information or engages in debate, discussion, lobbying, or any other aspect of the deliberative process, either among themselves or between board members and the staff.

Although there are no cases directly on point, if an executive officer receives the same question on substantive matters addressed in an upcoming agenda from a quorum of the body, this office recommends that a memorandum addressing these issues be provided to the body and the public so they will receive the same information.

This office has opined that under the Brown Act (the counterpart to the Bagley-Keene Act which is applicable to local government bodies) that a majority of the board members of a local public agency may not e-mail each other to discuss current topics related to the body's jurisdiction even if the e-mails are also sent to the secretary and chairperson of the agency, posted on the agency's Internet website, and made available in printed form at the next public meeting of the board.⁴

The prohibition applies only to communications employed by a quorum to develop a collective concurrence concerning action to be taken by the body. Conversations that advance or clarify a member's understanding of an issue, or facilitate an agreement or compromise among members, or advance the ultimate resolution of an issue, are all examples of communications that contribute to the development of a concurrence as to action to be taken by the body. Accordingly, with respect to items that have been placed on an agenda or that are likely to be placed upon an agenda, members of state bodies should avoid serial communications of a substantive nature that involve a quorum of the body.

In conclusion, serial meeting issues will arise most commonly in connection with rotating staff briefings, telephone calls or e-mail communications among a quorum of board members. In these situations, part of the deliberative process by which information is received and processed, mulled over and discussed, is occurring without participation of the public.

Just remember, serial-meeting provisions basically mean that what the body can not do as a group it can not do through serial communications by a quorum of its members.

³*Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 105. See also, 65 Ops.Cal.Atty.Gen. 63, 66 (1982); 63 Ops.Cal.Atty.Gen. 820, 828-829 (1980).

⁴ Cal.Atty.Gen., Indexed Letter, No. IL 00-906 (February 20, 2001).

■ Contacts by the Public

One of the more difficult areas has to do with the rights of the public to contact individual members. For example, a communication from a member of the public to discuss an issue does not violate the Act. (§ 11122.5(c)(1).) The difficulty arises when the individual contacts a quorum of the body.

So long as the body does not solicit or orchestrate such contacts, they would not constitute a violation of the Bagley-Keene Act. Whether its good policy for a body to allow these individual contacts to occur is a different issue.

■ Social Gatherings

The Act exempts purely social situations from its coverage. (§ 11122.5(c)(5).) However, this construction is based on the premise that matters under the body's jurisdiction will not be discussed or considered at the social occasion. It may be useful to remind board members to avoid "shop talk" at the social event. Typically, this is difficult because service on the body is their common bond.

■ Conferences and Retreats

Conferences are exempt from the Act's coverage so long as they are open to the public and involve subject matter of general interest to persons or bodies in a given field. (§ 11122.5(c)(2).) While in attendance at a conference, members of a body should avoid private discussions with other members of their body about subjects that may be on an upcoming agenda. However, if the retreat or conference is designed to focus on the laws or issues of a particular body it would not be exempt under the Act.

■ Teleconference Meetings

The Act provides for audio or audio and visual teleconference meetings for the benefit of the public and the body. (§ 11123.) When a teleconference meeting is held, each site from which a member of the body participates must be accessible to the public. [Hence, a member cannot participate from his or her car, using a car phone or from his or her home, unless the home is open to the public for the duration of the meeting.] All proceedings must be audible and votes must be taken by rollcall. All other provisions of the Act also apply to teleconference meetings. For these reasons, we recommend that a properly equipped and accessible public building be utilized for teleconference meetings. This section does not prevent the body from providing additional locations from which the public may observe the proceedings or address the state body by electronic means.

NOTICE AND AGENDA REQUIREMENTS

The notice and agenda provisions require bodies to send the notice of its meetings to persons who have requested it. (§ 11125(a).) In addition, at least ten days prior to the meeting, bodies must

prepare an agenda of all items to be discussed or acted upon at the meeting. (§ 11125(b).) In practice, this usually translates to boards and commissions sending out the notice and agenda to all persons on their mailing lists. The notice needs to state the time and the place of the meeting and give the name, phone number and address of a contact person who can answer questions about the meeting and the agenda. (§ 11125(a).) The agenda needs to contain a brief description of each item to be transacted or discussed at the meeting, which as a general rule need not exceed 20 words in length. (§ 11125(b).)

The agenda items should be drafted to provide interested lay persons with enough information to allow them to decide whether to attend the meeting or to participate in that particular agenda item. Bodies should not label topics as “discussion” or “action” items unless they intend to be bound by such descriptions. Bodies should not schedule items for consideration at particular times, unless they assure that the items will not be considered prior to the appointed time.

The notice and agenda requirements apply to both open and closed meetings. There is a tendency to think that agendas need not be prepared for closed session items because the public cannot attend. But the public’s ability to monitor closed sessions directly depends upon the agenda requirement which tells the public what is going to be discussed.

REGULAR MEETINGS

The Act, itself, does not directly define the term “regular meeting.” Nevertheless, there are several references in the Act concerning regular meetings. By inference and interpretation, the regular meeting is a meeting of the body conducted under normal or ordinary circumstances. A regular meeting requires a 10-day notice. This simply means that at least 10 days prior to the meeting, notice of the meeting must be given along with an agenda that sufficiently describes the items of business to be transacted or discussed. (§§ 11125(a), 11125(b).) The notice for a meeting must also be posted on the Internet, and the web site address must be included on the written agenda. In addition, upon request by any person with a disability, the notice must be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the applicable federal rules and regulations. The notice must contain information regarding the manner in which and the deadline by which a request for any disability-related modification or accommodation, including auxiliary aids or services, may be made by a person requiring these aids or services in order to participate in the meeting.

In two special situations, items may be added to the agenda within the 10-day notice period, provided that they are added and notice is given no later than 48 hours prior to the meeting. (§ 11125.) The first such situation is where the body concludes that the topic it wishes to add would qualify for an emergency meeting as defined in the Act. (§ 11125.3(a)(1).) The second situation is where there is a need for immediate action and the need for action came to the attention of the body after the agenda was mailed in accordance with the 10-day notice requirement. (§ 11125.3(a)(2).) This second situation requires a two-thirds vote or a unanimous vote if two-thirds of the members are not present.

Changes made to the agenda under this section must be delivered to the members of the body and to national wires services at least 48 hours before the meeting and must be posted on the Internet as soon as practicable.

SPECIAL MEETINGS

A few years ago, special meetings were added to the Act to provide relief to agencies that, due to the occurrence of unforeseen events, had a need to meet on short notice and were hamstrung by the Act's 10-day notice requirement. (§ 11125.4.) The special meeting requires that notice be provided at least 48 hours before the meeting to the members of the body and all national wire services, along with posting on the Internet.

The purposes for which a body can call a special meeting are quite limited. Examples include pending litigation, legislation, licensing matters and certain personnel actions. At the commencement of the special meeting, the body is required to make a finding that the 10-day notice requirement would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for the finding. The finding must be adopted by two-thirds vote and must contain articulable facts that support it. If all of these requirements are not followed, then the body can not convene the special meeting and the meeting must be adjourned.

EMERGENCY MEETINGS

The Act provides for emergency meetings in rare instances when there exists a crippling disaster or a work stoppage that would severely impair public health and safety. (§ 11125.5.) An emergency meeting requires a one-hour notice to the media and must be held in open session. The Act also sets forth a variety of other technical procedural requirements that must be satisfied.

PUBLIC PARTICIPATION

Since one of the purposes of the Act is to protect and serve the interests of the general public to monitor and participate in meetings of state bodies, bodies covered by the Act are prohibited from imposing any conditions on attendance at a meeting. (§ 11124.) For example, while the Act does not prohibit use of a sign-in sheet, notice must be clearly given that signing-in is voluntary and not a pre-requisite to either attending the meeting or speaking at the meeting. On the other hand, security measures that require identification in order to gain admittance to a government building are permitted so long as security personnel do not share the information with the body.

In addition, members of the public are entitled to record and to broadcast (audio and/or video) the meetings, unless to do so would constitute a persistent disruption. (§ 11124.1.)

To ensure public participation, the Legislature expressly afforded an opportunity to the public to speak or otherwise participate at meetings, either before or during the consideration of each agenda item. (§11125.7.) The Legislature also provided that at any meeting the body can elect to consider comments from the public on any matter under the body's jurisdiction. And while the body cannot act on any matter not included on the agenda, it can schedule issues raised by the public for consideration at future meetings. Public comment protected by the Act includes criticism of the programs, policies and officials of the state body.

ACCESS TO RECORDS

Under the Act, the public is entitled to have access to the records of the body. (§ 11125.1.) In general, a record includes any form of writing. When materials are provided to a majority of the body either before or during the meeting, they must also be made available to the public without delay, unless the confidentiality of such materials is otherwise protected. Any records provided to the public, must be available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the applicable federal rules and regulations, upon request by a person with a disability.

Notwithstanding the foregoing, the Act makes Government Code section 6254, the most comprehensive exemption under the California Public Records Act, applicable to records provided to the body. That is, if the record that is being provided to the board members is a record that is otherwise exempt from disclosure under section 6254 of the Government Code, then the record need not be disclosed to members of the public. (§ 11125.1(a).) However, the public interest balancing test, set forth in Government Code section 6255, is expressly made inapplicable to records provided to members of the body.

If an agency has received a request for records, the Public Records Act allows the agency to charge for their duplication. (§ 11125.1(c).) Please be aware that the Public Records Act limits the amount that can be charged to the direct cost of duplication. This has been interpreted to mean a pro-rata share of the equipment cost and probably a pro-rata share of the employee cost in order to make the copies. It does not include anything other than the mere reproduction of the records. (See, § 6253.9 for special rules concerning computer records.) Accordingly, an agency may not recover for the costs of retrieving or redacting a record.

ACCESSABILITY OF MEETING LOCATIONS

The Act requires that the place and manner of the meeting be nondiscriminatory. (§ 11131.) As such, the body cannot discriminate on the basis of race, religion, national origin, etc. The meeting site must also be accessible to the disabled. Furthermore, the agency may not charge a fee for attendance at a meeting governed by the Act.

CLOSED SESSIONS

Although, as a general rule, all items placed on an agenda must be addressed in open session, the Legislature has allowed closed sessions in very limited circumstances, which will be discussed in detail below. Closed sessions may be held legally only if the body complies with certain procedural requirements. (§ 11126.3)

As part of the required general procedures, the closed session must be listed on the meeting agenda and properly noticed. (§ 11125(b).) Prior to convening into closed session, the body must publically announce those issues that will be considered in closed session. (§ 11126.3.) This can be done by a reference to the item as properly listed on the agenda. In addition, the agenda should cite the statutory authority or provision of the Act which authorizes the particular closed session. (§11125(b).) After the closed session has been completed, the body is required to reconvene in public. (§ 11126.3(f).) However, the body is required to make a report only where the body makes a decision to hire or fire an individual. (§ 11125.2.) Bodies under the Bagley-Keene Act are required to keep minutes of their closed sessions. (§ 11126.1.) Under the Act, these minutes are confidential, and are disclosable only to the board itself or to a reviewing court.

Courts have narrowly construed the Act's closed-session exceptions. For example, voting by secret ballot at an open-meeting is considered to be an improper closed session. Furthermore, closed sessions may be improperly convened if they are attended by persons other than those directly involved in the closed session as part of their official duties.

■ Personnel Exception

The personnel exception generally applies only to employees. (§ 11126(a) and (b).) However, a body's appointment pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution (usually the body's executive director) has been designated an employee for purposes of the personnel exception. On the other hand, under the Act, members of the body are not to be considered employees, and there exists no personnel exception or other closed session vehicle for board members to deal with issues that may arise between them. Board elections, team building exercises, and efforts to address personality problems that may arise between members of the board, cannot be handled in closed session.

Only certain categories of subject matter may be considered at a closed session authorized under the personnel exception. (§ 11126(a)(1).) The purpose of the personnel exception is to protect the privacy of the employee, and to allow the board members to speak candidly. It can be used to consider appointments, employment, evaluation of performance, discipline or dismissal, as well as to hear charges or complaints about an employee's actions. Although the personnel exception is appropriate for discussion of an employee's competence or qualifications for appointment or employment, we do not think that discussion of employee compensation may be conducted in closed

session in light of an appellate court decision interpreting a similar exception in the Brown Act, (the counterpart to the Bagley-Keene Act which is applicable to local government bodies).⁵

The Act requires compliance with specific procedures when the body addresses a complaint leveled against an employee by a third person or initiates a disciplinary action against an employee. Under either circumstance, the Act requires 24-hour written notice to the employee. (§ 11126(a)(2).) Failure to provide such notice voids any action taken in closed session.

Upon receiving notice, the employee has the right to insist that the matter be heard in public session. (§ 11126(a)(2).) However, the opposite is not true. Under the Act, an employee has no right to have the matter heard in closed session. If the body decides to hold an open session, the Bagley-Keene Act does not provide any other option for the employee. Considerations, such as the employee's right to privacy, are not addressed under the Bagley-Keene Act.

If an employee asserts his or her right to have the personnel matter addressed in open session, the body must present the issues and information/evidence concerning the employee's performance or conduct in the open session. However, the body is still entitled to conduct its deliberations in closed session. (§ 11126(a)(4).)

■ **Pending Litigation Exception**

The purpose of the pending litigation exception is to permit the agency to confer with its attorney in circumstances where, if that conversation were to occur in open session, it would prejudice the position of the agency in the litigation. (§ 11126(e)(1).) The term "litigation" refers to an adjudicatory proceeding that is held in either a judicial or an administrative forum. (§11126(e)(2)(c)(iii).) For purposes of the Act, litigation is "pending" in three basic situations. (§11126(e)(2).) First, where the agency is a party to existing litigation. Secondly, where under existing facts and circumstances, the agency has substantial exposure to litigation. And thirdly, where the body is meeting for the purpose of determining whether to initiate litigation. All of these situations constitute pending litigation under the exception.

For purposes of the Bagley-Keene Act, the pending litigation exception constitutes the exclusive expression of the attorney-client privilege. (§ 11126(e)(2).) In general, this means that independent statutes and case law that deal with attorney-client privilege issues do not apply to interpretations of the pending litigation provision of the Bagley-Keene Act. Accordingly, the specific language of the Act must be consulted to determine what is authorized for discussion in closed session.

Because the purpose of the closed session exception is to confer with legal counsel, the attorney must be present during the entire closed session devoted to the pending litigation. The Act's pending litigation exception covers both the receipt of advice from counsel and the making of

⁵*San Diego Union v. City Council* (1983) 146 Cal.App.3d 947.

litigation decisions (e.g., whether to file an action, and if so, what approach should be taken, whether settlement should be considered, and if so, what the settlement terms should be.

What happens in a situation where a body desires legal advice from counsel, but the Act's pending litigation exception does not apply? In such a case, legal counsel can either (1) provide the legal advice orally and discuss it in open session; or (2) deliver a one-way legal advice memorandum to the board members. The memorandum would constitute a record containing an attorney-client privileged communication and would be protected from disclosure under section 6254(k) of the Public Records Act. (11125.1(a).) However, when the board members receive that memorandum, they may discuss it only in open session, unless there is a specific exception that applies which allows them to consider it in closed session.⁶

■ **Deliberations Exception**

The purpose of the deliberations exception is to permit a body to deliberate on decisions in a proceeding under the Administrative Procedures Act, or under similar provisions of law, in closed session. (§ 11126(c)(3).)

■ **Real Property Exception**

Under the Act, the real-property exception provides that the body can, in closed session, advise its negotiator in situations involving real estate transactions and in negotiations regarding price and terms of payment. (§ 11126(c)(7).) However, before meeting in closed session, the body must identify the specific parcel in question and the party with whom it is negotiating. Again, the Act requires that the body properly notice its intent to hold a closed session and to cite the applicable authority enabling it to do so.

■ **Security Exception**

A state body may, upon a two-thirds vote of those present, conduct a closed session to consider matters posing a potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could adversely affect their safety or security. (11126(c)(18).) After such a closed session, the state body must reconvene in open session prior to adjournment and report that a closed session was held along with a description of the general nature of the matters considered, and whether any action was taken in closed session.

Whenever a state body utilizes this closed session exception, it must also provide specific written notice to the Legislative Analyst who must retain this information for at least four years. (11126(c)(18)(D).) This closed session exception will sunset in 2006. (11126(h).)

⁶*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 381.

REMEDIES FOR VIOLATIONS

The Act provides for remedies and penalties in situations where violations have allegedly occurred. Depending on the particular circumstances, the decision of the body may be overturned (§ 11130.3), violations may be stopped or prevented (§ 11130), costs and fees may be awarded (§11130.5), and in certain situations, there may be criminal misdemeanor penalties imposed as well. (§ 11130.7.)

Within 90 days of a decision or action of the body, any interested person may file suit alleging a violation of the Act and seeking to overturn the decision or action. Among other things, such suit may allege an unauthorized closed session or an improperly noticed meeting. Although the body is permitted to cure and correct a violation so as to avoid having its decision overturned, this can be much like trying to put toothpaste back in the tube. If possible, the body should try to return to a point prior to when the violation occurred and then proceed properly. For example, if the violation involves improper notice, we recommend that the body invalidate its decision, provide proper notice, and start the process over. To the extent that information has been received, statements made, or discussions have taken place, we recommend that the body include all of this on the record to ensure that everyone is aware of these events and has had an opportunity to respond.

In certain situations where a body has violated the Act, the decision can not be set aside or overturned; namely, where the action taken concerns the issuance of bonds, the entering into contracts where there has been detrimental reliance, the collection of taxes, and, in situations where there has been substantial compliance with the requirements of the Act. (11130.3(b).)

Another remedy in dealing with a violation of the Act involves filing a lawsuit to stop or prevent future violations of the Act. (§ 11130.) In general, these legal actions are filed as injunctions, writs of mandates, or suits for declaratory relief. The Legislature has also authorized the Attorney General, the District Attorney or any other interested person to use these remedies to seek judicial redress for past violations of the Act.

A prevailing plaintiff may recover the costs of suit and attorney's fees from the body (not individual members). (§ 11130.5.) On the other hand, if the body prevails, it may recover attorney's fees and costs only if the plaintiff's suit was clearly frivolous and totally without merit.

The Act provides for misdemeanor penalties against individual members of the body if the member attends a meeting in violation of the Act with the intent to deprive the public of information to which he or she knows, or has reason to know, the public is entitled to receive. (§ 11130.7.)

THE BAGLEY-KEENE OPEN MEETING ACT

Government Code Sections 11120-11132
(January 2004)

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THE BAGLEY-KEENE OPEN MEETING ACT

Government Code Sections 11120-11132

§ 11120. Policy statement; requirement for open meetings

11120. It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

§ 11121. State body

11121. As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

§ 11121.1. State body; exceptions

11121.1. As used in this article, “state body” does not include any of the following:

- (a) State agencies provided for in Article VI of the California Constitution.
- (b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).
- (c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).
- (d) State agencies when they are conducting proceedings pursuant to Section 3596.
- (e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.
- (f) State agencies provided for in Section 11770.5 of the Insurance Code.
- (g) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

§ 11121.9. Requirement to provide law to members

11121.9. Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

§ 11121.95. Application to persons who have not assumed office

11121.95. Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

§ 11122. Action taken; defined

11122. As used in this article “action taken” means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

§ 11122.5. Meeting defined; exceptions

11122.5. (a) As used in this article, “meeting” includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

§ 11123. Requirement for open meetings; teleconference meetings

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, “teleconference” means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

§ 11123.1. Compliance with the ADA

11123.1. All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

§ 11124. No conditions for attending meetings

11124. No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance. If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 11124.1. Right to record meetings

11124.1. (a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the taping or recording. Any inspection of an audio or video tape recording shall be provided without charge on an audio or video tape player made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

§ 11125. Required notice

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

§ 11125.1. Agenda; writings provided to body; public records

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the

meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

§ 11125.2. Announcement of personnel action

11125.2. Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

§ 11125.3. Exception to agenda requirements

11125.3. (a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

§ 11125.4. Special meetings

11125.4. (a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider “pending litigation” as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

§ 11125.5. Emergency meetings

11125.5. (a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, “emergency situation” means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

§ 11125.6. Emergency meetings; Fish and Game Commission

11125.6. (a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that

constitute the impact to the economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

§ 11125.7 Opportunity for public to speak at meeting

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(d) This section is not applicable to closed sessions held pursuant to Section 11126.

