

Submitted via email: elapca_comments@waterboards.ca.gov,
Darrin.Polhemus@waterboards.ca.gov, and Christine.Sotelo@waterboards.ca.gov

August 15, 2023

Christine Sotelo
Environmental Laboratory Accreditation Program (ELAP)
State Water Resources Control Board (SWRCB)
1001 I Street
Sacramento, CA 95814

RE: Comment Letter - Proposed ELAP Fee Draft Regulatory Language

Dear Ms. Sotelo:

The California Water Environment Association (CWEA) appreciates the opportunity to provide feedback and comments on the Proposed Environmental Laboratory Accreditation Program (ELAP) Fee Regulatory Language (Draft Proposed Language) that was received through electronic correspondence from California Water Boards on August 9, 2023.

CWEA is a 501(c)3 non-profit association that empowers wastewater professionals as they protect water, California's most critical resource. Our community of over ten thousand professionals represents all facets of wastewater management and resource recovery, from operators to lab technicians to engineers. CWEA's Lab Analyst certification is held by 780 of our members, and, in our busiest year, CWEA hosted over 500 individual training events for water professionals. Our education and training programs help to keep our members up to date on the latest technical, operational, and regulatory issues. Our Laboratory Analyst Certification Program plays an important role in protecting California's water environment by providing employers with evidence that certificate holders have successfully demonstrated job-related knowledge, skills, and abilities.

In addition to the education and training programs, CWEA has an active state Laboratory Committee (CWEA LC) and local section Laboratory Committees from various regions of California that consist of CWEA Laboratory Analyst Certificate holders from Grade 1 to 4 and laboratory analysts aspiring to receive CWEA certification. Members of CWEA serve laboratories across the state for both publicly and privately-owned laboratories.

The CWEA LC shares the common goal with the State Water Resources Control Board (Board) to keep laboratories of various sizes in business. This shared goal is reflected in the following comments to help foster a collaborative working relationship to achieve this outcome.

The CWEA Laboratory Committee members respectfully submit the following comments:

1. Request to Delay the Adoption and Initiate a Collaborative Process

We believe that the adoption of the Draft Proposed Language or revision thereof at the September 19, 2023, State Water Resources Control Board meeting is premature. A new ELAP Fee Workgroup (workgroup) was formed at the end of June 2023 and consists of volunteers from laboratories (public and privately owned) and various associations. The workgroup has met with ELAP staff only once since its formation. Formulating a new ELAP fee structure should include ELAP staff's collaboration with the workgroup, ELTAC and other experts in the field, followed by an appropriate amount of time for public comments. To successfully introduce a new component to the ELAP fee structure, this collaboration is essential to ensure ELAP fee structures in the future are practical and sustainable for all laboratories and ELAP. Given that the samples-per-method fee structure has the potential to significantly change the landscape of the environmental laboratory business in California, it is imperative that we take the time to make sure regulatory reporting requirements are designed to collect accurate data to achieve success in the implementation of a program such as this.

We feel that ELTAC is the appropriate forum to initiate the collaborative process to achieve success in the implementation of the reporting requirements. The last ELTAC meeting was held in December 2022 and this matter will not be discussed until the ELTAC meeting on August 22, 2023. The collaboration and partnership process will need time to develop and require initiation beyond September 19, 2023.

Additionally, we would like to highlight that the current top priority for ELAP-certified laboratories is to ensure compliance with the 2016 TNI Standard minus two effective January 1, 2024. The next 1-2 years will test laboratories' ability to maintain the new ELAP accreditation requirements. Thus, adopting the proposed draft on September 19, 2023 for implementation on January 1, 2024, the same date as the new accreditation standard, would be non-ideal timing.

Therefore, we are requesting a delay in the adoption of the Draft Proposed Language and request that a collaborative process be formed between ELAP staff, the new ELAP Fee Workgroup, ELTAC, other experts in the field and the State Agency Partners to work on the new component of the ELAP fee structure.

It is expected that the collaborative process will take four quarterly meetings over a one-year period with a report out to ELTAC on the findings regarding the fee structure as a standing item after the ELTAC meetings occur. It is important to note that municipal laboratories have strong relationships with commercial labs and are well-positioned to assist ELAP as a liaison to assist in the development of the methodology that works for both primary sectors of accreditation.

