



PASADENA WATER AND POWER

October 20, 2016

Felicia Marcus, Chair
Frances Spivy-Weber, Vice Chair
Tam M. Doduc
Steven Moore
Dorene D'Adamo

California State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: ELAP Regulations Development/Laboratory Standard

On September 6, 2016 the State Board Water Resources Control Board (State Board) gave notice that they would be holding a Workshop on October 6, 2016 on the proposed changes to the laboratory accreditation regulations. The focus of the proposed changes is the Environmental Laboratory Accreditation Program's (ELAP) proposal to use Volume 1 of The NELAC Institute's (TNI) 2016 documents as requirement for laboratory accreditation. On October 17 Pasadena Water & Power (PWP) along with 84 other impacted parties submitted comments on that proposal. PWP would like to submit some additional material to supplement one of those comments. We commented that:

Health & Safety Code Sections 100825-100920: When the State Legislature adopted the Environmental Laboratory Accreditation Act (ELAA) it created two options for accreditation, laboratories may be compliant with either the National Environmental Laboratory Accreditation Council (NELAC) or with California's own requirements.

*"100829. The State Water Resources Control Board **may** do all of the following related to accrediting environmental laboratories in the state:*

- (a) Offer **both** state accreditation and NELAP accreditation, which shall be considered equivalent for regulatory activities covered by this article.*
- (b) Adopt regulations to establish the accreditation procedures for **both** types of accreditation." (emphasis added).*

The California legislature did not authorize ELAP to only offer one type of accreditation; it authorized ELAP to offer **both** types of accreditation. In proposing this regulation, ELAP is exceeding the authority granted it by the state legislature.

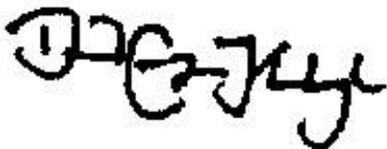
The proposed regulations are contrary to the legislative intent of the ELAA as well as the explicit language in the statute.

To support this interpretation there is attached a letter from the Department of Health Services (DHS) to Hannah-Beth Jackson, Chair of the Assembly Environmental Safety and Toxic Materials Committee Participation supporting the passage of the bill authorizing ELAP to offer TNI (NELAP), SB 1304. The deputy director states that *“NELAP is entirely voluntary and environmental laboratories will have the option of seeking NELAP accreditation according to the federal standards, or continuing to be accredited for California only under the state standards. NELAP-accredited laboratories will always be required to meet the higher of the federal or California standards”*. ELAP was part of DHS at the time so it is clear that that was how ELAP understood the bill’s provisions about TNI (NELAP).

Two years later, ELAP adopted emergency regulations to set fees for TNI (NELAP) program. I have attached the California Regulatory Notice Registry NO. 48-Z NOVEMBER 30, 2001 which contains a Notice of Emergency Rulemaking for National Environmental Laboratory Accreditation Program Fees (R-70-00E). According to the State of California *“Section 100862, added to the Health and Safety Code (H&SC) by SB 1304 (Chapter 372, Statutes of 1999), specifically requires the establishment of fees to enable environmental laboratories in California to participate on a voluntary basis in the National Environmental Laboratory Accreditation Program (NELAP). NELAP accredited laboratories are required to fully support the NELAP accreditation costs through fees”*.

It is worth noting that for over ten ELAP offered NELAP accreditation on a voluntary basis until their recognition by TNI was withdrawn. So the actual practice of ELAP and the stated intent of ELAP all make it clear that the language in the current statute requires ELAP offer both TNI based accreditation as well as its own traditional form of accreditation.

We thank you for your attention.



David Eugene Kimbrough, Ph.D. Water Quality Manager, Pasadena Water & Power

DEK/hs

Attachments

DEPARTMENT OF HEALTH SERVICES

714/744 P Street
P.O. BOX 942732
SACRAMENTO, CA 94234-7320
(916) 657-2843



June 15, 1999

The Honorable Hannah-Beth Jackson, Chair
Assembly Environmental Safety and Toxic Materials Committee
State Capitol, Room 2082
Sacramento, CA 95814

Dear Assemblymember Jackson:

SUPPORT OF SENATE BILL (SB) 1304

The Department of Health Services (Department) is pleased to sponsor SB 1304, which makes statutory changes necessary to allow California's existing environmental laboratory accreditation program to become a recognized accrediting authority for the National Environmental Laboratory Accreditation Program (NELAP). NELAP, a program of the federal Environmental Protection Agency, will provide a common set of accreditation standards for environmental laboratories nationwide.