(e) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(f) This section is not applicable to hearings conducted by the State Board of Control pursuant to Sections 13963 and 13963.1.

(g) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

§ 11125.8. Closed session; Board of Control; crime victims

11125.8. (a) Notwithstanding Section 11131.5, in any hearing that the State Board of Control conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

§ 11125.9. Regional water quality control boards; additional notice requirements

11125.9. Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

§ 11126. Closed sessions

11126. (a)(1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, “employee” does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant’s qualifications for licensure and an inquiry specifically related to the state body’s enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, “lease” includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by

law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(d)(1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B)(i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the California Board of Accountancy pursuant to

Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

§ 11126.1. Minutes; availability

11126.1. The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

§ 11126.3. Required notice for closed sessions

11126.3. (a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

§ 11126.5. Removal of disruptive persons

11126.5. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

§ 11126.7. Charging fees prohibited

11126.7. No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

§ 11127. State bodies covered

11127. Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

§ 11128. Time restrictions for holding closed sessions

11128. Each closed session of a state body shall be held only during a regular or special meeting of the body.

§ 11128.5. Adjournment

11128.5. The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

§ 11129. Continuation of meeting; notice requirement

11129. Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 11130. Legal remedies to stop or prohibit violations of act

11130. (a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this

article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in-camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

§ 11130.3. Cause of action to void action

11130.3. (a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

§ 11130.5. Court costs; attorney's fees

11130.5. A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof. A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 11130.7. Violation; misdemeanor

11130.7. Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

§ 11131. Prohibited meeting facilities; discrimination

11131. No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. As used in this section,

“state agency” means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

§ 11131.5. Required notice; exemption for name of victim

11131.5. No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

§ 11132. Closed sessions; express authorization required

11132. Except as expressly authorized by this article, no closed session may be held by any state body.

May 6, 2016

Subject: Issues to consider on FOTs for CA-ELAP

From: Andy Eaton.

In looking at the FOTs, there are a number of issues that ELAP needs to decide on and ELTAC provides a good forum for feedback on these issues. I have tried to articulate the key items that ELTAC should weigh in on (and the comments reflect my views on the subject).

1. The FOTs as distributed by ELAP illustrate some significant gaps in understanding regulatory requirements. Many of the FOTs were missing important methods.
2. Currently for multi analyte methods the FOTs are very inconsistent in approach. In some cases an entire method is listed for accreditation, even though that results in an inability to truly evaluate PT results, in particular because the number of method analytes in a method is not necessarily static. In other cases only a limited subset of analytes are listed.
 - a. ELAP should accredit by analyte and not by method
 - b. If there is a regulatory program, at a minimum the listed analytes should be the ones that require monitoring (whether or not they have regulatory limits)
 - c. Many regulatory programs do not specify analytes, but instead broad categories (e.g VOCs, SOCs) or “methods” – eg. 624, 8260, etc. ELAP could address this conundrum by using the PT providers as a resource to know which analytes should be listed on the FOTs.
3. Currently the FOTs do not include all methods approved by various regulatory authorities (Federal or CA) for compliance monitoring. ELAP FOTs should list all approved methods so as to not unnecessarily restrict laboratories from using the method that they feel most comfortable with (again with the caveat that it is approved by a regulatory agency (either CA or Federal) for use. This would help prevent regulators and analysis requestors from arbitrarily selecting methods for programs because those are the ones that happen to be listed on ELAPs FOTs.
4. ELAP should have a mechanism to add other methods at laboratory request (e.g.. the old 99X FOT), but move those new methods into the database with “real” numbers at the earliest opportunity so there is not a proliferation of 99s... This would also help to move ELAP in the direction of always allowing the latest approved technologies to be used.
5. Technology descriptions in the FOTs are inconsistent and would benefit from adopting the descriptions used in the TNI standard which is also used by PT providers.
6. Any analyte that requires monitoring, even if unregulated, such as those with notification levels, should be listed on the FOTS (e.g. nitrosamines, 1,4-dioxane) and labs should need to obtain certification to report those data to regulatory agencies. Note that this is not just an ELAP issue, and requires consultation with your regulatory bodies to ensure that they agree that certification is required for this type of monitoring.
7. The form of the FOTs is not as user friendly as the old form and it would be nice to not move backwards from a user perspective.

AGENDA ITEM #5

Attachment 1

There are certainly other issues that ELTAC may raise on this subject, but the ones above seem to provide some of the overarching issues. It is better to get it right the first time and take time than to rush through the FOTs and then end up with multiple versions in play, creating more work for ELAP and for labs.

ELTAC Draft Mission Statement

ELTAC serves to facilitate transparency, as an inclusive conduit for the fair and balanced exchange of information and dialogue between the laboratory community and ELAP. ELTAC works to provide support, critical stakeholder review, scientifically valid advice and unbiased guidance to ELAP on technical issues and the foreseeable effects that regulatory decisions may have, to ensure public health and environmental protection. ELTAC partners with ELAP to create and maintain a high quality accreditation program to meet the needs of the California laboratory community.

Our Cause = Who? What? Where?	<ul style="list-style-type: none">• ELAP• Laboratory community• California laboratory community
Our Action = What we do	<ul style="list-style-type: none">• Facilitate transparency• Inclusive conduit for fair and balanced exchange of information• Dialogue between laboratory community and ELAP• Works to provide support• Critical Stakeholder review• Scientifically valid advice• Unbiased Guidance• Partners to create and maintain high quality accreditation program• Meet the needs of California laboratory community
<u>Our Impact = Changes for the Better</u>	<ul style="list-style-type: none">• Transparency• Balanced• Foreseeable effects that regulatory agency may have• Maintain a high quality accreditation program to meet the needs of the California laboratory community

ELTAC Draft Mission Statement

Contributors to the draft mission statement above:

ELTAC Representatives: R. Coss, R. Gossett, M. Ghabour, G. Neshvad

Draft Mission Statement:

“ELTAC serves to facilitate transparency, as an inclusive conduit for the fair and balanced exchange of information and dialogue between the laboratory community and ELAP. ELTAC works to provide support, critical stakeholder review, scientifically valid advice and unbiased guidance to ELAP on technical issues and the foreseeable effects that regulatory decisions may have, to ensure public health and environmental protection. ELTAC partners with ELAP to create and maintain a high quality accreditation program to meet the needs of the California laboratory community.”

White Paper #1: Accreditation Standards for ELAP

By David Kimbrough, Pasadena Water & Power

Presented to the Environmental Laboratory Technical Advisory Committee,
May 11, 2016

The Environmental Laboratory Technical Advisory Committee (ELTAC) has been given the task of discussing the pros and cons of adopting a new accreditation standard. This whitepaper is an attempt to provide the ELTAC with one perspective on this matter in an effort to stimulate thinking and discussion.

1) Introduction

The Environmental Laboratory Accreditation Program (ELAP) was created to ensure that California regulatory agencies received reliable results from laboratories that are used for regulatory compliance monitoring. California has been involved in environmental laboratory issues since the 1920's and has been accrediting drinking water and wastewater laboratories since the early 1950's. The United States Environmental Protection Agency's drinking water certification program was largely based on what California was doing.

Over the last 20 years ELAP has largely failed to achieve most of its goals. It often only barely functioned, failing to routinely conduct on-site assessments (OSAs) and/or conducting incomplete OSAs, inconsistent review of laboratory Proficiency Testing Samples (PTSs), failing to adequately process forms, generally resulting in ineffective and incomplete assessments of laboratory performance. The core problem was a failure of management to direct and train staff in a consistent and effective fashion.

When ELAP was transferred to the State Water Resources Control Board, Board management assessed that ELAP needed to be overhauled. Part of that process was the creation of an Expert Review Panel (ERP). The ERP's task was to assess ELAP and present recommendations to get ELAP back on track. The ERP spent a year taking in information from ELAP, the laboratory community, the State Regulatory Agencies that ELAP are supposed to support, and others. The ERP prepared a report with a number of recommendations for helping to improve ELAP. Most of those recommendations were well received by all stakeholders.

The one exception was on the subject of "Accreditation Standards". The ERP recommended that ELAP adopt a new Accreditation Standard that could be uniformly applied to all laboratories by all ELAP staff. The ERP provided Three Options on how this goal might be achieved. The ERP suggested that accreditation requirements found in The National Environmental Laboratory Accreditation Conference (NELAC) Institute's (TNI) documents might be incorporated into ELAP's new Accreditation Standard. The ERP argued that an Accreditation Standard based on a Quality Systems approach was best. However, many stakeholders objected to using the TNI documents as a prescription to resolve ELAP's shortcomings. The feeling was that implementation of the TNI Standard requirements would be detrimental to ELAP's efforts to return to a fully functional program, and it would be detrimental to the interests of most ELAP accredited laboratories.

2) The Heart of Accreditation

The way the State of California has historically accredited environmental laboratories is in principle quite simple. The State, through its regulatory agencies in regulation, permit conditions, and other similar instruments, identifies analytical methods for particular analytes that it considers acceptable. Bodies with permits from State regulatory agencies are required to use laboratories that employ these approved methods for the combination of analytes necessary to assess compliance sample quality. Laboratories that analyze compliance samples for these permitted bodies apply to ELAP for accreditation for the methods and analytes that the permittees are required to use. ELAP then determines whether the laboratory is competent to analyze those samples for those agencies by those methods for those analytes.

3) Accreditation Standard

An Accreditation Standard is a set of requirements that ELAP uses to assess whether a laboratory is competent to analyze sample for a particular regulatory agency for a particular method for a particular analyte.

What should the Accreditation Standard contain that will allow ELAP to work better?

- a) The starting point must then a list of which combination of approved method and analyte each State Regulatory Agency requires its permittees to use. From this list, laboratories can apply to ELAP for accreditation.

- i. Historically approved methods have been grouped together into Fields of Accreditation or Testing (FOA or FOT). All approved methods for a given regulatory agency that are related are grouped into FOAs. For example all methods approved by the Division of Drinking Water for elements are currently grouped into FOA 103. This would include Atomic Absorption Spectrometry, Atomic Emission Spectrometry, Mass Spectrometry, and so forth.
 - ii. In most cases, more than one analytes can be analyzed by a particular method. ELAP has in the past allowed laboratories to seek accreditation for just particular analytes rather than just by method. Units of Accreditation (UOA) would consist of a combination of Regulatory Agency – Method – Analyte.
 - iii. However in some cases ELAP required laboratories to be accredited for all analytes for which the method was approved irrespective of whether the laboratory had any clients who were required to test for those analytes.
- b) The accreditation process for assessing a laboratory's competence for any given UOA has four parts:
 - i. Laboratories need to be required to fill out forms providing ELAP with key information about the laboratory. This is important for ELAP to be able to assess the laboratory's capabilities.
 - ii. Laboratories need to be required to pay a fee. This is important to fund ELAP's activities.
 - iii. Laboratories need to be required to purchase, analyze, and successfully pass PTs to assess laboratory performance.
 - iv. Laboratories need to be required to participate in an OSA to determine if the information on the forms is correct and to rectify any deficiencies found.
- c) ELAP has had a set of requirements for what information needs to be on each form for each UOA.
 - i. Location of the Laboratory
 - ii. FOAs and UOAs being applied for
 - iii. Organization
 - iv. Qualifications of Staff
 - v. Facilities

- vi. Methods
 - vii. Equipment
 - viii. Quality Assurance
- d) ELAP has a set of requirements for assessing if each of these areas with specific standards. These standards come from:
- i. The approve methods themselves
 - ii. The regulations and statutes of the State of California
 - iii. The Quality Assurance Manual of the laboratory
- e) If a laboratory can demonstrate that they can comply with the requirements for each UOA, ELAP will accredit it.

4) Accreditation Standard vs. Quality System

The ERP Report and ELAP appear to use the term Accreditation Standards to mean, approximately, the same thing as Quality Systems at times. However, this is not accurate. Even the ERP implies as much in their own report where they write:

“ELAP should adopt a clear standard to which it accredits laboratories, and it should implement this standard as soon as possible because it is a foundation of many of the other Panel recommendations. Standards that are based on quality systems provide ongoing checks to help ensure that all functions of the laboratory, regardless of size, are in compliance, resulting in greater confidence in the data produced. The Panel envisions three possible routes the State could take to achieve this: (1) Create ELAP's own State-specific standard; (2) modify and adopt an existing standard; or (3) adopt an existing standard. “

The ERP is arguing for an Accreditation Standard **based on** Quality Systems which implies, correctly, that an Accreditation Standard is different from a Quality System.

ELAP is of course a regulatory enforcement program, it can only accredit laboratories based on what is in their regulations (adopted by ELAP through the Office of Administrative Law under the Administrative Law Act) and enabling statutes (adopted by the State Legislature), i.e. what is in law. ELAP's statutes and regulations lay out procedures for how ELAP will assess a laboratory and determine if they are to be granted or denied accreditation. Accreditation Standard is thus their statutes and regulations. ELAP's statutes 100830(a)(2) allow ELAP to adopt regulations

to establish requirements for “Quality Assurance”. The statutes state that ELAP: “...may issue, deny, renew, or suspend a certificate of accreditation for individual units or fields. Suspension and denial of units or fields of accreditation shall be based on a laboratory's failure to comply with this article and regulations adopted thereunder.” ELAP did indeed adopt regulations to do this, including a section Quality Systems (called “Quality Assurance” in Article 8 §64815) so any future regulation would necessarily include this as well.

If ELAP needs a new Accreditation Standard, it would need to write or amend, at a minimum, a new set of regulations, if not also a new set of statutes.

5) Quality System

a) TNI

The TNI documents are not a Quality System, despite the use of the term. They represent what could, at best be described as part of a Quality System. The entire concept of Quality Management System is to manage the quality of the product from beginning to end. Data Quality Objectives (DQOs), Measurement Quality Objectives (MQOs), Data Quality Indicators (DQIs), Measurement Quality Indicators, would need to be established in statute, regulation, in permits, sampling plans, and the like for them to be established. The DQO's might vary from project to project so there might be Quality Assurance Project Plans (QAPPs). Without these elements established beforehand, a laboratory cannot have a meaningful Quality System. A laboratory Quality System can only be but one part of a larger Quality Management System. The TNI Quality System elements are merely the outline, a framework, for establishing the laboratory component of a broader Quality Management System.

b) ELAP

If ELAP is interested in establishing a Quality Management System it would involve working with the Division of Drinking Water (DDW) to establish DQOs, MQOs, DQIs, MQIs, and so forth that would apply to all of the work of the DDW, not just the laboratories. The same could be done for the Division of Water Quality, the Department of Toxic Substances Control, the Department of Fish and Wildlife, etc.

6) The Three Options

a. Option 1 – The “Do It Yourself” (DIY) Option

The ERP explained Option 1 this way: “The major benefit of creating a State-specific standard is that it would ensure the resulting laboratory requirements meet program and client needs. This effort will allow the State to include only those requirements it considers important for laboratory performance. Major drawbacks are the difficulty, cost, and time associated with writing an original document. Additionally, this option would require the State to develop State-specific training protocols for ELAP assessors, and provide resources to communicate the new requirements to the laboratories. These drawbacks make selecting this option time and cost-prohibitive.”

The ERP provides no insights into what this Accreditation Standard might look like, it merely argues that the process of establishing this Accreditation Standard would be time-consuming and costly. The ERP does not explain how it determine that this was the more costly approach. It appears to assume that ELAP would be beginning from scratch. This assumption however is incorrect. ELAP has its own existing regulations with which to start, as well as draft regulations developed earlier by a joint ELAP-ELTAC committee, and the regulations from other state laboratory accreditation programs are accessible and available.

b. Option 2– The “Hybrid” Option

The ERP explained Option 2 this way: “The major benefit of modifying an existing standard is that it would save time and resources compared to the development of a State-specific standard. The major drawback is that the savings of time and resources might be relatively small in comparison to Option 1. The Panel heard testimony at its August 2015 meeting about an effort by the State of Wisconsin to modify an existing standard. The Panel learned that reaching consensus on the modifications to the standard and the adoption process took an extensive amount of time and, in the end, resulted in an imperfect standard. This, in effect, isolated Wisconsin’s laboratory program, which is not recognized by other states, adding costs and placing restrictions on Wisconsin laboratories conducting business across state lines. Because California’s laboratory community is much larger than

Wisconsin's, the Panel believes that the timeframe for development and adoption of a modified standard would be more protracted than Wisconsin's timeframe. From the information presented, it became clear to the Panel that this option is not practical for ELAP in the immediate future."

Option 2 is supposed to be a "hybrid" of TNI (although TNI is not named explicitly; this was made clear during the ERP's public hearings in Sacramento and Costa Mesa). However, the Wisconsin regulations are all of 25 pages long (as opposed to over 200 for the TNI document), only nine of which are Quality Systems. The Wisconsin regulations used many of the same ideas found in TNI, mainly from Volume 1 Module 2, but none of the exact language. They just started with some of the TNI documents but completely re-wrote it to suit their own needs. Further, most of the Wisconsin regulations are completely independent of the TNI documents. Option 2 is not really any more "hybrid" than Option 1 would be.

As a practical matter, there is no real difference between Options 1 and 2. The ERP did not favor Option 2 for the same reason it did not favor Option 1: it would take too much time and energy from ELAP to establish. It is certainly true that since there is little, if any, difference between the two Options, it is doubtful that it would take any more or less time to develop an Accreditation Standard by either process.

c. Option 3 – The TNI Option

The ERP explained Option 3 this way: *"The major benefit of adopting an existing standard is that the time and resources needed to implement it will be greatly reduced. The major drawback is the lack of ability to customize it to meet State-specific needs. Thus, it would be critical to select the correct standard. The State would need to ensure that the standard it selects meets its clients' requirements and contains proper resources for both assessors and laboratories to ensure a smooth, consistent implementation."*

- i. The ERP's main argument is that The TNI Option is the easiest and quickest Accreditation Standard to adopt, the "Off-The-Shelf" solution. The ERP also notes that this option provides a greater range of inter-state reciprocity and would allow ELAP "...to take advantage of a wealth of available resources and support" although exactly what is meant by that is not explained. What

resources and support and from whom they would be provided is not detailed.

- ii. One of the key differences between TNI accreditation documents and the existing system is the requirement that laboratory analyze two PTSs per year. This was a source of considerable consternation among laboratories as PTS analysis is an expensive process. However, the ERP recommended that ELAP not implement two PT samples per year right away but be implemented at some later unspecified date. A large part of the TNI documents involve PTS, Module 1 of Volume 1, Module 2 of Volume 2, and all of Volume 3. This raises the question as to what the ERP is actually recommending in Option 3. ELAP staff organized two seminars in early April, 2016 to give a description of TNI. At those seminars only Volume 1, Module 2 was discussed, which was the Quality Systems section.
- iii. Is the ERP recommending that ELAP adopt all three volumes of TNI in its entirety or only parts? If it is the entire three volume set, how would ELAP implement that recommendation from the ERP to not require two PTSs per year? If the ERP is recommending that ELAP implement only parts of the three volumes of the TNI documents, which parts are they recommending? Is it only Volume 1, Module 2 or are other parts recommended as well? It is hard to see how ELAP can implement all of TNI requirements while not requiring two PTSs per year.
- iv. The ERP suggests that a variety of resources and support are available if the TNI documents are used. If ELAP did not adopt all of the TNI documents would those resources and support still be available?
- v. Further, if ELAP is only going to take parts of TNI and not others, and thus develop those other parts itself, it is not really going to be any faster than developing its own standard or hybrid standard.

