

# **D R A F T**

## **STATE WATER RESOURCES CONTROL BOARD RESOLUTION 2023-**

### **ADOPTING EMERGENCY REGULATIONS AMENDING THE ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM (ELAP) FEE REGULATIONS IN TITLE 22, CALIFORNIA CODE OF REGULATIONS SECTION 64802.25**

#### **WHEREAS:**

1. The State Water Board is responsible for administering the Environmental Laboratory Accreditation Act. (Health & Saf. Code, § 100825 et seq.) Health and Safety Code (HSC) section 100860.1 requires that a laboratory pay a fee at the time of applying for ELAP certification and annually thereafter.
2. Pursuant to HSC sections 100829, 100830, and 116271, the State Water Board is authorized to adopt regulations for accreditation of environmental laboratories, including establishing fees.
3. HSC section 100829 mandates that the accreditation program operated pursuant to the Environmental Laboratory Accreditation Act be fully fee-supported. HSC section 100920 requires that environmental laboratory accreditation fees be deposited in the Environmental Laboratory Improvement Fund.
4. HSC section 100829 requires the State Water Board to set the amount of total revenue collected each year through the fee schedule at an amount equal to the amount appropriated by the Legislature in the annual Budget Act for expenditure from the Environmental Laboratory Improvement Fund, taking into account the reserves in the Environmental Laboratory Improvement Fund. HSC section 100829 also provides that the schedule of fees be set in an amount sufficient to recover all reasonable regulatory costs incurred for the purposes of the Environmental Laboratory Accreditation Act. HSC section 100829 also requires that the State Water Board review and revise the fees each fiscal year as necessary to conform to the amounts appropriated by the Legislature.
5. HSC section 100829 further states the State Water Board shall adopt the schedule of fees by emergency regulation. The State Water Board staff recommends adopting amendments to the State Water Board's ELAP fee regulations in accordance with HSC section 100829.

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6. The amendments to the ELAP fee regulations will be contained in California Code of Regulations, title 22, section 64802.25.
7. These regulations are exempt from review by the Office of Administrative Law and will take effect upon being filed with the Secretary of State by the Office of Administrative Law.
8. The California Environmental Quality Act (CEQA) provides a statutory exemption for the review and modification of charges by public agencies. Specifically, Public Resources Code section 21080, subdivision (b)(8), provides for such statutory exemption if the public agency finds that such charges "are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter."
9. The State Water Board finds that the charges identified in California Code of Regulations, title 22, section 64802.25 subdivisions (a), (b), and (e) and Tables 1 and 2 are for the purpose of: meeting operating expenses, including employee wage rates and fringe benefits; purchasing or leasing supplies, equipment, or materials; and meeting financial reserve needs and requirements.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts amendments to California Code of Regulations, title 22, section 64802.25, as appended to this resolution.
2. The State Water Board determines that adoption of California Code of Regulations, title 22, section 64802.25 is exempt from CEQA for the reasons given above, and directs the State Water Board staff to prepare and submit to the State Clearinghouse a Notice of Exemption reflecting this determination.
3. State Water Board staff will submit the regulations to the Office of Administrative Law (OAL) for filing with the Secretary of State.

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4. If, prior to OAL filing the regulations with the Secretary of State, State Water Board staff or the State Water Board determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or the Executive Director's designee may make such changes.

### **CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 19, 2023.

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Courtney Tyler  
Clerk to the Board