The Department currently accredits environmental laboratories that analyze food, drinking water, wastewater, hazardous wastes, and contaminated soils and sediment for regulatory compliance. Under the current program, environmental laboratories that operate in multiple states must obtain multiple accreditations, resulting in the expense and redundancy of multiple proficiency testing studies and on-site assessments. If California becomes a NELAP-recognized accreditation authority, environmental laboratories accredited by California will automatically be accredited in other NELAP-recognized states, providing a competitive edge for California businesses while still maintaining the highest standards. In addition, environmental laboratories accredited in other NELAP-recognized states will automatically be accredited in California.

Participation in NELAP is entirely voluntary and environmental laboratories will have the option of seeking NELAP accreditation according to the federal standards, or continuing to be accredited for California only under the state standards. NELAP-accredited laboratories will always be required to meet the higher of the federal or California standards.

If California does not become NELAP-recognized, out-of state laboratories with NELAP accreditation may find it no longer financially feasible to do business in California. California's participation in NELAP will help ensure the highest environmental laboratory standards while at the same time promoting a competitive business environment.

The Honorable Hannah-Beth Jackson, Chair
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Please contact me at (916) 657-2843 if you have any questions or want further information regarding SB 1304.

Sincerely,

ORIGINAL SIGNED BY

Charleen M. Milburn
Deputy Director
Legislative and Governmental Affairs



California Regulatory Notice Register

REGISTER 2001, NO. 48-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

NOVEMBER 30, 2001

PROPOSED ACTION ON REGULATIONS

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

State Agency: California Highway Patrol

Multi-County: Program Beta Risk Management Authority

Conflict of Interest Code—Notice File No. Z01-1120-03 2005

TITLE 8 & 24. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Construction Safety Orders and Elevator Safety Orders—Notice File No. Z01-1113-03 2006

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Training Specifications—Reserve Training Module “D”—Notice File No. Z01-1119-04 2016

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Training Specifications—Public Safety Dispatchers’ Basic Course—Notice File No. Z01-1119-05 2018

TITLE 13. AIR RESOURCES BOARD

Voluntary Accelerated Vehicle Retirement Regulations—Notice File No. Z01-1120-25 2020

TITLE 14. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

LEA Enforcement Assistance Grants—Notice File No. Z01-1120-01 2023

TITLE 14. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Rigid Plastic Packaging Container Recycling Rates—Notice File No. Z01-1120-04 2026

TITLE 14. FISH AND GAME COMMISSION

Incidental Take of Coho Salmon—Notice File No. Z01-1120-24 2028

TITLE 16. BUREAU OF SECURITY AND INVESTIGATE SERVICES

Clarification of Fee Amounts—Notice File No. Z01-1120-02 2030

TITLE 16. STRUCTURAL PEST CONTROL BOARD

Customers Notification—Notice File No. Z01-1120-05 2032

TITLE 22. DEPARTMENT OF HEALTH SERVICES

National Environmental Lab Accreditation Program Fees—Notice File No. Z01-1105-02 2033

(Continued on next page)

*Time-
Dated
Material*

**TITLE 22. DEPARTMENT OF
HEALTH SERVICES**

ACTION: Notice of Emergency Rulemaking

SUBJECT: National Environmental Laboratory Accreditation Program Fees (R-70-00E)

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the Office of Regulations, Department of Health Services, 714 P Street, Room 1000, P.O. Box 942732, Sacramento, CA 94234-7320, by 5 p.m. on January 14, 2002, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand-delivered be submitted in triplicate.