7) Three Options?

- a) If ELAP does not adopt TNI as whole and only parts in Option 3, Option 2 and Option 3 are pretty much the same, as is Option 1. In fact, it may well be the case that there is only one option, ELAP has to write its own regulations and draw upon a different source, possibly including TNI, either directly or indirectly as was done in Wisconsin.

- b) Irrespective of which of these Options are eventually chosen by ELAP, a draft regulatory package will still need to be prepared. The Administrative Procedures Act (APA) requires that a regulatory package have four elements. These are: (1) the proposed text; (2) the Initial Statement of Reasons; (3) the STD Form 399 Economic and Fiscal Impact Statement; and (4) the Notice of Proposed Regulatory Action (notice). The actual text of the regulations is not necessarily the biggest part of this package. So there is actually little real difference in terms of how much time ELAP would have to spend to adopt the new Accreditation Standard. The ERP's recommendation for Option 3 was entirely based on how quickly and easily it could be adopted.
- c) So at the end of the day, the only real question is this: How would using any part of the TNI documents help ELAP function better?

8) TNI Problems

- a. It is, it would seem, still unresolved which version of the TNI documents would be used. Some TNI compliant states still use the 2003 version (e.g. Florida), the remainder use the 2009 version, but TNI itself will soon be releasing the 2016 version. It is difficult to fully assess this option if it is unknown which version is to be used.
- b. The 2009 and 2016 TNI Documents are, or will be, copyright protected. Much of the text is taken word for word from the ISO 17025 Standard which has very exacting copyright restrictions held by ISO. This is similar to the situation with the California Building Code and Fire Code. Each is developed by a third party as the TNI documents are but are incorporated into State law as Title 24 Part 1 – 12 (<http://www.bsc.ca.gov/Home/Current2013Codes.aspx>) which includes the Fire Code as Part 9 (<https://law.resource.org/pub/us/code/bsc.ca.gov/gov.ca.bsc.2013.09.pdf>). The State of California owns the copy right on these documents. It would seem logical that the same relationship apply to the TNI documents.
- c. Further, the TNI documents are locked behind paywall. Interested parties who want to determine their opinion about the TNI documents would have pay. This places an unreasonable burden upon any interested party who might wish to provide comment either in preparation for the ELTAC meeting or during the formal comment period required by the APA. All of the Building Codes, including the Fire Code, are available for free online.

- d. Until these problems are resolved, it would be hard to consider using TNI documents, as a whole or in parts, for ELAP's Accreditation Standard.

9) Criteria for the Assessment of the Accreditation Standards

- a. Since there is really only one real Option, ELAP will have to write a set of regulations compliant with the APA. This includes associated documents containing all of the elements of an Accreditation Standard. The only question is should some elements from TNI be included or not?
- b. The ERP was created because ELAP was not performing its functions adequately and was created to provide advice on how ELAP can improve. The ERP was not created to try to improve or reform laboratory performance for the most part. As a result, when assessing the issue of Accreditation Standards there should be **Two Criteria**:
 - i. The **Primary Criterion** in determining which option ELAP should implement must be whether including language from the TNI document improves or diminishes ELAP's ability to do its job.
 - ii. The **Secondary Criterion** should be whether including language from the TNI document improves or diminishes the laboratories' ability to their jobs.
 - iii. Current requirements are found in the methods that laboratories are accredited for and in current regulations described above in 2) Accreditation Standards.

10) Primary Criterion

- a. Which TNI Documents? - Part of the problem with using the TNI documents is that it is not clear which TNI documents are to be used. There are 1998 documents, 2003 documents, 2009 documents, and the 2016 documents. The former is cited in ELAP's enabling legislation and all three of the latter have been suggested for use at various times by various individuals. It is difficult to see how ELAP can effectively use the TNI documents when there are four different TNI documents and which is being proposed is unknown.
- b. TNI is Inaccessible - The different difficulty in assessing the usefulness of the TNI requirements is that they are not publically available. The TNI

seminar of April 2016 was confined to just the Quality Systems (Volume 1, Module 2) and no substantive documents were allowed to be removed from the room. Furthermore, there is no available recording of these events, as was initially promised during and after the workshops. The discussion below is based on notes from that event.

- i. Non-TNI Requirements - It is essential to note that these requirements are in addition to the method specific requirements, not in place of them. So ELAP staff will have to conduct On-Site Assessments (OSAs) and other accreditation activities using both the TNI requirements and the existing method specific requirements.
- ii. The sheer bulk of the 2003 requirements seems to be an entire problem all by itself. ELAP staff will have to be trained to review an 85 page checklist (or whatever similarly large checklist is developed for either the 2009 or 2016 documents) with 1126 separate requirements. It will take a tremendous amount of training to master all of these requirements which is beyond the equally immense training required to master the individual method requirements.
- iii. At the April 7 Rancho Cordova TNI Workshop, Jerry Parr noted that the TNI requirements do not provide any additional benefit to accuracy, precision, or protection of public health, which are part of ELAP's objective.
- iv. During the April 9 Costa Mesa TNI Workshop, Chris Gunning indicated that it took him, on average, an entire day to conduct an OSA based solely on the Quality Systems General Requirements (Module 2) requirements alone. These requirements are the same for every laboratory. Using PWP's laboratory as an example, currently ELAP staff take one day to conduct a complete OSA for Field of Testing 101, 102, 103, and 105. The amount of time ELAP staff would take to conduct an OSA on PWP just adding the Quality Systems General Requirements would immediately double. Since PWP's lab is typical of a typical California small government laboratory, this would automatically double OSA auditor time for small labs, and even more time would need to be allotted for large laboratories. However, there are additional requirements that were not discussed at the Quality Systems for specific types of analysis which involve requirements not found in methods or current regulation:

- a) Module 3: Asbestos Testing
 - b) Module 4: Chemical Testing
 - c) Module 5: Microbiological Testing
 - d) Module 6: Radiochemical Testing
 - e) Module 7: Toxicity Testing
- v. For example, technical requirements not found in approved methods at the April 9 workshop: VOLUME 1, MODULE 5 Quality Systems for Microbiological Testing - 1.7.5 b) had unique Sample Handling requirements.
 - a) "Microbiological samples from known chlorinated sources (such as wastewater effluent), unknown sources where chlorine usage is suspected (such a new client or a new source) and all potable water sources (including source water) shall be checked for absence of chlorine residual."
 - b) This would seem to suggest that all Colilert bottles for TC/EC and HPC would have to be checked for chlorine residual.
 - c) There are however provisos: *"Laboratories that receive samples from potable water sources (including source water) that have a demonstrated history of acceptable preservation may check a sample from each source at a frequency of once per month if"*:
 - I. *"the laboratory can show that the received sample containers are from their laboratory;*
 - II. *sufficient sodium thiosulfate was in each container before sample collection to neutralize at minimum 5 mg/L of chlorine for drinking water and 15 mg/L of chlorine for wastewater samples;*
 - III. *one container from each batch of laboratory prepared containers or lot of purchased ready-to-use containers is checked to ensure efficacy of the sodium thiosulfate to 5 mg/l*

chlorine or 15 mg/L chlorine as appropriate and the check is documented;

IV. chlorine residual is checked in the field and actual concentration is documented with sample submission."

- vi. This requirement is not found in any approved method so ELAP will have to be trained on this as well as the actual method requirements. This places additional and unneeded burdens on ELAP staff.
- vii. A second example comes from Volume 2 Section 6.0 which requires: "[ELAP] shall assess the laboratory to ensure that PT samples are tracked, prepared, and analyzed in the same manner as routine samples. The Primary AB shall require the laboratory demonstrate through their records that.." a through g.
 - 1. This requires that ELAP staff will have to review all data from all PT samples on each OSA.
 - 2. It creates an additional set of requirements that ELAP staff have to be trained for.
 - 3. It adds a great deal more work as ELAP staff have to review the analytical batch for all PT samples.

c. TNI would be very labor intensive

- i. Again using PWP's laboratory as an example, for ELAP to incorporate the Quality System's General Requirements and the Modules 4 & 5 could easily triple the amount of time ELAP staff would have to spend just at the location for the OSA. This would also triple the amount of time spent in preparation for the OSA and for follow-up.
- ii. ELAP had been an NELAP approved Accreditation Body for many years, approximately from 2000 – 2014. When ELAP offered TNI (NELAP) accreditation, their fees were three times higher than for their conventional accreditation. When ELAP proposed those fees, they justified them by saying that a NELAP OSA took three times as much effort. This analysis would appear to support that assessment.

- iii. Suffice it to say it is clear that if ELAP were to adopt even just part of the TNI document, it would require vast amount of time to both train ELAP staff and for ELAP staff to actually implement.
- iv. On page iv of the ERP's final report it notes: "*ELAP has insufficient resources to accomplish its mission*", an assessment that many familiar with the ELAP would readily agree with. However, given this reality, it is hard to see how burdening ELAP's limited personnel resources with three times the necessary work makes any sense.
- v. The TNI requirements are vague, ambiguous, difficult to implement, and do not serve to assist ELAP in protecting public health. These requirements do not provide any additional protection to public health nor do they improve the accuracy or precision of the laboratory results.
- vi. Further, many of these requirements do not actually have any objective standard. In this case, there is no explanation as to what is or is not an acceptable policy or procedure. How do assessors assess a policy without any standard to compare it to? This is a "Standardless Requirement".

d.

- 1. For example requirement 4.6.1 says: "*The laboratory shall have a policy and procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, reception and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.*"
- 2. Another example of requirements that are vague, ambiguous, difficult to implement, and do not serve to assist ELAP in protecting public health is from Section 4.5 on Subcontracting where Section 4.5.1 contradict each other. 4.5.5 requires the use of TNI accredited laboratories as sub-contractors while 4.5.1 has a very broad definition.

- a. 4.5.1 says: *"When a laboratory subcontracts work, whether because of unforeseen reasons (e.g. workload, need for further expertise or temporary incapacity) or on a continuing basis (e.g. through permanent subcontracting, agency or franchising arrangements), this work shall be placed with a competent subcontractor. A competent subcontractor is one that, for example, complies with this International Standard for the work in question."*
- b. However 4.5.5 says: *"When a laboratory subcontracts work, this work shall be placed with a laboratory accredited to this Standard for the tests to be performed or with a laboratory that meets applicable statutory and regulatory requirements for performing the tests and submitting the results of tests performed. The laboratory performing the subcontracted work shall be indicated in the final report. The laboratory shall make a copy of the subcontractor's report available to the client when requested."*
- e. Using TNI requirements to supplement existing requirements would be counter-productive to ELAP. It would drain resources while providing no additional benefits to ELAP as compared to using the existing requirements.

11)Secondary Criterion

The needs of the laboratories are largely the same as ELAP. The TNI documents alone are huge, complex, ambiguous, vague, and time-consuming to read and understand. Vast amounts of new resources will be drawn into the process of accreditation if TNI were to be incorporated into ELAP's Accreditation Standard. Given the fact that incorporating TNI into ELAP's Accreditation Standard is not intended to help the laboratories (it is to help ELAP according to the original ERP charge questions), it is hard to make the case for including TNI documents. If anything, the case is even stronger for the laboratories for not including the TNI documents. ELAP staff at least is made up of full time accreditation officers; they have more of a basis to learn all of the additional requirements. Most laboratories do not have the resources to review and incorporate the TNI documents. 80% of laboratories accredited by ELAP have five or fewer

staff members, a great many have only one or two, and quite a few do not even have single full time laboratory staff member. Some laboratories consist only of operators who spend a few hours a week in the laboratory and the director is simply a supervisor who oversees several units, the laboratory is just one.

12)Conclusion

The fundamental problem that caused ELAP's problems was the lack of leadership and management skills. The old Accreditation Standard was a problem but it was not the main problem. Adopting a new Accreditation Standard will be helpful but will not provide ELAP's with leadership or management. Given these realities including TNI requirements into ELAP's Accreditation Standard simply does not make sense. This is true whether the question is examined from the point of view of restoring ELAP's ability to do its job or from the needs of the laboratory community. Using the TNI documents as part of ELAP's new Accreditation Standard would place an undue burden on the ELAP program, creating a drain on limited resources while providing no benefits. The use of standardless requirements, which produce vague and ambiguous documents actually amplifies ELAP's historic problem with inconsistency between assessors. It will vastly expand the amount of time ELAP staff will need to conduct OSAs. Requiring two PTSs per year, if that is implemented, will require more ELAP staff resources that it does not have and place an unneeded load on laboratories.

White Paper #2: The Impact of TNI on Florida Laboratories

By David Kimbrough, Pasadena Water & Power

When the State of Florida required all laboratories to be NELAP/TNI compliant it caused significant problems for smaller laboratories.

Presented to the Environmental Laboratory Technical Advisory Committee,
May 11, 2016

The Expert Review Panel (ERP) was created to address the many shortcomings of the previous management of the Environmental Laboratory Accreditation Program (ELAP). The ERP made a number of recommendations, one of which was for ELAP to adopt a new Accreditation Standard. The ERP provided Three Options for how to approach preparing a new Accreditation Standard. The ERP has suggested that accreditation requirements found in the documents of The NELAC Institute (TNI) would be helpful to ELAP, either in part or in their entirety, to get back on track to being an effective regulatory body.

However while the focus of the ERP's work is quite correctly focused on fixing ELAP, the interests of the laboratory community should not be lost in this effort. Adopting a new Accreditation Standard which is beneficial to ELAP but harmful to the laboratory community is no better than ELAP having an outdated and ineffective Accreditation Standard. One of the on-going concerns about the use of TNI as part of an Accreditation Standard is its impact upon laboratories in general but upon smaller laboratories in particular. 80% of laboratories accredited by ELAP have five staff members or fewer.

There has been and no doubt will continue to be considerable discussion on the topic of how TNI might or might not impact laboratories with smaller staffs. What this paper will attempt to do is look how TNI was actually applied in the State of Florida and the actual impact it had upon accredited laboratories. In 2000 the State of Florida adopted the November 1998 National Environmental Accreditation Conference (NELAC) and adopted the 2003 NELAC requirements in 2002. Other states of course took similar steps, California authorized ELAP to adopt regulations to enforce the 1998 NELAC requirements as well. However California, like other states who were NELAC compliant, made that form of accreditation optional, laboratories could either use NELAC requirements or not. In California, only around 10% of laboratories opted to use the NELAC requirements, all of which were larger commercial laboratories conducting substantial inter-state commerce so California and other similar state does not

provide a good measure for the impact of NELAC on smaller laboratories, only preferences.

Florida is unique among TNI compliant state accreditation programs, it requires all laboratories to be TNI compliant and it has a readily available database of laboratories that are currently accredited and are no longer accredited (see Figure 1). There are 376 laboratories in the inactive database. A lot of those were not physically located in the State of Florida and were not small laboratories. There were 202 which were physically located in Florida. 90 or so of these inactive laboratories are associated with local municipalities and other government agencies, mostly laboratories associated with sewage treatment plants but also drinking water facilities, county and state public health laboratories, and university laboratories (Figure 2). Others were bottled water companies (Zephyrhills Spring Water Company), private water utilities (Bonita Springs Utilities WRF Lab), commercial laboratories (Advanced Environmental Laboratories, Inc. – Gainesville), in-house laboratories (Tropicana), and so forth.

Not all of these laboratories actually ceased to exist or even lost accreditation. Some laboratories simply changed their names, or moved to new locations, or were purchased by other laboratories, or were consolidated after a parent company was purchased. Zephyrhills Spring Water Company was purchased by a larger firm which already had a laboratory at another facility. Advanced Environmental Laboratories, Inc. – Gainesville simply moved a few blocks away and got a new certificate number.

However those reasons rarely apply to the government laboratories listed, although it did in some cases. For example, the City of Cocoa had had two laboratories, one for their wastewater treatment plant and one for their drinking water plant. After NELAP was implemented, the two were consolidated and the wastewater laboratory was closed.

On the other hand, the City of Vero Beach's Wastewater Treatment (E53303) is listed as inactive at its 17 17th Street (Figure 3), there is no comparable listing in Active List (Figure 4) in Indian River County, however the treatment plant is still in operation at the same address, the laboratory is simply no longer accredited. The facility did not move to a new location or change its name or purchased by another firm. This laboratory applied for accreditation in 2002, it was renewed in 2003, and the entire accreditation was relinquished in 2005. The City of Atlantic Beach which has a small wastewater treatment plant (3.5 MGD) had to close their laboratory because of the burden of NELAP accreditation (Figure 5).

The City of Bartow Wastewater Treatment Plant Laboratory (E54339) is also listed as inactive. However a review of the database revealed no information about when the City of Bartow relinquished its accreditation. A telephone call to the

treatment plant operator on duty revealed that the plant had indeed dropped their accreditation as soon as the TNI requirements were added (Figure 6). Figure 7 – 18 show other small laboratories that relinquished their accreditation following the adoption of NELAP/TNI requirements.

While there is clearly more research to be done on this topic but it is clear that when the State of Florida switched their accreditation program to include NELAP/TNI, it has a huge impact on the laboratory community, particularly smaller utility laboratories.