2. Regulatory Language Needs Clarification

We would like to request clarification of the draft regulatory language as noted in bold:

*“(a) Beginning January 1, 2024, accredited laboratories shall track the **total number of tests run per method performed at the laboratory for regulatory purposes**. Test results for regulatory purposes may not necessarily be directly uploaded to the state agency by the laboratory. The totals will be used in the future by The State Board for calculating and setting fees.”*

- a. Request to clarify the total number of tests per method performed meant:
 - i. Total number of samples performed per method (single analyte method), or
 - ii. Total number of analytes performed per method (multiple analyte method), or
 - iii. Total number of samples per method regardless of the method being single analyte or multiple analyte method.
- b. Request to specify all programs that are considered for regulatory purposes.
- c. Many municipally owned laboratories are not full-service labs and therefore, samples for methods not performed in-house are sent out to privately owned laboratories regardless of use, for regulatory or process monitoring purposes.
- d. Request to specify responsible parties to report samples analyzed for regulatory purposes.
 - i. The laboratory that actually performed the test on the samples, or
 - ii. The in-house laboratory that received the results and then reported the results to their regulatory agency.
- e. Request to clarify which to include in the counting will be helpful. For example:
 - i. Count samples run per method for parameters and frequency of testing based on minimum requirements as outlined in the monitoring and reporting requirements (MRP) of the NPDES permit, or
 - ii. Count all samples run per method greater than the minimum requirements of the MRP. The Draft Regulatory Language needs clarity to prevent confusion and inaccuracy of reporting.

3. Reporting Mechanism (tools)

Most laboratories currently do not track the number of samples tested for regulatory purposes. Additionally, most laboratories do not have a Laboratory Information Management System (LIMS) database.

For accuracy of reporting and to separate sample results by a method performed for non-regulatory purposes (i.e. process monitoring, special study, residential testing, screening, etc.) from regulatory purposes, laboratories with LIMS database will need to design a mechanism by which only results for regulatory purposes are tracked for reporting to ELAP. This effort requires significant staff time to re-design or re-configure a LIMS database in lieu of reporting all samples run per method regardless of reporting purposes (total number of samples per

method). Laboratories with no LIMS database will need to design another type of system for tracking, counting, and verification to comply with this requirement.

We request additional information on how the data will be collected, tracked and verified by ELAP staff. The requested information may include but is not limited to:

- a. Format of the report to ELAP
- b. Mechanism to report (emails, upload to which database, etc.) to ELAP
- c. Mechanism for ELAP staff to track and verify the accuracy of reports.

The reporting mechanism (tools) or database for this purpose needs to be tracked, verified, and maintained. Therefore, this effort will create an additional workload for staff from both the laboratories and ELAP and may necessitate an increase in staffing.

4. Request to Revise Reporting Frequency

We would like to propose reporting on an annual basis in lieu of quarterly reporting similar to Volumetric Annual Reporting as required in the Recycled Water Policy. Decreasing the reporting frequency will reduce the administrative burden.

5. Enforcement Ramifications

The draft regulatory language (c) requirement “...reported totals shall be verifiable”, has enforcement ramifications. The ability to track, verify, and maintain regulatory sample counts requires a reporting system and tools for laboratories and ELAP staff. Time and resources are needed to establish a system and clarify the scope of what is required. Clarification is needed on the enforcement requirements should a laboratory not report the number of tests on a quarterly basis or inadvertently submit inaccurate counts.

6. Request for Inclusion of a Sunset Date

The draft regulatory language does not include an end date for the regulatory reporting requirements. We are requesting that a sunset date be added to the draft language. The proposal to require reporting is supposed to be used to inform ELAP staff in the formulation of the new component of the ELAP fee structure and therefore, temporary in nature.

Alternative Fee Change Component from Collaborative Process

The collaborative process as requested could potentially result in discovery of alternative fee changes to components of future new ELAP fees that are reasonable and sustainable. One option for consideration is setting fees on individual FOAs rather than grouping the FOAs based on a tiered system and adding fee component based on complexity of the method or technology.

In addition to this submittal, CWEA also supports the feedback from comment letters submitted to you by our Summit Partners, including the California Association of Sanitation Agencies (CASA), Central Valley Clean Water Association (CVCWA), and Bay Area Clean Water Agencies (BACWA).

We appreciate your consideration of our comments and requests. If you have any questions or need additional information about this submittal, please contact our Laboratory Committee Leadership, Josie Tellers (jtellers@cityofdavis.org), Sushmitha Reddy (sreddy@ieua.org), and Blake Brown (bbrown@centralsan.org).

Respectfully Submitted,



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