Comments by FAX (916-657-1459) or email (regulation@dhs.ca.gov) must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

CONTACTS

Inquiries concerning the action described in this notice may be directed to Charles E. Smith of the Office of Regulations at (916) 657-0730, or to the designated backup contact person, Allison Branscombe, at (916) 657-0692. Inquiries regarding the substance of the regulations may be directed to George Kulasingam, Ph.D., Chief of the Environmental Laboratory Accreditation Program, at (510) 540-2800. In any such inquiries, please identify the action by using the Department regulation control number **R-70-00E**.

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

California statutes govern the certification of environmental laboratories providing analytical data for regulatory purposes in California. These statutes were first adopted in 1988 (AB 3739, Chapter 894), as

Chapter 7.5, Division 1, Part 2, Health and Safety Code, Sections 100825 through 100920 (formerly Sections 1010 through 1029). The statutes were amended in 1989, 1991, 1993, 1996, and 1999.

Regulations implementing the California statutes were first adopted as Section 64801 through 64827, Title 22, Division 4, Chapter 19, California Code of Regulations in 1994.

Section 100862, added to the Health and Safety Code (H&SC) by SB 1304 (Chapter 372, Statutes of 1999), specifically requires the establishment of fees to enable environmental laboratories in California to participate on a voluntary basis in the National Environmental Laboratory Accreditation Program (NELAP). NELAP accredited laboratories are required to fully support the NELAP accreditation costs through fees.

The Budget Act for 2000–2001 (AB 1740, Chapter 52, Statutes of 2000), Provision 2 to Item 4260-001-0001, provides that the department shall promulgate emergency regulations to adjust fees that otherwise would not be sufficient to support a fully fee supported program at least at the 95% level. Without the fees established in this regulation, the Department’s NELAP accreditation program would not be supported by fees from the regulated laboratories at the required 95% level.

The Department has been approved by the United States Environmental Protection Agency’s National Environmental Laboratory Accreditation Program to be the accrediting authority for the State of California.

California is required to maintain consistency with federal laws and regulations governing certain aspects of the activities of environmental testing laboratories. This proposed regulation change is consistent with the NELAP requirements and is not inconsistent with other related federal requirements.

The National Environmental Laboratory Accreditation Conference (NELAC) is the standard setting body whose standards and procedures serve as the basis for NELAP recognition and requirements. NELAC standards and procedures are specified in United States Environmental Protection Agency publication EPA 600/R-99/08, July 1999. There are no fees specified in the NELAC standards. The NELAC standards in Sections 4.1.6 and 6.2.1, provide that an accrediting authority, where required, shall establish the level and timing of fees to be paid by laboratories. However, California H&SC Code Section 100862 mandates the establishment of such fees to fully support the program.

Specifically, the Department has adopted regulation changes in Title 22, California Code of Regulations, summarized as follows:

Section 64860, in a new Article 16, was adopted to establish a schedule of fees for laboratories applying for NELAP accreditations. The new fees vary depending on the complexities of the fields of testing the laboratory is being approved to conduct. They are intended to reflect the increases in departmental workload costs incurred during the evaluations and oversight of the capabilities of laboratories under the new accreditation program.

AUTHORITY

Sections 100830, 100835, and 100862, Health and Safety Code.

REFERENCE

Section 100825, Health and Safety Code.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: No fiscal impact exists.
- B. Fiscal Effect on State Government: Expenditures are included in the FY 2001–02 Budget Bill for item 4260-001-0179.
- C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists.
- D. All cost impacts, known to the Department at the time the notice of emergency action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the emergency action: Participation in the National Environmental Laboratory Accreditation Program (NELAP) is entirely voluntary. Laboratories choosing to participate in NELAP would incur the base fee of \$3000 and the appropriate fee for the fields of testing, ranging from \$750 to \$1,800.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.

- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

no later than 21 days prior to the close of the written comment period, and addressed to the Office of Civil Rights within the Department of Health Services by phone (916-657-1411); FAX (916-657-0153); TDD (916-657-2861); or email (civilrights-ra@dhs.ca.gov).

The Department has determined that the regulations may affect small businesses.

The Department has determined that the regulations will have no impact on housing costs.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and a copy of the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the emergency regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the emergency regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

Sign language interpreting services at a public hearing or other reasonable accommodation will be provided upon request. Such request should be made