Figure 1

Florida Department of Environmental Protection Webpage for Laboratories No Longer Certified under NELAP by the Florida Department of Health

<div> </div>								
NELAP-Certified Organizations - Location Results								
Laboratories <u>no longer certified</u> Under NELAP by the Florida Department of Health								
Organization Name and Location Query Results								
Database Version: 01/23/2016 8:18:22 AM								
DOH ID	Organization	Address	City	State	Zip	County	Phone	Fax
E871021	A & B Environmental Services, Inc.	10100 East Freeway, Suite 100	Houston	TX	77029	HARRIS	(713) 453-6060	(713) 453-6091
E87425	A & B Laboratories, Inc.	10100 East Freeway, Suite 100	Houston	TX	77029	No County	(713) 453-6060	(713) 453-6091
E67593	AFIOH/SDC	2350 Gillingham Drive	Brooks City-Base	TX	78235	No County	(210) 536-5865	(210) 536-6205
E83580	AJT & Associates Environmental Laboratory	8900 Astronaut Blvd.	Cape Canaveral	FL	32920	Brevard	(321) 783-7989	(321) 783-0041
E871073	ALS Laboratory Group - Houston, Texas	10450 Stanchiff Rd., Suite 210	Houston	TX	77099	HARRIS	(281) 530-5656	(281) 530-5887
E87685	AMRO Environmental Laboratories Corporation	111 Herrick Street	Merrimack	NH	03054	No County	(603) 424-2022	(603) 429-8496
E87037	ASC, a division of ecology and environment, inc.	4493 Walden Avenue	Lancaster	NY	14086	No County	(716) 685-8080	(716) 685-0852
E87636	ASCI Corporation - Environmental Testing Laboratory	4444 Airpark Blvd.	Duluth	MN	55811	No County	(218) 722-4040	(218) 722-2592
E871003	Accutest/SPL Environmental - Houston	8880 Interchange Dr.	Houston	TX	77054	HARRIS	(713) 660-0901	(713) 660-0120
E82620	Advanced Environmental Laboratories, Inc. - Gainesville	2106 N. W. 67th Place, #7	Gainesville	FL	32653	Alachua	(352) 367-1500	(352) 367-0500
E86613	Agrimond, L.L.C.	8304 N.W. South River Drive	Medley	FL	33166	Dade	(305) 888-8330	(305) 888-8380
E87847	Air Technology Laboratories	18501 E. Gale Avenue, Suite 130	City of Industry	CA	91748	No County	(626) 964-4032	(626) 964-5832
E71992	Allen Boyd - Franklin County - Oyster Industry Laboratory	28 Airport Road	Apalachicola	FL	32320	Franklin	(850) 653-8863	(850) 653-3643
E87687	Allmond Laboratory Services, Inc.	110 Baldwin Drive	Albany	GA	31707	No County	(229) 438-0394	(229) 883-4272
E87629	Almega Environmental, Inc.	1124 East Lakeshore Drive	Carriere	MS	39426	No County	(601) 799-5808	(601) 798-7682

Figure 2
Government Run Laboratories on the Inactive List

DOH ID	Organization
E43877	City Of Vero Beach, Wastewater Treatment Plant
E52465	City of Atlantic Beach Wastewater Treatment Plant
E54266	City of Auburndale Wastewater Laboratory
E54339	City of Bartow Wastewater Treatment Plant Laboratory
E56034	City of Belle Glade Wastewater Treatment Plant
E54461	City of Bradenton Water Reclamation Laboratory
E54712	City of Bradenton Water Treatment Plant Laboratory
E54020	City of Clearwater - Marshall Street Water Pollution Control Laboratory
E53727	City of Cocoa Water Treatment Plant
E54508	City of Dunedin Wastewater Treatment Plant
E52335	City of Fernandina Beach Wastewater Treatment Plant
E54336	City of Fort Meade Wastewater Treatment Plant Laboratory
E54373	City of Haines City Wastewater Treatment Plant
E56744	City of Hallandale Beach Water Treatment Plant
E56756	City of Lauderhill Water Treatment Plant
E53306	City of Leesburg Wastewater Utility Laboratory
E51497	City of Mary Esther Wastewater Treatment Plant
E53732	City of New Smyrna Beach Water Treatment Plant Laboratory
E56721	City of North Lauderdale Water Plant
E53343	City of Ormond Beach Public Utilities
E52474	City of Palatka Wastewater Treatment Plant
E56300	City of Pembroke Pines Wastewater Treatment Plant
E52400	City of Perry Wastewater Treatment Plant
E51289	City of Port St. Joe Wastewater Treatment Plant Laboratory
E56264	City of Royal Palm Beach Utilities Dept. Wastewater Treatment Plant Laboratory


E53372	City of Sanford Water Reclamation Facility Laboratory
E54736	City of Sarasota Water Plant Laboratory
E55378	City of Sebring Wastewater Treatment Plant
E53421	City of St. Cloud Water and Wastewater Facilities
E54743	City of St. Petersburg - Cosme Water Treatment Plant Laboratory
E56725	City of Tamarac Utilities Laboratory
E54369	City of Tarpon Springs Wastewater Treatment Plant
E54426	City of Venice - Eastside Wastewater Treatment Plant
E54326	City of Venice Water Reclamation Laboratory
E53303	City of Vero Beach Environmental Control Laboratory
E54466	City of Wauchula Wastewater Treatment Plant
E53321	City of Winter Garden Wastewater Pollution Control Facility
E54305	City of Winter Haven Wastewater Treatment Plant #2 - Lake Conine
E54066	City of Winter Haven Wastewater Treatment Plant #3
E53136	City of Winter Park Estates Laboratory
E53416	City of Winter Springs Wastewater Reclamation Facility
E55419	Bonita Springs Utilities WRF Lab
P341052	FL DACS Central Dairy Laboratory
E84746	FL DACS Central Dairy Laboratory
E33863	FL DEP - Central District Laboratory
E31640	FL DEP - Central Laboratory/Innovation Park Satellite Laboratory
E32890	FL DEP - NE District
E31887	FL DEP - NW District Chemistry Laboratory
E36885	FL DEP - SE District Lab
E34886	FL DEP - SW District Chemistry Laboratory
E34830	FL DEP - South District Laboratory
E11062	FL Department of Health - Pensacola Branch Laboratory

E16122	FL Department of Health - West Palm Beach Branch Laboratory
E22794	FL Dept. of Health - Bradford County Health Department
E13800	FL Dept. of Health - Bureau of Radiation Control
E24768	FL Dept. of Health - Citrus County Health Department
E24704	FL Dept. of Health - Hernando County Health Department
E25705	FL Dept. of Health - Highlands County Health Department
E23708	FL Dept. of Health - Marion County Health Department
E24709	FL Dept. of Health - Pinellas County Health Department
E24710	FL Dept. of Health - Polk County Health Department
E24711	FL Dept. of Health - Sarasota County Health Department
E22770	FL Dept. of Health - St. Johns County Health Department - Environmental Eng.
E26789	FL Dept. of Health - St. Lucie County Health Department
E54524	Florida Governmental Utility Authority - Gulf Gate Laboratory
E51431	Florida State Hospital Wastewater Treatment Plant
E511004	Florida State Hospital Wastewater Treatment Plant
E96766	Miami-Dade County Public Schools, Department of Materials Testing and Evaluation
E661069	NOAA - AOML Nutrient Laboratory
E51561	Niceville, Valparaiso, Okaloosa County Regional Sewer Board, Inc.
E56970	Okeechobee Utility Authority Wastewater Treatment Plant
E56584	Okeechobee Utility Authority Wastewater Treatment Plant Laboratory
E56723	Okeechobee Utility Authority Water Treatment Plant
E43155	Orange County Environmental Protection Division
E44301	Plant City Water Pollution Control Laboratory
E53758	Port Orange Utility - Garnsey Water Treatment Plant Laboratory
E56489	Port St. Lucie Utility Systems Department Laboratory
E63359	Kennedy Space Center Laboratory for Sewage Treatment Operations
E56532	Sailfish Point Utility Corporation

E53390	Seminole County Environmental Services Greenwood Lakes Treatment Plant
E63507	U.S. Geological Survey, WRD, OWQRL
E76857	UF / IFAS / IRREC - Lab 25 (C. Wilson)
E72949	UF-IFAS Wetland Biogeochemistry Laboratory
E06897	UF-TREC Soil and Water Laboratory
E52302	United Water Florida Primary Laboratory
E76888	University of Florida Soil and Water Science Laboratory
E74916	University of South Florida
E71176	University of West Florida Wetlands Research Laboratory
E23111	Volusia County Environmental Health Laboratory
E53650	Woodlea Road Wastewater Utilities Laboratory

Figure 2

Florida Department of Environmental Protection Transaction History for the City
of Vero Beach, Wastewater Treatment Plant

 NELAP-Certified Laboratories

Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM


Organization:		City Of Vero Beach, Wastewater Treatment Plant					
DOH ID:		E43877					
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Non-Potable Water	SM 2540 D	Residue-nonfilterable (TSS)	10/24/2002	From: No Certification To: Applied	None NELAP	FL	10/28/2002
Non-Potable Water	SM 2540 D	Residue-nonfilterable (TSS)	4/1/2003	From: Accredited To: Accredited	NELAP NELAP	FL FL	5/23/2003
Non-Potable Water	SM 2540 D	Residue-nonfilterable (TSS)	5/23/2003	From: Applied To: Accredited	NELAP NELAP	FL FL	5/23/2003
Non-Potable Water	SM 2540 D	Residue-nonfilterable (TSS)	8/3/2005	From: Accredited To: Relinquished	NELAP NELAP	FL FL	8/5/2005

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Last updated: April 23, 2015









Figure 3

Florida Department of Environmental Protection List of All Accredited
Laboratories in Indian River County



Florida Department of Environmental Protection

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- » [Public Notices, Outreach & Education Calendar](#)
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NELAP-Certified Organizations - Location Results

Laboratories Certified Under NELAP by the Florida Department of Health

Organization Name and Location Query Results

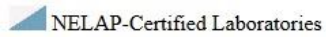
Database Version: 01/23/2016 8:18:22 AM

LAB ID	DOH ID	Organization	Type	Street Address	City	State	Zip	County	Phone
5849	E23759	FL Dept. of Health - Indian River County Health Department	DOH CHD	1900 27th Street	Vero Beach	FL	32960	Indian River	(772) 794-7400

Hits: 1

Figure 4

Florida Department of Environmental Protection Transaction History for the City of Cocoa



Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

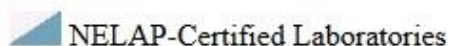
Organization:		City of Cocoa Water Treatment Plant					
DOH ID:		E53727					
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Drinking Water	SM 9221 E	Fecal coliforms	7/1/2003	From: Accredited	STATE	FL	7/2/2003
				To: Accredited	NELAP		
Drinking Water	SM 9221 E	Fecal coliforms	10/18/2007	From: Accredited	NELAP	FL	10/26/2007
				To: Relinquished	NELAP		

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Last updated: April 23, 2015

Figure 5

Florida Department of Environmental Protection Transaction History for the City
of Bartow's Wastewater Treatment Plant



Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

There are no transaction entries for this FOA.

Please note that the AAMS Database was created in March 2002.

No transaction history entries exist prior to this date.

If you have further questions regarding this FOA

please contact the DOH Lab Certification Program (904-791-1599).

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City of Bartow Wastewater Treatment Plant Laboratory

Last updated: April 23, 2015

Figure 6

Florida Department of Environmental Protection Transaction History for the Bradford County Health Department

 NELAP-Certified Laboratories

Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:	FL Dept. of Health - Bradford County Health Department
DOH ID:	E22794

Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Drinking Water	SM 9223 B	Total coliforms ~and~ E. coli	11/14/2002	From: Accredited To: Accredited	STATE NELAP	FL	1/17/2003
Drinking Water	SM 9223 B	Total coliforms ~and~ E. coli	5/31/2005	From: Accredited To: Relinquished	NELAP NELAP	FL FL	6/13/2005

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Last updated: April 23, 2015

Figure 7

Florida Department of Environmental Protection Transaction History for the City of Auburndale

 NELAP-Certified Laboratories

Laboratories **no longer certified** Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM


Organization:		City of Auburndale Wastewater Laboratory					
DOH ID:		E54266					
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Non-Potable Water	SM 5210 B	Carbonaceous BOD (CBOD)	7/1/2003	From: Accredited	NELAP	FL	7/24/2003
				To: Inactive	NELAP	FL	

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Last updated: April 23, 2015

Figure 8

Florida Department of Environmental Protection Transaction History for
the City of Belle Glade


NELAP-Certified Laboratories

Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:	City of Belle Glade Wastewater Treatment Plant
DOH ID:	E56034


Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Non-Potable Water	EPA 350.2	Ammonia as N	7/24/2001	<div>From: Accredited</div> <div>To: Accredited</div>	<div>STATE</div> <div>NELAP</div>	<div>FL</div>	2/18/2003
Non-Potable Water	EPA 350.2	Ammonia as N	4/5/2003	<div>From: Accredited</div> <div>To: Relinquished</div>	<div>NELAP</div> <div>NELAP</div>	<div>FL</div> <div>FL</div>	4/4/2003

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Last updated: April 23, 2015

Figure 9

Florida Department of Environmental Protection Transaction History for the City of Bradenton

 NELAP-Certified Laboratories

Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:	City of Bradenton Water Reclamation Laboratory
DOH ID:	E54461


Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Non-Potable Water	SM 5210 B	Carbonaceous BOD (CBOD)	4/11/2005	From: Inactive To: Relinquished	NELAP NELAP	FL FL	4/19/2005
Non-Potable Water	SM 5210 B	Carbonaceous BOD (CBOD)	4/11/2005	From: Accredited To: Inactive	NELAP NELAP	FL FL	4/19/2005

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Last updated: April 23, 2015

Figure 10

Florida Department of Environmental Protection Transaction History for
the City of Clearwater

 NELAP-Certified Laboratories

Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:		City of Clearwater - Marshall Street Water Pollution Control Laboratory						
DOH ID:		E54020						
Program	Method	Analyte	Date Effective	Status		Accreditation Type	Primary AA	Date Entered
Non-Potable Water	SM 2320 B	Alkalinity as CaCO3	7/1/2003	From:	Accredited	STATE	a	7/24/2003
				To:	Inactive	STATE		

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Last updated: April 23, 2015

Figure 11

Florida Department of Environmental Protection Transaction History for the City of Dunedin



Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:		City of Dunedin Wastewater Treatment Plant					
DOH ID:		E54508					
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Non-Potable Water	SM 5210 B	Carbonaceous BOD (CBOD)	10/31/2006	From: Accredited	NELAP	FL	11/7/2006
				To: Relinquished	NELAP	FL	
Non-Potable Water	SM 5210 B	Carbonaceous BOD (CBOD)	2/6/2008	From: Relinquished	NELAP	FL	3/20/2008
				To: Applied	NELAP	FL	
Non-Potable Water	SM 5210 B	Carbonaceous BOD (CBOD)	6/13/2008	From: Applied	NELAP	FL	6/27/2008
				To: Accredited	NELAP	FL	
Non-Potable Water	SM 5210 B	Carbonaceous BOD (CBOD)	10/1/2010	From: Accredited	NELAP	FL	10/5/2010
				To: Relinquished	NELAP	FL	

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Last updated: April 23, 2015

Figure 12

Florida Department of Environmental Protection Transaction History for the City of Fernandina Beach



Laboratories **no longer certified** Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:	City of Fernandina Beach Wastewater Treatment Plant
DOH ID:	E52335

Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Non-Potable Water	SM 9222 D	Fecal coliforms	7/8/2003	From: Accredited To: Accredited	STATE NELAP	FL	8/21/2003
Non-Potable Water	SM 9222 D	Fecal coliforms	10/28/2005	From: Accredited To: Relinquished	NELAP NELAP	FL FL	10/28/2005

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Last updated: April 23, 2015

Figure 13

Florida Department of Environmental Protection Transaction History for Haines City



Laboratories no longer certified Under NELAP by the Florida Department of Health

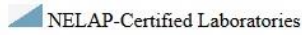
Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:		City of Haines City Wastewater Treatment Plant						
DOH ID:		E54373						
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered	
Non-Potable Water	SM 9222 D	Fecal coliforms	5/10/2002	From: Accredited	STATE	FL	2/28/2003	
				To: Accredited	NELAP			
Non-Potable Water	SM 9222 D	Fecal coliforms	2/1/2005	From: Accredited	NELAP	FL	2/2/2005	
				To: Relinquished	NELAP	FL		

Figure 14

Florida Department of Environmental Protection Transaction History for Hernando County Health Department



Laboratories **no longer certified** Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:		FL Dept. of Health - Hernando County Health Department					
DOH ID:		E24704					
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Drinking Water	SM 9223 B	Total coliforms ~and~ E. coli	4/17/2002	From: Accredited To: Accredited	STATE NELAP	FL	2/27/2003
Drinking Water	SM 9223 B	Total coliforms ~and~ E. coli	10/1/2003	From: Accredited To: Relinquished	NELAP NELAP	FL FL	9/30/2003

[top](#)

Last updated: April 23, 2015

Figure 15

Florida Department of Environmental Protection Transaction History for Putnam County Environmental Health Department



Laboratories **no longer certified** Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:		Dept. of Health - Putnam County Environmental Health Department					
DOH ID:		E22779					
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Drinking Water	SM 9223 B	Total coliforms ~and~ E. coli	12/6/2002	From: Accredited To: Accredited	STATE NELAP	FL	12/30/2002
Drinking Water	SM 9223 B	Total coliforms ~and~ E. coli	7/30/2005	From: Accredited To: Relinquished	NELAP NELAP	FL FL	8/10/2005

[top](#)

Last updated: April 23, 2015

Figure 16

Florida Department of Environmental Protection Transaction History for
the United States Geological Survey, Water Resources Discipline, Ocala Water
Quality and Research Laboratory



Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

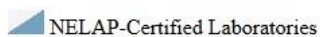
Organization:		U.S. Geological Survey, WRD, OWQRL					
DOH ID:		E63507					
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Non-Potable Water	EPA 410.4	Chemical oxygen demand	7/15/2003	From: Accredited To: Accredited	STATE NELAP	FL	8/15/2003
Non-Potable Water	EPA 410.4	Chemical oxygen demand	9/30/2004	From: Accredited To: Relinquished	NELAP NELAP	FL FL	5/12/2005

[top](#)

Last updated: April 23, 2015

Figure 17

Florida Department of Environmental Protection Transaction History for the Tropicana Products Environmental Operations Laboratory



Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Database Version: 01/25/2010 0:12:21 PM

Organization:	Tropicana Products Environmental Operations Laboratory						
DOH ID:	E84460						

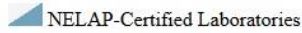
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Non-Potable Water	EPA 350.1	Ammonia as N	4/4/2003	From: Accredited	NELAP	FL	4/21/2003
				To: Relinquished	NELAP	FL	

[top](#)

Last updated: April 23, 2015

Figure 18

Florida Department of Environmental Protection Transaction History for the Hernando County Health Department



Laboratories no longer certified Under NELAP by the Florida Department of Health

Transaction History Query Results

Database Version: 01/23/2016 8:18:22 AM

Organization:		FL Dept. of Health - Hernando County Health Department					
DOH ID:		E24704					
Program	Method	Analyte	Date Effective	Status	Accreditation Type	Primary AA	Date Entered
Drinking Water	SM 9223 B	Total coliforms ~and~ E. coli	4/17/2002	From: Accredited To: Accredited	STATE NELAP	FL	2/27/2003
Drinking Water	SM 9223 B	Total coliforms ~and~ E. coli	10/1/2003	From: Accredited To: Relinquished	NELAP NELAP	FL FL	9/30/2003

[top](#)

Last updated: April 23, 2015

In Support of California Adoption of the TNI Standard

Allison Mackenzie

Babcock Laboratories, Inc.

Prepared for the May 11th, 2016

Environmental Laboratory Technical Advisory Committee (ELTAC) meeting

In Support of California Adoption of the TNI Standard

“ELAP does not have a relevant accreditation standard...” and “...these deficiencies have cost the program credibility among key constituencies” (Phelps, Adelson, Arms, Miller, & Speis, 2015).

These were some of the stark conclusions of a panel of five laboratory accreditation experts from across the United States after their external examination of the existing California Environmental Laboratory Accreditation Program (CA ELAP). Their conclusion was that not only does California need a robust accreditation standard, but adoption in a timely fashion is of critical importance as hundreds of labs across the state and the country test and report thousands of pieces of analytical data—data that is vital to the protection of the public health and preservation of the environment—to California agencies daily. This paper will explore the key reasons why CA ELAP should adopt The NELAC Institute (TNI) Standard. Simply stated, the TNI Standard is the most comprehensive, practical, and economically viable option available to CA ELAP.

To begin, it is important to understand the basic purpose of accreditation. According to the website of the California State Water Resources Control Board (SWRCB), “ELAP-accredited laboratories have demonstrated capability to analyze environmental samples using approved methods” (ELAP, 2016). The purpose of a quality systems based laboratory standard is to ensure the competency of a laboratory to produce data of known and documented quality. All labs—public and private—produce data for decision making purposes affecting public health and safety and therefore must be held to the same standard, regardless of lab size. Labs perform compliance testing that is vital to the future of environmental sustainability and human health (Morgan, 2015; See also Appendix B). It is precisely because State agencies use this analytical data to monitor and make decisions regarding the environment and public health that ELAP “provides evaluation and accreditation on environmental testing laboratories to ensure the quality of analytical data [produced]” (ELAP, 2016). With ELAP’s purpose defined, we can assume that CA ELAP agrees with Parr’s (2010) following statement on data quality:

Data of known and documented quality is critical for end users of environmental measurement data and government agencies to make accurate, reliable and cost-effective decisions to protect the public health and the environment.

Focusing an accreditation system on methods alone is insufficient to ensure quality and consistency. As Parr (2010; See also Appendix C) continues to explain:

An important factor in improving the quality of environmental data and ensuring that the data are adequate for the intended purpose, is a consistent, stringent, comprehensive and yet practical accreditation program to ensure the competency of all environmental testing laboratories and related sampling and measurement organizations in the United States.

With this understanding of the basic purpose of accreditation under CA ELAP and the need for a quality system based laboratory standard to ensure data quality, this paper proposes that CA ELAP should adopt the TNI Standard because it is the most comprehensive, practical, and economically viable option available to CA ELAP.

Comprehensive

Sitting on the edge of the Pacific Rim and boasting the world's 8th largest economy, California is a global leader in agriculture, education, industry, manufacturing and technology (Sisney, Garosi, 2015). Interstate and international commerce depend on mutual recognition of standards and in fact, California's trade and commerce extend across all fifty states and into countries around the world.

The TNI Standard employs the International Organization for Standardization (ISO) 17025, a quality systems document recognized nationally and internationally for the conformity assessment of testing laboratories. ISO standards, including ISO 17025, are used around the globe and are requisite in many nations, including the European Union (EU) countries and in Asia, (ISO, 2014).

With ISO 17025 as the foundation, the TNI laboratory standard adds requirements, specifications, and clarifications unique to the environmental field and necessary to assure a consistent approach to quality and establish the foundation for data comparability between labs. At the present time, the TNI Standard is recognized in over twenty five (25) states across the United States and has full reciprocity in twenty three (23) states. Twelve (12) states are qualified as TNI Assessment Bodies (AB) and TNI has been adopted by several states as the only acceptable accreditation standard across all regulatory programs, (Morgan, 2015; See also Appendix B). Founded in 1998 as the National Laboratory Accreditation Council and the National Laboratory Accreditation Program (NELAC & NELAP), the TNI Standard is well established and widely recognized (Parr, 2010; See also Appendix C).

Perhaps the most important feature of the TNI Standard is that it is a consensus-based standard which has been developed over twenty years with input and comment from hundreds of laboratory and regulatory professionals at the federal, state, and local levels. Countless hours of time have been devoted by experts with proficiency in all areas of environmental testing—from microbiology and chemistry to whole effluent toxicity and radiological testing—to create the TNI Standard. Hundreds of professionals gather twice each year at TNI conferences to discuss, clarify, recommend, and ultimately adopt improvements to the Standard with input having been derived from multiple committees working throughout the year. Collaboration and technical knowledge is the power of TNI, resulting in recognition of the TNI Standard as an American National Standard by the American National Standards Institute (ANSI).

Founded in 1918, ANSI's mission is "To enhance both the global competitiveness of U. S. business and the U. S. quality of life by promoting...consensus standards and conformity assessment systems" (ANSI, 2016). In addition to creating guidelines and standards that impact

energy, agriculture, construction, etc., a key activity of ANSI is to evaluate the competence of organizations that determine conformity assessment. ANSI recognition of TNI and the Standard adds credibility and further wide-spread recognition.

TNI is a comprehensive standard because it includes more than one aspect of accreditation. TNI has established standards for laboratory Performance Testing (PT) and for the providers of PTs. It outlines the requirements necessary for conformity in production, distribution, and evaluation of PTs and the generation and interpretation of PT results. Additionally, TNI addresses the quality systems necessary for an organization or program that provides accreditation under the Standard—the conformity of the AB. The AB's must also adopt quality systems and practices to maintain consistency and demonstrate competence, and to ensure objectivity in assessment.

The TNI Standard has also shown scalability and applicability to a wide variety of laboratories. Large laboratories with more than 75 staff, specialty laboratories such as whole effluent toxicity and microbiology laboratories, and small laboratories with only one or two employees have all successfully implemented and benefited from the TNI Standard (Morgan, 2009). TNI and the lab professionals engaged in the continuous evaluation and improvement of the Standard have demonstrated a commitment to quality and sensitivity to the limited resources of small labs. In fact, many of the resources available through TNI, the working committees, and at the annual meetings are a direct reflection of this commitment. These resources include templates for Quality Assurance Manuals and Standard Operating Procedures (SOPs) and training webinars on implementation.

Practical

Adoption of the TNI Standard in California is the most practical option offering the quickest and most efficient implementation. The Standard is already well established and would not require the resources that would be necessary to create a California laboratory accreditation standard from scratch. At the onset, it took more than ten years to complete and adopt the first TNI Standard and more than five years is spent just to update the existing Standard.

In Wisconsin, a state that opted to take elements of existing standards and customize them, the process of creating and adopting a standard took six years (Sotomayor, 2015; See also Appendix D). Even using the regulatory framework developed more than six years ago in California as a starting point, agreement and consensus would take time and create delays. Given the constraints of the Bagley-Keene Act—and the strongly held opinions of members of ELTAC, the regulated community, and the regulatory agencies—collaboration would be both contentious and costly.

Adoption of the TNI Standard would enable ELAP and environmental laboratory managers to spend valuable time learning and applying the Standard and refining their existing laboratory systems and processes to meet the new criteria. Training and orientation of laboratory personnel could also begin sooner rather than waiting for new program development, approval and implementation. Additionally, the drafting, review and adoption of new regulations can begin in a more time efficient manner.

Data suggests TNI Standard adoption and implementation would improve data quality and defensibility across numerous regulatory programs: drinking water, recycled water, wastewater, and solid waste. According to a 2009 NELAP survey with 553 respondents from 42 states and six countries, 85% of the labs surveyed believed that implementation of NELAP had improved the quality and defensibility of the data they produced. 294 of the respondents were labs with 10 or fewer staff members and 17.5% (97) were small labs with less than three employees. Further, 476 out of 553 labs felt that NELAP improves employee quality awareness (Morgan, 2009). Implementing a standard that benefits both the data consumers and data producers is exceptionally practical.

Accreditation consistency is enhanced by the TNI Standard because ABs and labs must follow the same quality systems based program. Not only are the expectations of the accredited labs more clearly defined, but the AB must also meet clearly defined expectations. Therefore, in addition to serving the needs of State agencies by ensuring data quality and defensibility, the Standard also serves the needs of labs by ensuring the AB follows a specific set of rules and it offers a means of reconciling differences of perception through a formal standard interpretation request process.

Economical

Development of a customized California laboratory accreditation standard would be costly and fiscally irresponsible. According to conservative estimates, each year that the ELTAC and ELAP spend working to create a standard will cost the state of California, public agencies, and commercial laboratories somewhere between \$200,000 and \$500,000 (Appendix A). Even three years spent to accomplish the initiative could have a potential price tag of \$1.5 Million. Arguably, that money is better invested in implementation and training instead of recreating the proverbial wheel.

A common misconception is that TNI places an undue financial burden on labs based on size. As previously discussed, there has been considerable effort made to streamline TNI requirements and to minimize the cost of implementation to small laboratories. All laboratories should be capable of the same level of quality, documentation, and technical ability. Indeed, all laboratory data—especially data used for regulatory compliance—must be of known quality and integrity. **Size of population served should not have a bearing on the quality and reliability of the lab or the lab's test results.** Organizations and agencies unwilling or incapable of investing the time to meet a minimum level of regulatory conformity and quality should not be generating data critical to protection of the public health and the environment.

Finally, the TNI Standard provides the State of California and the laboratory community with resources that they would otherwise lack. The power of TNI rests in collaboration with environmental professionals across the United States, with direct access through TNI to the top experts in the environmental field and at regulatory agencies, and with the myriad resources developed by those professionals over the course of the existence of the national laboratory

accreditation efforts. Without a doubt, the TNI Standard is the most economically viable option that is fiscally responsible to the water rate payer and to the California taxpayer.

In conclusion, if the intention of CA ELAP is to best serve its stakeholders—laboratories, State agencies, regulators, and the general public—adopting the TNI Standard is the answer. The TNI Standard is comprehensive in scope, service, and expertise. Its ISO 17025 and consensus-based foundation give the Standard wide-spread recognition, support, and applicability. The Standard is well-established and has proven benefits, making it the most practical choice in terms of manageable and effective implementation. Furthermore, adopting the TNI Standard is the most cost-effective solution for the State, as it can invest in implementation and training rather than the development of a new, untested program. In addition, the Standard will help ensure all labs operate at the appropriate level of quality—a level that is consistent with the quality of protection to which the public and environment are entitled. In short, the Standard is the best option for California which is why CA ELAP should adopt the TNI Standard.

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Appendix A

Potential Financial Burden of ELAP-created or Modified Accreditation Standard

A 4-hour-long Environmental Laboratory Advisory Committee meeting held monthly to discuss and craft an accreditation standard for California will cost approximately \$230,000 per year. This estimate can rapidly escalate and easily double if meetings are held more frequently, or ELTAC members devote more than 10 hours a month to development of a standard.

ELAP time: 19 hours x 12 months x \$72/hour = \$16,416

ELTAC time: 18 committee members x 10 hours x 12 months x \$100/hour = \$216,000

These estimates do not include facilities costs, IT costs, or travel costs associated with meetings.

Assumptions

1. Fully burdened cost of ELAP staff as reported by Larsen and Sotelo to the Expert Review Panel in March, 2015 is \$72/hour.
 2. Estimated staff time to prepare documents and post notifications for committee meetings compliant with Bagley-Keene Act is 3 labor hours per meeting.
 3. Estimated staff time for 4 employees to attend a 4 hour committee meeting is 16 labor hours.
 4. The average fully burdened cost to the employer of ELTAC members is \$100/hour.
 5. Estimated ELTAC time to attend monthly meetings is an average of 6 hours per member.
 6. Estimated time spent by ELTAC members to research and prepare for monthly meetings is an average of 4 hours per month.
-
- Salary range for QA Director \$105,991 to \$167,652 with median of \$139,521 based on website: <http://www1.salary.com/CA/Anaheim/Quality-Assurance-Director-salary.html>
 - Benefits based on Rancho California Water District website: <http://www.ranchowater.com/index.aspx?NID=138>

ACIL LABORATORY ACCREDITATION PERSPECTIVE

Presented by: Judith R. Morgan, MS, REM
ACIL Environmental Sciences Section, Chairman
ESC Lab Sciences
VP, Chief Regulatory Officer
Mt. Juliet, TN



American Council of Independent Laboratories (ACIL)

- Founded in 1937
- Trade association representing independent, commercial scientific and testing laboratories
- Membership is comprised of professional services firms engaged in:
 - ✓ testing
 - ✓ product certification
 - ✓ consulting
 - ✓ research and development
- Affiliate members are manufacturer's laboratories, consultants, and suppliers to the industry

American Council of Independent Laboratories (ACIL)

- **ACIL exists to support the needs of the Independent Testing Industry**

Independent Testing Firms are defined as:

Commercial entities engaged in the following activities for the public:

Analysis	Product Certification
Testing	Research & Dev
Inspection	Sampling
Materials engineering	Related other consulting services

**A
N
D**

Not affiliated with any institution, company, or trade group that might affect their ability to conduct investigations, render reports, or give professional, objective, and unbiased counsel

ACIL White Paper - 2012

“Economic Benefits of National Environmental Laboratory Accreditation Using an Alternative Accreditation Process”

**Summarizes the maturity
of the National
Environmental Laboratory
Accreditation Program
(NELAP)**

**Outlines the need for the
use of 3rd Party
Accreditation**

**Addresses economic
benefit to state budgets**

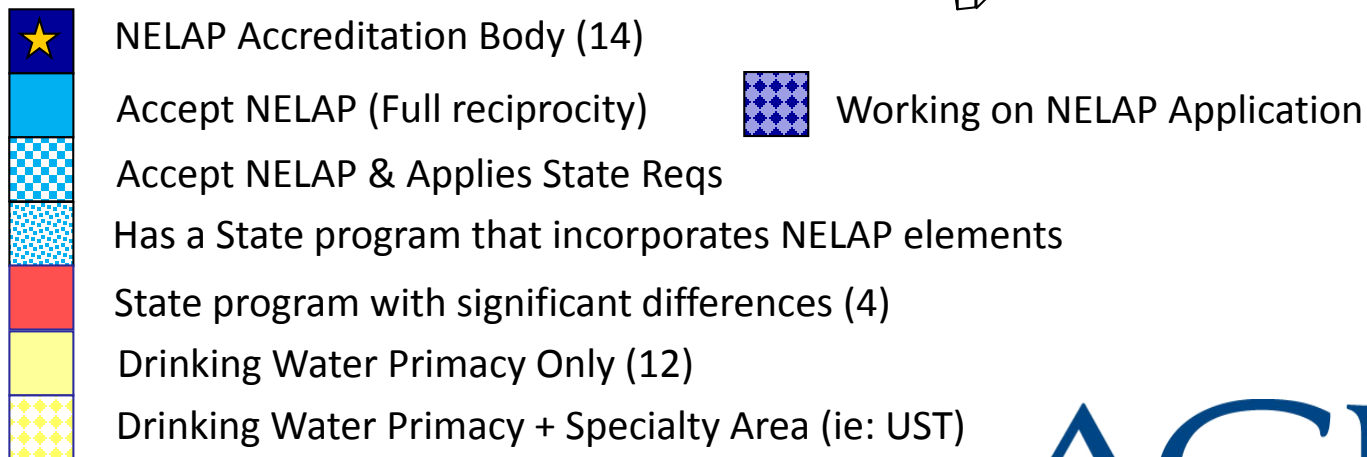
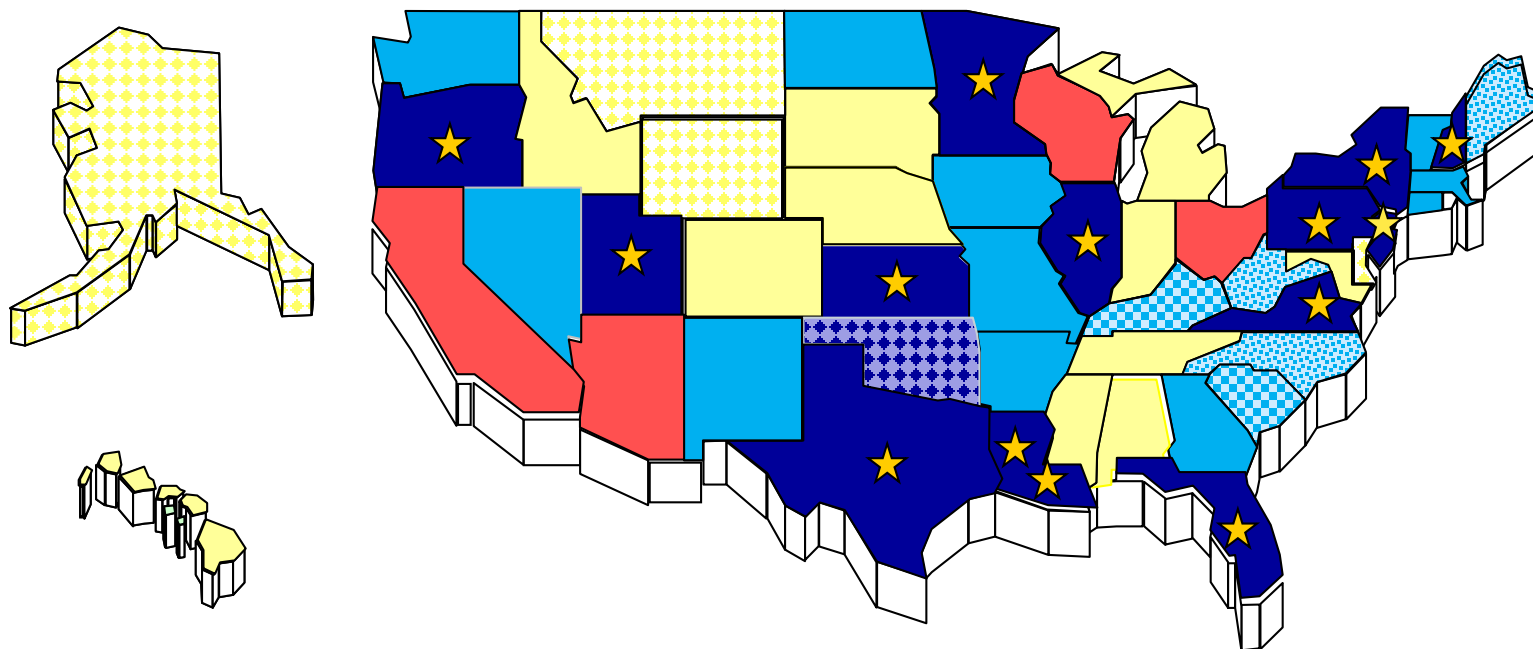
**Outlines the process to
migrate from traditional
certification/accreditation
programs to 3rd party
based programs**

ACIL Representation

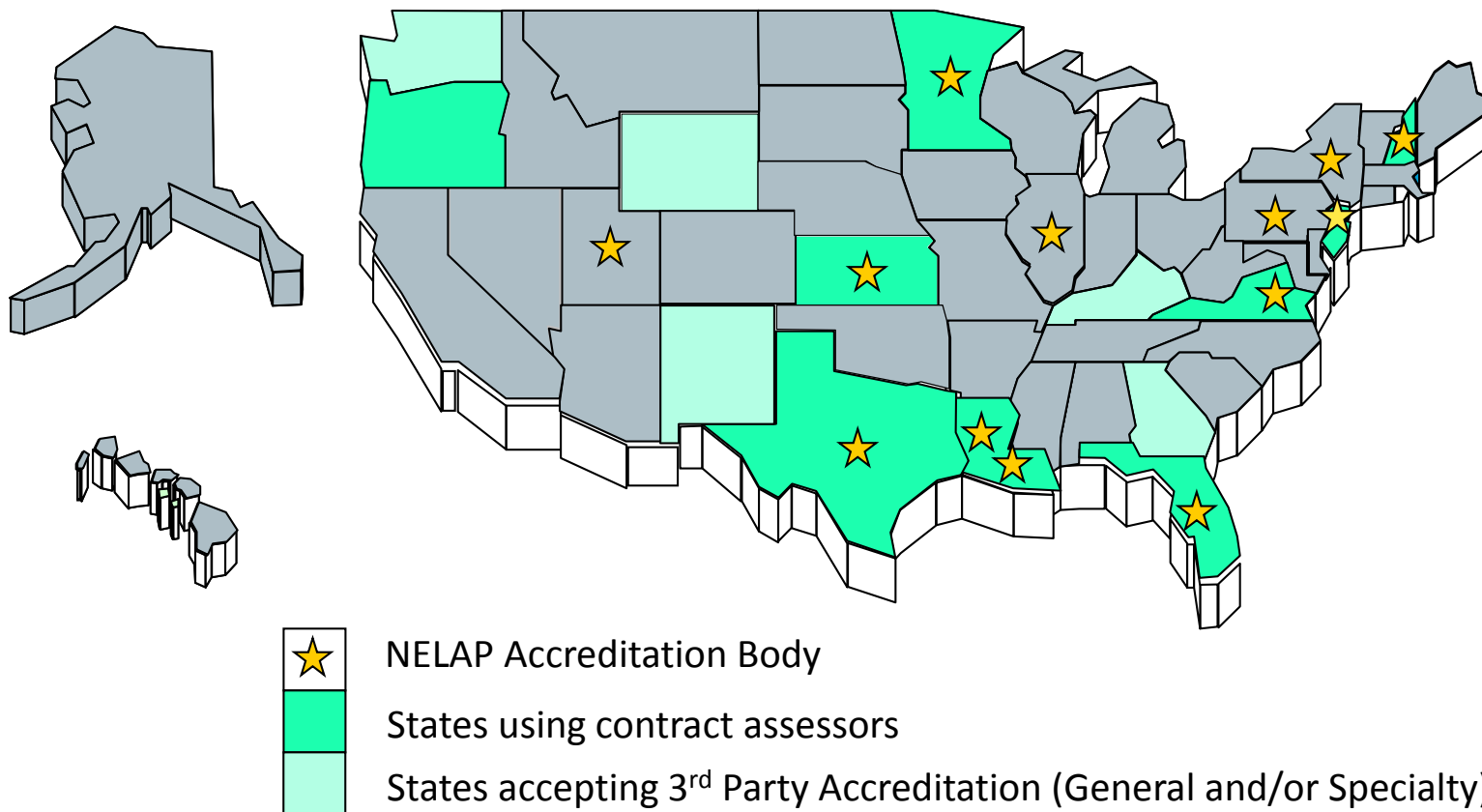
Maxwell Report 2014

- Top 30 Environmental Laboratories
 - ✓ Represent 1.02 Billion in Revenue
- ACIL Environmental Laboratory Members
 - ✓ Represent 9 of the Top 12
 - ✓ Total 672M in Revenue from Maxwell Top 30 members
- ACIL Environmental Laboratory Members represent an estimated 750M of the total available environmental market.

Appendix B The National Program Today



Appendix B Contract Assessors and 3rd Party Accreditation



Others using or specifying 3rd Party Accreditation and/or Assessment:
Dept. of Defense, Dept. of Energy, EPA NLLAP, EPA NVLAP, etc.

ACIL Vision for CA ELAP

1. Realization of Equivalency Among Data Producers

- **All labs**, public and private:
 - ✓ Produce data that determines public health and safety
 - ✓ Must be held to the same standard
 - ✓ Perform compliance testing that is key to the future of environmental sustainability and human health
- **No** defensible **reason** for ELAP to have two programs
- Data defensibility is necessary for all compliance monitoring and is not proportional to size
 - ✓ No different than other professionals: Note that the medical profession does not offer different levels of MD's based on population served.
- Size and revenue are not proportional to quality expectation
 - ✓ **All** laboratories are capable of the same level of quality system and technical ability
 - ✓ Environmental equity and justice, knows no budget or size

ACIL Vision for CA ELAP

2. Accreditation Consistency – National Consensus Based Standard

- Adopt a National Consensus Based Standard (TNI Standard)
- CA rejoin NELAP
 - ✓ CA can actively participate in the development , implementation and adoption of the standard.
 - ✓ Provides peer collaboration and support via the Accreditation Council
- Reform current regulations to adopt a **single program** built on a national consensus based standard
 - ✓ TNI is accredited by ANSI and the TNI Standard incorporates multiple ISO standards
- TNI Standard (ISO 17025 Based)
 - ✓ Requires the same foundational quality system regardless of lab type or size.
 - ✓ Defensibility is achieved via adherence to the same requirements for quality, technical, personnel, ethics/data integrity, and documentation
- **Ultimate goal** is to provide data of known and documented quality that is consistent across **ALL** providers, public and private.

WHY the TNI Standard...

- ANSI Accredited
- Incorporates ISO 17025 as the foundation for quality systems
- Most experienced and expansive “brain trust” of individuals participate in the development:
 - ✓ Many more participants and resources than any single agency has
 - ✓ Known experts with specific disciplines, from public & private sectors, including multiple non-NELAP states, collaborate together
- Policies & Processes in place for: Organization, standard development, balance, stakeholder representation, acceptance, and implementation
- Formal Standard Interpretation Request (SIR) Process:
 - ✓ Aids in ensuring consistent interpretation and implementation of the standard
 - ✓ AC must agree on interpretation
 - ✓ Interpretations are incorporated into future standard revisions
 - ✓ Available to entire membership and community
- Requires consistency for method validation, addition of non-traditional analytes, data integrity, data qualification and many other processes not addressed by every individual state program.

ACIL Vision for CA ELAP

3. Accreditation Consistency – Accreditor Options

- Require program conformance to ISO 17011
- Accept 3rd party accreditation via existing Accreditation Bodies (AB) conforming to ISO 17011
- **All ABs need oversight** to maintain consistency and guarantee improvement
- ABs with no oversight **cannot objectively** identify, monitor and correct their own insufficiencies
 - ✓ TNI ELSS Volume 2 requires a review of each Accreditation Body to ensure uniform conformance to the standard and assess documentation, procedures, qualifications and training
- Utilize TNI's Non Governmental Accreditation Body (NGAB) program to be implemented this year (2015)
 - ✓ TNI ELSS Volume 2 adds value above and beyond pure 17011
 - ✓ The program ensures that all NGABs comply with the TNI Standard
- Utilize known and qualified contract assessors to augment the program (like Florida). This provides access to additional qualified personnel in high volume or unusually busy time periods.
- Laboratories want the **option to choose** a suitable and equivalent path for their needs:
 - ✓ For accreditation
 - ✓ That best fits their needs and requirements for laboratory conformity assessment

ACIL Vision for CA ELAP

4. Establish Recognition/Reciprocity with Other Programs (states, national entities or private accreditation services)

- Existing programs, currently conforming to the TNI Standard, are **consistently** implemented, enforced, and assessed.
- Existing Reciprocities/recognitions:
 - ✓ 14 NELAP AB's – Full bi-directional recognition
 - ✓ WA – Full recognition of NELAP and A2LA
 - ✓ GA - Full recognition of NELAP and A2LA, ACLASS, AIHA, CALA, NSF, QAI
 - ✓ 29 Others – Full recognition of NELAP
 - ✓ 9 “DW Only” Primacy states will accept NELAP in lieu of home state

NOTE:

- 45 States reference NELAP, in full or part, in their regulations
- DOD incorporates NELAP combined with additional program specific requirements. Accreditation is granted by approved 3rd party accreditors conforming to ISO 17011.

ACIL Vision for CA ELAP

5. Personnel Consistency

- **Professionalism** and technical knowledge are requirements.
- Adopt personnel requirements that include **training** that is **consistent** with requirements of ANSI, TNI and/or other relevant consensus organizations
- TNI Environmental Laboratory Sector Standard (ELSS) provides qualification requirements for:
 - ✓ Accreditors and Assessors (TNI ELSS V2M1 & V2M3)
 - ✓ Laboratory Personnel (TNI EL V1M2)
- Utilize the available national resources via TNI Educational and Training network
- National standard compliance reaches beyond the program constraints and limited program implementation of the EPA DW Certification Manual (which is insufficient for NPDES, RCRA, and other regulatory programs).

ACIL Vision for CA ELAP

6. Personnel Qualifications

- Assessors must have:
 - ✓ Actual experience in a testing laboratory
 - ✓ Education in a scientific discipline
 - ✓ The knowledge, experience, and personality to mentor and suggest improvements
 - ✓ Successful auditing experience
 - ✓ Necessary resources to provide assistance
 - ✓ Solid understanding of applicable standards, methods, quality and technology
 - ✓ Desire to stay current on new technology and methods in order to ensure proper implementation and documentation
 - ✓ Credentials that prove their expertise

ACIL Vision for CA ELAP

7. Fees

- Offer Separate licensing and accreditation options
- Fees should be commensurate with type of accreditation:
 - ✓ Licensing (reduced cost) – “Full reciprocity = less resources”
 - ☆ ELAP labor is limited to review of reciprocal accreditation documents
 - ☆ PT review, Corrective Actions, etc. are the responsibility of the reciprocal/accepted accreditor
 - ✓ Full accreditation via ELAP – ELAP provides all services for accreditation, which requires increased resources thus a higher cost
- Should use above suggested options to:
 - ✓ Save taxpayer monies
 - ✓ Ensure consistency of requirements across CA and neighboring state borders
 - ✓ Move the program to a position of relevance to today’s labs and data users

ACIL Vision for CA ELAP

7. Fees - Example

In 2012 CA NELAP fees were a multiple of ELAP fees:

A fully accredited reciprocal out-of-state commercial lab

NELAP = \$17,200 vs ELAP \$5400

Both are reciprocal recognitions and are **document review only**, since the primary accreditor is responsible for accreditation details and documents

ACIL Vision for CA ELAP

8. Proficiency Testing Program

- **Ensure evaluation consistency:** Mandate the use of ISO* approved providers participating in the national consensus based standards process.
- **Provide real time review of PT results:** Require true corrective action, suspension or other actions where necessary.
- **Develop a thorough process for PT review:** Define actions related to unacceptable PTs and enforce in a timely manner
- **Reciprocal/recognized accreditors maintain PT tracking** for their laboratories. No need to duplicate effort.
 - ✓ reduce cost and save time/labor for CA
- **Consider contracting PT review to a 3rd Party** – Save time, resources, and improve accuracy and efficiency

ACIL Vision for CA ELAP

9. Provide Program Services to Labs and Data Users

- Create metrics that reflect accountability measures for timeliness and service. Be transparent regarding operations.
- Keep community updated and provide assistance for regulatory rule changes (fed and state): i.e. Method Update Rule (MUR)
- Provide valuable services and communication in a timely manner to the accredited community
- Provide outreach, quality assurance functions, and assistance to improve the laboratory community
- Provide access to knowledgeable personnel who are available to assist with questions or issues and can provide consistent feedback
- Include up to date program news and FAQs on the ELAP website
- ELAP should help data users (public/private) understand the basic requirements needed to produce data of known and documented quality

Top Priorities

1. Mandate a national consensus based standard (i.e. TNI)
2. Apply the standard to all laboratories
3. Utilize 3rd party resources to remove the current backlog and close gap between current programs and national standard
 - a) ISO 17011 Accreditation Bodies (NELAP ABs, NGABs)
 - b) Contract assessors
4. Reorganize the program and personnel to support the implementation and maintenance of the national standard
5. Allow for a licensing or full accreditation option with appropriate fees for each
6. Current draft regulations introduce language and acronyms outside of industry standard. Recommend re-writing and simplifying the regulations to reference a national standard and provide support operations accordingly

Conclusions

- All environmental labs produce data that determines current and future public health and safety
- **All labs**, public and private, must be held to the same standard across the entire industry. Labs want a level playing field.
- Complete data defensibility is necessary and is not proportional to laboratory size
- CA needs a single program built on a national consensus based standard (ie: TNI standard) and should rejoin NELAP
- All accreditations should be performed by ABs conforming to ISO 17011
- Labs want a choice for accreditation.
- Options should exist for accreditation and fees:
 - ✓ NELAP – Full service via state or contract assessment, where state evaluates and monitors all requirements, including PTs, Corrective Actions, etc.
 - ✓ NGAB – Licensing by CA via ISO 17011 AB, where accreditor evaluates and monitors all requirements, including PTs, Corrective Actions, etc.

Conclusions

- Establish reciprocity or recognition with other programs conforming to a national consensus based standard
- Adopt personnel requirements that are consistent with requirements of ANSI, TNI and/or other relevant consensus organizations
- Require personnel to be experienced and credentialed
- Mandate the use of ISO accredited providers for Proficiency Testing
- Provide timely, value added, services to the lab community that will promote improvement and consistency while advancing the knowledge base of the laboratory

Thank you for your time!

Questions?

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HISTORY AND FUTURE OF LABORATORY ACCREDITATION

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ABSTRACT

In 1978, the US Environmental Protection Agency (EPA) initiated a laboratory certification program for laboratories involved in analyzing drinking water and delegated the authority for operation of the program to state agencies. Over the ensuing years, many states expanded this program to include other environmental media. As a result of efforts that began in 1987, a National Environmental Laboratory Accreditation Program (NELAP) has been created and is now managed by The NELAC Institute (TNI). This article summarizes the activities leading up to the formation of TNI, describe in detail the core programs being performed by the new organization and provide information about the future of national laboratory accreditation.

INTRODUCTION

Laboratory accreditation serves multiple purposes for different constituents. In general, NELAP accreditation attests to the competency of a laboratory for conducting environmental measurements.

- For the public, NELAP accreditation promotes confidence that environmental data used to make policy decisions to protect public health and the environment are generated by laboratories with demonstrated competence.
- For data users, NELAP accreditation serves a consumer protection purpose. It provides assurance that the laboratory has been evaluated and has met accepted standards of competency established by and within the profession.
- For the profession, NELAP accreditation advances the field by promoting accepted standards of practice and advocating rigorous adherence to these standards.
- For government agencies, NELAP accreditation provides a basis to determine whether environmental monitoring data are adequate for their intended use.
- For the laboratory, NELAP accreditation provides ongoing internal and external evaluations, demonstrates a commitment to continuous improvement, provides an effective mechanism for accountability, and enhances its reputation.

THE BEGINNING

Almost all environmental compliance, regulatory and clean-up decisions are made based on measurement information. Data of known and documented quality is critical for end users of environmental measurement data and government agencies to make accurate, reliable and cost-effective decisions to protect the public health and the environment. An important factor in improving the quality of environmental data and ensuring that the data are adequate for the

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intended purpose, is a consistent, stringent, comprehensive and yet practical accreditation program to ensure the competency of all environmental testing laboratories and related sampling and measurement organizations in the United States.

EPA, with the states as its implementation partners, maintains requirements for the certification of drinking water laboratories as well as outlining accreditation requirements for laboratories that analyze lead in paint and asbestos. Many states independently established accreditation programs covering the analysis of waste waters, solid and hazardous wastes, and air samples. In the 1980's, the commercial laboratory community began to advocate for a single national accreditation program to consolidate the multiple state programs that contained divergent accreditation requirements. A national program would provide the foundation for ensuring the capability and competence of laboratories to foster the generation of data of known and documented quality. Over twenty years ago, EPA recognized the problem of uncoordinated, inconsistent and redundant state and federal laboratory accreditation programs. In a 1988 Report to Congress on the comparability of laboratory test procedures, the EPA recommended that it explore the feasibility of establishing a uniform, national laboratory accreditation program

In 1990, EPA's Environmental Monitoring Management Council (EMMC) established an ad-hoc panel to respond to the concerns from laboratories and regulators about the diverse number of state accrediting programs with different, sometimes conflicting requirements. This group was to consider the feasibility and advisability of a national environmental laboratory accreditation program. The workgroup concluded that a national program was a viable option, and recommended that EPA consult with representatives of all stakeholders, by establishing a federal advisory committee.

The Committee on National Accreditation of Environmental Laboratories (CNAEL) was chartered in 1991 under the Federal Advisory Committee Act (FACA) and its members represented the stakeholder community (federal, state accrediting programs, commercial laboratories, etc.). CNAEL was to explore the possibilities of a national program and provide recommendations to EPA concerning the alternatives for a national program as well as the implementation and administration of such a program. In its final report to EMMC in 1992, CNAEL recommended that a self-supporting national program for laboratory accreditation be established and provided recommended models and structure for the organization that would implement the program. CNAEL recommended the program consist of performance evaluation testing, combined with a laboratory process and quality assurance certification program, which would include onsite audits.

THE EARLY YEARS

In response to the CNAEL recommendations, EPA, state and federal representatives formed the State/EPA Focus Group in 1993. The participants in these meetings represented EPA program offices, state regulatory agencies, states with differing types of accrediting programs, and federal agencies that had a need to perform environmental testing. This group developed a proposed

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framework, modeled after the National Conference on Weights and Measures and prepared a draft Constitution, Bylaws and Standards, which were published in the Federal Register in December 1994.

On February 16, 1995, state and federal officials voted to approve an interim Constitution and Bylaws – thus establishing the National Environmental Laboratory Accreditation Conference (NELAC), a standards setting organization. The major objective of NELAC was to develop accreditation standards and adopt them so that the standards could be used to support a National Environmental Laboratory Accreditation Program (NELAP). These standards were developed by a set of standing committees, who were each responsible for a chapter of the NELAC standards.

In 1999, NELAP was established with 11 states receiving recognition as NELAP accreditation bodies. The goal of NELAP is to foster cooperation among the current accreditation activities of different states and other governmental agencies and to unify the state and federal agency standards. Each of the recognized accreditation bodies must implement the NELAC standards, and must accept the accreditation of laboratories accredited by other NELAP accreditation bodies. There are currently 13 state agencies that are recognized NELAP accreditation bodies.

NELAC was structured as an association of co-regulators: EPA, the states, and other federal agencies. Stakeholder groups such as commercial laboratories, municipalities, and trade groups were encouraged to attend meetings and participate on the NELAC committees. A vote to approve standards was limited to representatives from the state and federal agencies. If a private-sector organization felt the need to provide recommendations, such consensus could only be solicited through a committee chartered under the Federal Advisory Committee Act (FACA). In 1997, the Environmental Laboratory Advisory Board (ELAB) was established under the FACA to provide consensus advice on various issues, including recommendations on the NELAC standards.

NELAC was established as a way for the national laboratory accreditation effort to begin. The NELAC operations developed and adopted standards for laboratory accreditation. In addition in 2002, the initial standard for field activities was passed. This 2002 NELAC standard was the first to recognize the need for accreditation of field sampling and measurement organizations. However, not having the authority of an act of Congress to establish an accreditation program, NELAC relied on the voluntary participation of states to implement the program. States that decide to become part of the program are expected to use one set of requirements, the “NELAC Standards.”

EPA had always intended for the program to be self-sufficient. EPA followed the recommendations of CNAEL in retaining oversight of the program, but expected a graduation into autonomy. It is clear that without EPA’s leadership and monetary support NELAC would not have progressed beyond the conceptual stage, but lacking an anchoring Federal statute, NELAC could not presume continued funding from EPA or the Agency’s perpetual management of the program.

THE TRANSITION

Two significant events occurred in the late 1990's that required changes to the original NELAC structure:

- The National Technology Transfer and Advancement Act (NTTAA) became law in March 1996. The NTTAA outlined requirements Federal agencies must implement relative to the use of private sector standards and conformity assessment practices. Federal agencies were directed to adopt private sector standards, wherever possible, in lieu of creating proprietary, non-consensus standards.
- A revised OMB Circular A-119 was issued in February 1998. This circular established policies on Federal use and development of voluntary consensus standards and on conformity assessment activities. Voluntary standards were defined as standards that were developed by a voluntary consensus standard body (VCSB). OMB Circular A-119 further defined the attributes and functions of a VCSB, which included, among other requirements, balanced interests in the standards development and approval process.

Clearly, NELAC, in its original structure, did not meet the definition of a voluntary consensus organization. Therefore, in 2002, NELAC amended its Constitution and By-Laws to make the conference a standards adoption body only. NELAC established itself as an organization that could receive and consider standards that have been developed by standards development organizations that use a consensus process as defined in OMB A-Circular 119. The last NELAC standard was published in 2003 and implemented in 2005.

While there are many recognized voluntary consensus standard bodies (ASTM International, American Industrial Hygiene Association (AIHA), etc.), no one group came forward to develop standards specifically designed for accreditation of environmental laboratories and field activities. In 2002, a new voluntary consensus standard organization, the Institute for National Environmental Laboratory Accreditation (INELA) was formed with a mission of developing standards for NELAC and other organizations to use.

INELA was incorporated as a non-profit member organization. The membership was entitled to vote on all standards and could voluntarily participate on any committee. INELA formed expert committees that functioned like the standing committees of NELAC, but with balanced representation from all stakeholder groups. Using the NELAC standards as a template, these expert committees began the process of developing consensus standards. The first INELA standard was accepted by member vote in September 2004, but was not adopted by the organization as it did not represent any significant change over the 2003 NELAC standard. In May, 2005, INELA began the process of reorganizing the 2004 standard so that a single volume would contain all the requirements for accrediting a targeted program such as environmental laboratories, field operations, taxonomy, etc.

THE RESTRUCTURING EFFORTS

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The EPA Office of Research and Development (ORD) began providing financial and staffing support from the early meetings of the State-EPA Focus Groups. The ORD funding support allowed the National Environmental Laboratory Accreditation Conference (NELAC) and the National Environmental Laboratory Accreditation Program (NELAP) to begin operations and provided direct support through August 2006. At the Interim meeting in 2000, EPA reminded the NELAC community of the recommendation in the Committee on National Accreditation of Environmental Laboratories (CNAEL) document dealing with self-sufficiency. In 2005, Lara Phelps, the NELAC Executive Director announced that a series of cooperative agreements would provide support for facilitating NELAC's transition to self sufficiency. These were awarded to several groups for various tasks deemed necessary to support the future program. As a step toward self sufficiency, Ms Phelps resigned from her role as NELAC and NELAP Executive Director in August, 2006, but continued as the project manager for the self-sufficiency effort.

The National Forensic Science Technology Center (NFSTC) was selected as the primary organization to assist the NELAC board in determining the structure and format of a future organization. The NELAC board selected a team of individuals, the Self Sufficiency Task Group (SSTG) to provide recommendations on a plan for self-sufficiency, and a transition strategy to ensure the continuation of the NELAC and NELAP activities until the transition was complete. The SSTG solicited input from the NELAC community during the January 2006 NELAC meeting. The suggestions from this meeting were used to develop a draft vision, mission and purpose for the new organization, and to identify key characteristics that the new organization should possess. In addition, the SSTG used the input from the meetings to develop a strategy for transition into a new organization, and identified immediate, interim and final goals. The SSTG also considered current standard setting organizations and solicited offers from professional organizations who might be interested in assisting with the NELAC self-sufficiency efforts. INELA was one several organizations that responded to this solicitation. Of the responses, INELA best fit the characteristics and criteria defined by the SSTG.

After an informal meeting between the INELA Board of Directors and representatives of the SSTG in April, 2006, the SSTG drafted a non-binding Memorandum of Understanding (MOU) for consideration and approval by both the INELA and NELAC Boards of Directors. In June 2006, both boards approved the MOU and selected five members from each organization to form a joint Partnership Planning Team (PPT) to explore the potential combination of the two organizations. The PPT developed a proposed model for the new organization and presented this to the stakeholder community at the NELAC meeting in Kansas on August 14 and 15, 2006.

THE PLAN FOR TRANSITION TO SELF-SUFFICIENCY

The presentation in August 2006 covered the proposed mission, values, organization, governance and structure of a transformed organization that would build on the attributes of both NELAC and INELA.

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The underlying assumptions the PPT provided for moving towards a combination were:

- Combining the operations of NELAC and INELA would result in a stronger organization.
- Combining operations would allow NELAC to achieve self-sufficiency quicker.
- Combining operations would be less disruptive to the stakeholder community.

The core values identified by the PPT as necessary in the transformed organization were:

- An organization that is inclusive and responsive to the needs of all stakeholders
- An organization based upon integrity and honesty
- A quality based organization that encompasses both a belief that the program is worthwhile and that quality is the underlying value for everything that is done.

The PPT recommended that the corporate structure of the organization be that of an incorporated 501(c)3, not-for-profit member organization managed by a board of directors.

At the end of the NELAC meeting, a vote was held by the government officials in attendance that overwhelmingly confirmed that the NELAC Board of Directors should continue to work with INELA on pursuing options for working together. The INELA membership in attendance at the meeting unanimously endorsed this direction as well. Based on the outcome of the NELAC meeting, the PPT continued its work with the goal of having the transformed organization operational by the next meeting of these groups in January 2007.

The PPT met by teleconference on a weekly basis and had a three-day meeting in late September, 2006, to complete their task of developing recommendations. Concurrently with this effort, the NELAC board formed a task group to develop recommendations about the governance and structure of the accreditation programs. These efforts were completed in October, 2006 at which time recommendations were sent to the NELAC and INELA boards for their consideration and were published on both the NELAC and INELA websites in a special report titled *Recommendations for Combining NELAC and INELA Operations*. A meeting of the INELA and NELAC Boards of Directors and Committee chairs occurred on November 6, 2006, to consider the recommendations.

FORMATION OF THE NELAC INSTITUTE

On November 6, 2006 a giant step towards achieving the long-term goal of the environmental laboratory and monitoring communities to have a national accreditation program was realized. After years of an evolving program under the auspices of the NELAC and INELA, the respective Board of Director's took actions necessary to form The NELAC Institute (TNI).

The actions taken on November 6th to form TNI were the result of years of hard work to create a national program through NELAC, years of hard work by INELA to create a consensus process for the development of accreditation standards, and months of intense exploration by a Partnership Planning Team (PPT) representing both entities that culminated in this new

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organization. As reflected in the new name, The NELAC Institute (TNI) has combined the heritage of NELAC with the consensus process of INELA into one organization.

The NELAC Institute (TNI) is a 501(c)3 non-profit organization whose mission is to foster the generation of environmental data of known and documented quality through an open, inclusive, and transparent process that is responsive to the needs of the community. The organization is managed by a Board of Directors and is governed by organizational Bylaws. Members of the organization include individuals from laboratories, data users, federal and state agencies and anyone interested in promoting environmental data of known and documented quality.

More information about TNI is available at www.nelac-institute.org.

TNI's PROGRAMS

The NELAC Institute operates the following major programs:

- ◆ Consensus Standards Development,
- ◆ Laboratory Accreditation System,
- ◆ National Environmental Laboratory Accreditation,
- ◆ National Environmental Field Activities Accreditation
- ◆ Proficiency Testing, and
- ◆ Technical Assistance.

Consensus Standards Development Program (CSDP)

The purpose of the Consensus Standards Development Program (CSDP) is to develop consensus standards for the accreditation of environmental laboratories. Accreditation standards are developed by Expert Committees using a consensus process that includes the elements of openness, balance, due process, and consensus as established by Circular A-119 published by the US Office of Management and Budget. Standards have been developed that are widely applicable, and will therefore promote a uniform national program of environmental laboratory accreditation. These standards are modular, allowing their assembly into a series of volumes, each specifically designed for a stakeholder group (Laboratories; Accreditation Bodies; Proficiency Test Providers; Proficiency Test Provider Oversight Bodies; and Field Sampling and Measurement Organizations). The standards that have been developed by this program are summarized in Table 1.

Table 1. TNI Accreditation Standards

Environmental Laboratory Sector

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<u>Volume 1: Management and Technical Requirements for Laboratories Performing Environmental Analysis</u>
Module 1 - Proficiency Testing
Module 2 - Quality Systems: General Requirements
Module 3 - Asbestos Testing
Module 4 - Chemical Testing
Module 5 - Microbiological Testing
Module 6 - Radiochemical Testing
Module 7 - Toxicity Testing
<u>Volume 2: General Requirements for Accreditation Bodies Accrediting Environmental Laboratories</u>
Module 1 - General Requirements
Module 2 - Proficiency Testing
Module 3 – On-site Assessment
<u>Volume 3: General Requirements for Environmental Proficiency Test Providers</u>
<u>Volume 4: General Requirements for an Accreditor of Environmental Proficiency Test Providers</u>
Field Sampling and Measurement Organization (FSMO) Sector
<u>Volume 1: General Requirements for Field Sampling and Measurement Organizations</u>
<u>Volume 2: General Requirements for Accreditation Bodies Accrediting Field Sampling and Measurement</u>

It is important to note that the TNI laboratory accreditation standard differs from the EPA certification program in one very significant manner. The TNI standard is based on ISO/IEC

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17025, an international standard that contains both technical and management requirements. The TNI standards also address the policy defined by EPA to adopt quality systems during sample collection and testing operations. (See ANSI/ASQ E-4 2004)

National Environmental Laboratory Accreditation Program (NELAP)

The National Environmental Laboratory Accreditation Program (NELAP) was established as a means to improve the quality and consistency of environmental data throughout the United States. Although NELAP is a national program; state governmental agencies serve as Accreditation Bodies. States, which apply to NELAP to become an accreditation body, may select to operate an accreditation program which covers all of the EPA regulatory programs or as few as one. For example, many states may select to only accredit laboratories for chemistry and microbiology under the drinking water program. Other states may select to operate a comprehensive program, which includes all types of analyses for all types of media (i.e., hazardous waste, waste water, drinking water, air, soil, etc.) under the five EPA regulatory programs [i.e., Clean Air Act (CAA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), and Safe Drinking Water Act (SDWA)]. There is no requirement that a state incorporate any particular portion of the possible scope into its program. The scope of accreditation, the type of laboratory included under the state's program, including the regulatory or voluntary nature of the program itself, the assessment of fees, and the use of third party assessors are all options of the state.

A NELAP Accreditation Body will accept by recognition, the accreditation status of a laboratory issued by another NELAP Accreditation Body (this is called secondary accreditation). Each Accreditation Body must adopt and adhere to this principle as a condition of membership in NELAP. In accepting the accreditation status of a laboratory through recognition, the Accreditation Body assumes accreditation responsibilities as a secondary accreditation body. A laboratory seeking accreditation must apply to its home state Accreditation Body for accreditation. However, if the Accreditation Body does not offer accreditation for testing in conformance with a particular field of accreditation (matrix-method/technology-analyte/analyte group), laboratories may obtain primary accreditation for that particular field of accreditation from any other NELAP Accreditation Body.

National Environmental Field Activities Program

The National Environmental Field Activities Program (NEFAP) is an accreditation program for field sampling and measurement organizations (FSMOs). TNI has published the accreditation standard for organizations that perform measurements in the field and collect samples. The standard is a management system standard.

The TNI Standard addresses the industry need for ensuring that field data and sample information must be of a known and documented quality. The data from environmental

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laboratories is only as good as the sample collected and presented for measurement. Many professionals in the environmental industry have often wondered why the sample collection and field testing do not require an independent review of these operations. Field test data used in making environmental decisions must be produced by organizations with a management system that is comparable to the fixed laboratory testing accreditation requirements.

The requirement for accreditation of field activities is extremely limited in regulatory programs or is does not exist in any government program. Therefore this is a voluntary program that is managed through the oversight of TNI to ensure consistency of implementation. The implementation of this standard by ABs and FSMOs will demonstrate that these organizations are interested in independent assessment of their organization to produce information and data that is appropriate for the intended use by their clients.

The TNI standard for FSMOs is modeled after ISO/IEC 17025:2005 “General Requirements for the Competence of Testing and Calibration Laboratories”. TNI Standard Volume 1 is the FSMO Competency standard which is the same international standard for fixed laboratories. TNI Standard Volume II is the FSMO accreditation body (AB) requirements to accredit FSMOs. The AB standard is based on ISO/IEC 17011:2004 “Conformity Assessment – General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies”.

Proficiency Testing Program

Proficiency Testing (PT) is defined as a means of evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source. The TNI PT program consists of:

- A PT Expert Committee that establishes the requirement for proficiency testing.
- A PT Program Executive Committee who manages the implementation of the program.
- A PT Provider Accreditor that accredits organizations as PT Providers.
- Private and public sector PT Providers that manufacture and provide PT samples and evaluate the results.

The TNI PT Expert Committee has developed standards for laboratory proficiency testing and proficiency testing samples, including: criteria for selection of the providers of the samples; protocols for the use of proficiency test samples and data in the accreditation of laboratories; and criteria for Proficiency Test Provider Accreditors (PTPAs).

The PT Executive Committee maintains a national PT program that contains the following elements:

- Fields of Proficiency Testing (analytes, concentrations, matrices and acceptance limits) appropriate for the scope of environmental monitoring performed in the United States
- Oversight of organizations that provide PT samples to laboratories to ensure these organizations are competent to do so.

Technical Assistance Program

The purpose of the Technical Assistance Program is to provide assistance to stakeholders, particularly those seeking accreditation and those who accredit. The program develops tools, training, and other resources to enable stakeholders to efficiently participate, adopt, implement and comply with the TNI standards. Specifically, this program:

- Develops tools and templates to assist laboratories and accreditation bodies with implementing accreditation programs.
- Ensures that training programs relevant to the needs of the stakeholder community are provided.
- Ensures that laboratory assessors have a forum to discuss common issues.
- Develops a mentoring program to assist both laboratories and accreditation bodies with implementing accreditation programs.
- Provides a voice and solution strategies for small organizations.

THE FUTURE

Lessons from history provide insight into key practices offering stability and growth to the new organization.

- TNI has achieved short-term financial stability, primarily through cooperative agreements with EPA and membership dues, but also through sound fiscal practices such as maintaining a small staff and virtual office with low administrative overhead.
- There is very strong stakeholder support for the work TNI is doing with more than 90% of its stakeholders believing in the programs being offered.
- Dedicated volunteers with a passion for this effort, committee structure and balance, and the expertise and experience of the organization's membership are all proven assets.
- Significant progress has been made towards implementing a new accreditation standard.
- Committees to operate the TNI programs are well established and viable.
- TNI has been accredited by the American National Standards Institute as a consensus standards organization.
- An infrastructure has been established to allow TNI to expand the program into non-traditional areas of monitoring such as field sampling and measurements, stack emission testing, and taxonomy.

Implementation of the New TNI Standards

The 2003 NELAC Standard has been used by NELAP-recognized Accreditation Bodies (ABs) since 2005, and as such, is very familiar to the ABs as well as the accredited laboratory community and other stakeholders. However, the 2003 NELAC standard contains language about the operation of an organization that no longer exists, contains administrative detail that does not pertain to the operation of an accreditation program, contains obsolete language from an obsolete version of ISO 17025, is very hard to read and understand by laboratories that have not

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been accredited, and is not recognized by the EPA as a consensus standard. The 2003 NELAC Standard is widely perceived as one of the barriers to increasing the participation of both laboratories and states in the program.

The 2009 TNI standards, which have been in development since 2003, were developed to respond to criticisms of the 2003 NELAC standard. The TNI standards were developed by a true consensus process, use the current version of ISO 17025, have incorporated ISO 17011, are organized to make it easier for a laboratory to understand the requirements, and have improved some of technical weaknesses in the 2003 NELAC standard.

National Accreditation

TNI's vision is that every organization that generates environmental monitoring data will be accredited to a consensus standard. For this vision to become a reality, a number of actions need to occur.

- TNI needs to reach out to EPA program offices and state agencies to understand their needs and concerns and then take action to address these needs and concerns.
- TNI needs to reach out to those laboratories that believe the program to be too onerous and find ways to alleviate their concerns.

To address these concerns, TNI's Advocacy Committee has taken on the task of reaching out to other organizations to understand their needs and concerns on national accreditation and bring those needs and concerns back to TNI for action. Specifically, the Advocacy committee has initiated efforts to meet with EPA program offices (e.g., Air, Solid Waste, Wastewater), other federal agencies, state agencies, and other data users to understand their needs for reliable environmental data and work to ensure the TNI program meets the needs of all data users, and to meet with trade associations representing laboratories to understand their perspectives on laboratory accreditation and work to ensure the TNI program addresses their concerns.

Small Laboratories

Many small laboratories perceive the 2003 NELAC standard has too onerous. TNI believes many of these concerns can be solved with the outreach effort that has begun, but TNI also believes more can be done to help small laboratories. TNI has already accomplished some actions to help small laboratories:

- a Quality Manual template has been developed
- templates for technical and administrative Standard Operating Procedures have been developed,
- laboratory "mentoring sessions" are now a integral component of every TNI meeting,
- several training courses and workshops to help small laboratories have been held, and
- the position of Small Laboratory Advocate within TNI has been created.

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As a result of these actions, many small laboratories, including many 1 and 2 person laboratories have become accredited over the last few years. TNI believes much more can be done, including:

- developing more tools and guidance,
- offering web-based training,
- ensuring that all requirements in the standard are essential for data quality, and
- improving the consistency of laboratory assessments.

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For more Information about TNI, contact TNI at:

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Hybrid Accreditation Standards: Wisconsin's Laboratory Accreditation

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Disclaimer

The views and opinions expressed in and during this presentation are solely the author's and do not represent the official positions of the Laboratory Certification and Registration Program of the Wisconsin Department of Natural Resources or the Milwaukee Metropolitan Sewerage District.

Consult these links for official information:

<http://dnr.wi.gov/regulations/labcert/>

<http://www.mmsd.com/>

Program Profile

- * Chemistry and Whole Effluent Toxicity
- * SDWA, NPDES, RCRA, CERCLA
- * Commercial, Municipal, Public Health, Industrial
- * In and Out of State
- * Fee Supported
- * Registration for Non-Commercials
- * Certification for Commercials

Hybrid Program

- * Certification vs. registration
- * NELAP elements vs. state requirements
- * Drinking water vs. all other matrices
- * Attempt to merge the best of several systems
- * Follows already established tradition

NELAP Technical Advisory Committee (TAC)

- * In 1998 recommended becoming a NELAP AA
- * Two-tiered system:
 - * Commercials NELAP
 - * Others covered by State program
- * Needed a change in the Statute
- * Required legislative sponsorship

Green Bay Packers Rule



- * Had a strong sponsor in House of Representatives.
- * However, Senate leader focused on funding alternatives for GBP stadium renovation.
 - * Would not consider any rule changes until GBP stadium renovation satisfied party's concern.
- * Stadium renovation funding mechanism approved.
- * WI NELAP statute changed approved by House, not considered by Senate.
 - * Rule change died in session.

Aftermath

- * Agency got cold feet.
 - * Commercials objected to two-tiered system.
 - * Municipals did not want to be part of NELAP.
 - * Both groups essentially lobbied against a NELAP compromise.
- * No sponsor in next legislative session.
- * No substantial internal or external support to become a NELAP AA (AB).

Other Reasons for 1998 Outcome

- * Wisconsin's Program predated NELAP by more than a decade.
- * Lack of local control over the accreditation standard.
- * Perceived by some as a costly alternative that did not add significant value to what already was in place.
- * Suspicion from the not-for-profit sector that commercials would take over.
- * Commercials insistence on a single accreditation tier.

Regroup

- * Realization that NR 149 needed change.
 - * The Code had not undergone a major revision since it was created in 1986.
- * Formed NR 149 Rule Advisory Committee to:
 - * Use the NELAC Standards as the basis for NR 149 revision.
 - * Take what was best and sensible from the NELAC Standards.
 - * Retain some Wisconsin-specific provisions.

The Product

- * Extensive compromising and negotiation.
- * Process took approximately six years.
- * Revised NR 149 published in April 2008.
- * Revision became effective September 2008.
- * Process for revising the 2008 version has started.
 - * New rule process would take at least three years to complete.

NELAP Items that Made It

- * Tiers of Accreditation
 - * Technology – Matrix – Analyte
 - * Method – Matrix – Analyte
- * Quality Systems Approach
- * Majority of the provisions of the Quality Systems Standard

NELAP Items that Did NOT Make It

- * Two PTs per year
 - * NR 149 requires one PT in combination with either three quality control standards or a second source verification program.
- * Internal audits
- * Annual management system reviews
- * Personnel qualifications
- * Unannounced assessments
- * Five-years for records retention

Items Unique to NR 149

- * Extensive and “particular” calibration section for analytical instruments.
- * Exclusion of PTs for AA flame analysis and colorimetric procedures.
 - * Must analyze three quality control standards evenly spaced in a year.
- * Program does not accept solid PT sample results.

Observations

- * NELAP has raised the bar.
- * Systems approach has worked.
- * Documentation has improved dramatically.
- * Laboratories certified under NR 149 have been able to transition to NELAP relatively easily.

On the Other Hand...

- * Have lost all reciprocal agreements previously in place with non-NELAP states.
- * Easy for out-of-state laboratories to miss Wisconsin specific requirements.
- * Remain in partial isolation.
- * Have not lessened assessment load.

My Laboratory

- * Certified for chemistry by WDNR under NR 149.
- * Certified for microbiology by WDATCP under ATCP 77.
- * Accredited to 2009 TNI Standards by Florida.
- * Not that difficult to maintain certifications and accreditations.
 - * Similar to complying with special client requirements.
- * NELAP accreditation improves credibility of results.
 - * Needed or useful to market Milorganite®

Editorials

- * Have uniformity as a principal goal.
- * Shun preferences that buy you little and that are obstacles to uniformity.
- * If you must have a two-tiered program, make demarcation clear and provide incentives that favor joining NELAP.
- * Avoid incorporating provisions in statute.
- * Try to incorporate as much as possible by reference.

And...

- * Know that adopting a standard in whole has advantages:
 - * Do not have to argue over selection.
 - * Do not have to re-invent content.
 - * Gives reason to justify all requirements.

Contact



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ENVIRONMENTAL LABORATORY TECHNICAL ADVISORY COMMITTEE

BY-LAWS
Adopted 02/04/2016

ARTICLE I

Name

The name of this Committee shall be the Environmental Laboratory Technical Advisory Committee (ELTAC).

ARTICLE II

Bagley-Keene Open Meeting Act

All meetings shall be conducted in accordance with the provisions of the Bagley-Keene Open Meeting Act (Government Code, Title 2, Division 3, Chapter 1 (commencing with Section 11120)), and each member is subject to the provisions of the Bagley-Keene Open Meeting Act. No provision of these By-Laws is intended to nor may be interpreted to conflict with or supplement the Bagley-Keene Open Meeting Act.

ARTICLE III

Objectives and Functions

ELTAC serves to implement objectives and requirements authorized in Section 100863 of the California Health and Safety Code.

ELTAC is established in law to "assist, advise and make recommendations regarding technical, scientific, and administrative matters concerning the accreditation or certification of environmental laboratories." (Health and Safety Code Section 100863) The law further provides that: "Subcommittees of the committee may be appointed consisting of committee members and other persons having particular knowledge of a subject area, for the purpose of assisting the ... [State Water Resources Control Board] on special problems and making recommendations to the Committee for consideration in the establishment of rules and regulations."

ELTAC shall assist the State Water Resources Control Board, Division of Drinking Water (hereafter referred to as "Division"), Environmental Laboratory Accreditation

Program (hereafter referred to as “ELAP”) by providing advice and making recommendations regarding technical and scientific matters for the establishment of rules and regulations that will ensure the proper administration and enforcement of provisions pursuant to Health and Safety Code, sections 100825-100920 as well as provisions in other statutes that impact environmental laboratory activity.

The Committee shall also function as a means of exchanging information and opinions related to environmental laboratory technology, methods, and practice. In support of this function, ELAP may request ELTAC member laboratories participate in outreach and education efforts and allow assessors the ability to tour their laboratories in order to learn about technologies the assessors have not previously witnessed.

ELTAC shall assist ELAP in:

- A. Developing scientifically rigorous recommendations regarding issues that impact the regulated laboratory community, regulatory agencies, and data users
- B. Improving communications and outreach between ELAP and its stakeholder communities
- C. The operation and improvement of ELAP
- D. The implementation of a performance based, transparent accreditation program that is accountable to ELAP stakeholders

ARTICLE IV

Membership

A. Types of Members

- 1. Designated Environmental Laboratory Accreditation Program Officer (DELAPO)

A full-time employee of ELAP shall be appointed as the DELAPO by the Deputy Director of the Division of Drinking Water (hereafter referred to as “Deputy Director”). The DELAPO or a designee shall be present at all of the meetings of the Committee and Subcommittees. Meetings may not be conducted in the absence of the DELAPO or designee. Each meeting shall be conducted in accordance with an agenda approved in advance by the DELAPO. The DELAPO is authorized to adjourn any meeting when he or she determines it is in the public’s best interest to do so. The DELAPO is not a voting member of the Committee.

- 2. Representative Member (Representative)

A Representative is an individual who is appointed by the Deputy Director to speak on behalf of a group, organization, or any other recognizable

group of persons having an interest in matters before ELTAC.

Representatives are voting members of ELTAC.

3. State Regulatory Agency Employee (SRAE)

SRAEs are appointed by the Deputy Director to speak on behalf of a California State board, department or office by which they are currently employed. SRAEs are not voting members of ELTAC.

4. Chairperson

This position shall be held by a current Representative. Annually, the Chairperson shall present a summary of ELTAC's scope of work to the State Water Board Members. The Chairperson shall be elected by voting members of ELTAC. The Chairperson shall solicit and create agenda items for ELTAC meetings. The Chairperson shall submit the agenda to the DELAPO at least 30 days before the scheduled ELTAC meeting for approval. The Chairperson is highly encouraged to be present at all meetings held in Sacramento. Voting for the Chairperson shall follow voting procedure as outlined in Article V. This member retains full voting privileges.

5. Scribe

The Scribe shall be an ELAP staff member who is appointed by the DELAPO. The Scribe is responsible for the meeting minutes, which shall highlight discussions and decisions made on agenda items and other orders of business. The Scribe shall make the minutes available to the public after the committee approves them. This is not a voting position.

B. Composition

ELTAC shall be comprised of the DELAPO and approximately fifteen (15) members (Representatives and SRAEs) to speak on behalf of interested parties and environmental laboratories subject to the Environmental Laboratory Accreditation Act. One of the current Representatives shall serve as the Chairperson. The Committee shall consist of a broad range of individuals who come from interested parties and environmental laboratories that have a wide range of expertise that includes, but is not limited to, ELAP's fields of testing. There shall be committee members from both Northern and Southern California, from both publicly and privately owned laboratories, and from laboratories of all sizes. Those serving on ELTAC shall be selected by the Deputy Director based upon their expertise and knowledge of: conformity and standards development, laboratory quality systems and accreditation, analytical methods and methods development, overall analytical laboratory operations; and familiarity of regulatory framework and requirements for compliance needs. Membership shall be established and term appointments maintained in such a manner as to require a minimum number of new appointments from each category each year, with terms

overlapping to maintain stability and continuity within ELTAC. The membership of ELTAC shall be constituted such that no one set of stakeholders shall have dominance over ELTAC and every Representative has substantive knowledge of ELAP services and environmental laboratory operations.

C. Terms for Representatives, SRAEs and the Chairperson

1. The membership term for Representatives and SRAEs shall be two (2) years unless an appointment is made to fill an un-expired term of a member not completing a term, in which case appointments of less than two (2) years may be made.
2. Representatives and SRAEs of ELTAC may not be appointed for more than four (4) consecutive years of service with a maximum lifetime service of six (6) years. In order to preserve representation on the ELTAC, with the consent of the incumbent member, current appointments shall be continued with full voting rights and privileges until replacements are seated.
3. The term of the Chairperson shall be one (1) year. The Chairperson shall not have restrictions on the amount of terms that can be served, as this position is elected annually.

D. Expectations

Representatives and SRAEs must have the resources and technical expertise to support participation on ELTAC. Representatives and SRAEs are expected to attend all ELTAC meetings, and provide an oral report out to ELTAC during the October meeting on communication held with their constituents. Failure to provide reports may result in dismissal from ELTAC at the discretion of the Deputy Director. In order to facilitate discussion, Representatives and SRAEs may attend meetings in person or remotely. Failure to attend ELTAC meetings may result in dismissal as outlined in Section E of this Article.

E. Absences and Dismissal

In the event a Representative or SRAE cannot attend an ELTAC meeting, he/she may choose an alternate to attend the meeting. An alternate may speak on behalf of a Representative or SRAE but the alternate's presence does not count toward a quorum. If a Representative or SRAE has sent an alternate in his/her place, that alternate shall not vote on agenda items. If the Chairperson cannot attend an ELTAC meeting, he or she must select an alternate to act as the Chairperson from existing ELTAC membership. A Representative/SRAE may be removed by the Deputy Director or by a 2/3 vote by the voting members on ELTAC. In the event a Representative or SRAE obtains work in a new field or fails to represent his/her constituents, a new Representative or SRAE shall take his/her place in accordance with the process outlined in Article V.

ARTICLE V

Appointments, Elections and Voting

A. Representative and SRAE Appointments

ELTAC shall consist of members appointed by the Division of Drinking Water Deputy Director. Applications for Representative and SRAE positions shall be submitted in writing to the DELAPO by no later than the 15th of September. A complete package will include:

1. The applicant's/nominee's full name, title, institutional affiliation, and contact information.
2. The applicant's/nominee's area(s) of expertise.
3. A summary of qualifications (1-2 sentences) outlining the individual's technical expertise and who they would represent. Inclusion of a curriculum vitae or resume is desirable.
4. Letter of recommendation or written endorsement from an organization, association, etc. (optional)

The Deputy Director shall appoint all Representatives and SRAEs after evaluating nominations. The Chief of ELAP, the Deputy Director and the Assistant Deputy Director of the Division of Drinking Water shall evaluate all nominees for eligibility and make their selection based on the most qualified candidate(s). In selecting committee members, executive personnel shall consider candidates who represent the different technical fields within the laboratory community, regulatory agencies, and data users. All nominations shall be made public.

B. Nominating the Chairperson

Before proceeding to the election for the Chairperson, one or more candidates must be nominated by a current Representative or SRAE at the October ELTAC meeting. The nomination must be accepted by the nominee in order to be considered as an eligible candidate in the voting process. When nominations are completed, the voting members, as provided for in these By-Laws, shall elect the Chairperson.

C. Electing the Chairperson

Voting for the Chairperson shall be conducted during the October ELTAC meeting. Each Representative shall be allowed one vote. The Chairperson shall be decided by a simple majority vote. Voting is not binding and the Deputy Director may appoint a different Chairperson if he/she deems it necessary.

ARTICLE VI

Operational Procedures

A. Quorum

The presence of one-half plus one of the total members on ELTAC (Representatives and SRAEs) shall constitute a quorum for the transaction of business. In the absence of a quorum, no official action may be taken by the ELTAC.

B. Meetings

1. ELTAC shall meet at least three (3) times a year. The DELAPO shall schedule meetings. One of these meetings shall be held in October.
2. Emergency or special meetings may be scheduled and held in accordance with Article II.
3. Unless otherwise scheduled by the DELAPO, all ELTAC meetings shall reside in Sacramento.
4. The proceedings of ELTAC shall be called to order and adjourned by the DELAPO and shall follow Robert's Rules of Order, newly revised.

C. By-Laws

1. These By-Laws must be reviewed by ELTAC for amendments no less than once every two (2) years.
2. These By-Laws may be amended by a two-thirds (2/3) majority vote of ELTAC's members pending final approval from the Deputy Director.
3. The Deputy Director reserves the right to make amendments to these By-Laws without the ELTAC's consent. ELTAC reserves the right to appeal these amendments to the State Water Resources Control Board during the public comment period of a regularly scheduled Board meeting.

D. Recommendations

1. Any recommendation(s) made to ELAP must be submitted in writing through letter or email to the DELAPO.
2. The DELAPO will respond no later than thirty (30) days after the recommendation has been received. The response shall be posted to the website, as well as emailed to ELTAC. The response shall include whether the DELAPO will accept or deny the recommendation, or if more time is needed.

E. Voting on Agenda Items During ELTAC Meetings

Only Representatives and SRAEs may vote for items on the ELTAC agenda unless ELTAC has decided otherwise in a previous meeting. It shall be a goal of ELTAC to reach a consensus on each agenda item.

F. Subcommittees and Consultants

Subcommittees may be established by ELTAC as needed. Each member of a Subcommittee, including persons who have not been appointed as or designated as

Representatives or SRAEs of ELTAC, must also comply with the provisions stated in Article II. Subcommittee members shall be appointed by the DELAPO. Membership on such Subcommittees may include members of the public; however, there must be at least one Representative or SRAE on any Subcommittee. All Subcommittee meetings shall be conducted in accordance with Article II. Only Subcommittee members may vote on issues before the Subcommittee. The DELAPO may request consultants to present information at a meeting of ELTAC or a meeting of a Subcommittee.

G. Regulations

Where possible, ELAP shall seek advice from ELTAC on all regulations and fees developed by ELAP related to environmental laboratory technology and practice. ELTAC may (by action taken at a public meeting) request that its comments on proposed regulations be submitted to the State Water Resources Control Board, and the DELAPO shall submit the comments to the State Water Resources Control Board. Individual members of ELTAC retain their right as a member of the public to submit comments on proposed regulations.

H. Minutes

A record shall be made by the Scribe of actions taken at each meeting by ELTAC and Subcommittee(s). The record shall then be posted in draft form on ELAP's website (www.waterboards.ca.gov/elap) until it can be approved by ELTAC. The minutes may only be approved at an ELTAC meeting or Subcommittee meeting whose actions are described in the minutes. The DELAPO shall designate a person to act as Scribe for each closed session of the ELTAC and any Subcommittee.

April 28, 2016

Laboratory Accreditation Work Group

Ms. Sotelo,

The Laboratory Accreditation Work Group (LAWG) is an informal collection of Southern California environmental laboratories, both publicly and privately owned. The LAWG usually meets quarterly to discuss various laboratory accreditation issues. The LAWG is committed to supporting and strengthening the environmental laboratory accreditation process.

On Thursday, February 25, 2016 the Environmental Laboratory Accreditation Program (ELAP) and the Division of Administrative Services Fee Unit conducted a Listening Session at the offices of the Los Angeles Regional Water Quality Control Board. The objective was to inform interested parties about ELAP's financial situation and possible ways to address and to take input from interested stakeholders. Topics discussed included the Budget Trailer Bill, the Emergency Rule Making Process, and how ELAP might restructure its fees to provide greater sustainability and equity among accredited laboratories.

On Thursday March 10, 2016 the LAWG met and discussed the same issues using slides from the Listening Session. There was considerable discussion on these topics. Since the goal of the listening sessions were for ELAP to acquire input from stakeholders, the members of the LAWG decided to summarize the discussion it had and submit to ELAP as an extension of the Listening Sessions.

ELAP staff stated that they are interested in developing fees that are sustainable and equitable, a goal everyone seems to agree with, although there were differences about what that might mean. However the general sense was that ELAP's fees should reflect the amount of resources ELAP must use to accredit each laboratory.

1) ELAP's Current Fee Structure

Currently there are two fees, a Base Fee which is the same for all laboratories and a Field of Testing (FOT) Fee. Each laboratory pays the same amount for each FOT that they are accredited for, but since different laboratories are accredited for different numbers of FOTs, this fee can vary significantly between laboratories. However, this difference can at least in some situations, be non-representative of the amount of effort ELAP exerts to accredit laboratories. Taking an extreme example, a one person laboratory testing wastewater for only two analytes, e.g. Total Coliforms and E. coli by Chromogenic Substrate and Chlorine Residual by Titration (FOTs 107 and 108) would pay the same total fees (Base Fee: \$ 695 FOT 107: \$ 1,542 FOT 108: \$ 1,542 or \$3779 total) as a ten person laboratory analyzing drinking water and waste water for Purge and Trap GC-MS by USEPA 524.2 and 1624 (FOT 104 and 110). Clearly these two laboratories do not, or at least should not, consume equal amounts of ELAP's resources to determine competency to perform regulatory compliance analysis.

2) ELAP's Costs

Based on the 2004-05 Fiscal Year Budget ELAP's costs, which while probably a bit out of date, are the only available data, are primarily labor. Costs include:

- a) Overhead/Pro Rata: \$ 588,000
- b) Operating Expenses & Equip: \$ 677,000
- c) Labor: \$ 2,084,418
- d) Total \$ 3,349,418

According to the program summary presented at the March 2015 presentation given at the Southern California Coastal Water Research Project (SCCWRP) there are 27 authorized positions [1]. (Adding all the positions below is 28 positions)

- a) Nine (9) Chemists (auditor / inspector)
- b) Three (3) Staff Chemist (auditor / inspector)
- c) Three (3) Environmental Scientist (cross-media - auditor / inspector)
- d) Three (3) Senior Environmental Scientist Specialist (cross-media - auditor / inspector / biology & microbiology expertise)
- e) Two (2) Supervising Chemists (Los Angeles & Richmond)
- f) Two (2) Management Services Technicians (Los Angeles & Richmond)
- g) Two (2) Office Technicians (Sacramento & Los Angeles)
- h) One (1) Environmental Program Manager (Sacramento)
- i) One (1) Supervising Senior Environmental Scientist Specialist (Sacramento)
- j) One (1) Laboratory Assistant (auditor / inspector)
- k) One (1) Scientific Aid

If ELAP wants fees to be equitable, sustainable, and proportional to the resources needed, it is recommended that where and when the labor time is being expended should be identified.

3) Approaches to Fees

There was a continuum of options on how to assess fees.

- a) At one pole was the idea that each laboratory pays the same fee no matter what. The thinking behind this proposal was that most of ELAP's staff time was devoted to administrative matters, training, writing regulations, and other activities that are not directly connected with the accreditation activities of any particular laboratory. Other non-labor resources would quite naturally be consumed in proportion to the labor resources.
- b) At the other pole was the idea there should be as much difference between laboratory fees as possible. The base fee should be small and there should be separate fees for each analyte as well as each Field of Testing (FOT) or specific method. There would also be higher fees for more complex methods or FOTs. Logic behind this approach is that most of ELAP's staff time is devoted to the assessment of individual laboratories, reviewing applications, assessing

performance testing samples, preparing for on-site assessments (OSAs), conducting OSAs, and following up on OSAs.

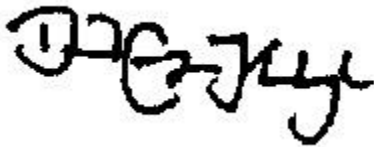
The difficulty in assessing these two extremes, and any sort of solution in between, is that no one knew how ELAP's staff time was actually being utilized. Further, the question was raised that since ELAP does not have standardized procedures for activities, it is unclear whether any existing distribution of labor resources may not be representative of how an optimal distribution would look.

4) Request for Additional Information

The participants of this discussion believe that ELAP's effort to solicit input from stakeholders on the matter of fees is very important and well appreciated and would like very much to contribute to the process. However there is at present insufficient information available on which to make any sort of recommendations or even form any opinions. We would therefore like to request that ELAP prepare some sort of summary of how labor resources are currently being deployed. If there are 27 positions, each working 40 hours per week 52 weeks a year that is 56,160 hours per year (minus of course vacation, holidays, and other leave). It would be very helpful to know how many of those hours are consumed by

- a) Review of PT samples
- b) Processing of applications
- c) Preparing for OSAs
- d) Conducting OSAs
- e) Following up on OSAs
- f) Administration
- g) Other

Knowing these numbers would help the laboratory community immensely in assessing what ELAP does and what sort of fee structure would support those activities. This could be something that the Environmental Laboratory Technical Advisory Committee could assist in resolving.



David Eugene Kimbrough, Chair

Pasadena Water & Power

[1] http://www.waterboards.ca.gov/drinking_water/certlic/labs/documents/program_overview.pdf

**California Environmental Laboratory Accreditation Program (ELAP) Expenditure
Information**

Year 2015

** This information is based on **estimated** costs and is intended only to inform discussion of
revising the ELAP Fee Structure.*

Summary

Indirect Costs: **\$1,338,800**

Salary Expenditures: **\$2,385,879**

Budgeted Positions: **27**

Expenditure Authority: **\$3,347,000**

In-Direct Costs (2015)

Indirect Costs (IDC) Total: **\$1,338,800**

The following items are included in IDC:

- Overhead Equipment
- General Expense
- Printing
- Communications
- Postage
- Travel
- Training
- Facilities Operations
- Utilities
- Contracts
- Pro-Rata
- SWCAP (Statewide Cost Allocation Plan)
- Equipment
- Paid Time Off
- Allocated Operating Expenses
- General Administration
- Other

Salary Information (2015)

Management Salary

# Employees	Salary	Benefits (43.21%)	Total
3	\$345,600.00	\$149,334.00	\$494,934.00

Vacancies = 1 (Supervising Chemist, Glendale)

Technical Staff Salary

# Employees	Salary	Benefits (43.21%)	Total
18	\$1,172,800.00	\$506,767.00	\$1,679,567.00

Vacancies = 1 (Chemist)

Administrative Staff Salary

# Employees	Salary	Benefits (43.21%)	Total
4	\$147,600.00	\$63,778.00	\$211,378.00

No Vacancies

Total Salaries 2015

# Employees	Salary	Benefits (43.21%)	Total
25	\$1,666,000.00	\$719,879.00	\$2,385,879.00

Total Vacancies = 2

**Exact salary and benefit costs will vary from these numbers. The SWRCB uses 43.21% for federal reporting of fringe benefits.*