



# CVCWA Central Valley Clean Water Association

*Representing Over Fifty Wastewater Agencies*

---

CASEY WICHERT – Chair, City of Brentwood  
MINDY BOELE – Secretary, City of Vacaville

DEEDEE ANTYPAS – Vice-Chair, City of Stockton  
HEATHER GROVE – Treasurer, City of Manteca

---

August 15, 2023

*Via Electronic Mail Only*

Environmental Laboratory Accreditation Program  
State Water Resources Control Board  
[elapca\\_comments@waterboards.ca.gov](mailto:elapca_comments@waterboards.ca.gov)

Re: CVCWA Comments – Proposed ELAP Fee Regulatory Language

To the Environmental Laboratory Accreditation Program (ELAP):

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the draft regulatory language regarding required reporting of tests run by accredited laboratories. CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters from the perspective of balancing environmental and economic interests consistent with state and federal law. In this letter, we encourage the State Water Resources Control Board (State Water Board) to forgo or postpone consideration of proposed regulatory language requiring the collection of data regarding the number of laboratory tests run per method for regulatory purposes.

**A. The Board Should Consider A Cooperative Approach To Obtaining Relevant Data Regarding Laboratory Tests**

During the ELAP update at the May 2, 2023, State Water Board meeting, ELAP proposed working with the stakeholder community to develop a new iteration of the ELAP fee structure and consider new options to align with other Board fee programs, such as moving forward with a volume-based charge. The State Water Board members confirmed ELAP's proposal to develop a new fee structure and directed ELAP to include robust stakeholder engagement in that process. On August 9, 2023, ELAP issued a request to the "ELAP Email List" for feedback on draft regulatory language requiring accredited laboratories to track and report the number of tests run by a laboratory for regulatory purposes to be considered by the State Water Board at its September 19 meeting.

CVCWA appreciates ELAP staff's efforts to address concerns regarding the current fee structure for ELAP accreditation to provide a more equitable approach to fees, especially for the smaller laboratories. Furthermore, CVCWA agrees with ELAP's acknowledgement that revising the proposed fee structure to a volume-based approach is not feasible for the 2023 fee setting process. However, including the proposed language in the fees regulation in September is premature.

The requirement for accredited laboratories to track and report the number of regulatory tests run per method would be burdensome to the laboratory community, especially given ongoing efforts to comply with the new ELAP regulations for a quality management system (TNI-2) by January 1, 2024. The addition of quarterly reporting requirement creates additional costs for compliance, including staff time and technical support – not only for the preparation of the report and submission of the information, but for necessary modifications to the laboratories' LIMS systems to identify "regulatory" samples. It is counterproductive to impose a financial burden for compliance with this reporting requirement where the purpose of data collection is ultimately to address concerns regarding the allocation of fees for ELAP participants.

Moreover, the collection of testing data is merely one step toward a new fee component based on the number of tests. Stakeholder involvement is needed to explore other avenues that can create a more equitable solutions that could use readily available data. Importantly, there are no assurances that imposing the reporting requirement will provide sufficient or relevant information for the new fee component, yet, the regulatory language provides no options or tools for additional or refined data requests. There is also no discussion of ELAP's timeline for developing the new fee component; the reporting requirements do not sunset and continue indefinitely.

There are superior alternative methods to obtaining laboratory data without incorporating the requirement as an obligation in regulatory language. The Environmental Technical Advisory Committee (ELTAC) is well-suited to consider the technical and administrative aspects of laboratory data collection. However, the ELTAC meeting scheduled for August 22 is insufficient for ELTAC to address comments and to provide thoughtful feedback, because inadequate time has been provided for solicitation of comments and because it is not the only item that requires ELTAC time and attention on the agenda meeting. Therefore, CVCWA recommends that, following the August 22 meeting, ELTAC be tasked with providing technical support to provide input and alternatives to utilize existing data collected or obtain readily available data that can be used in the development of a more sustainable fee structure.

Any guidance or recommendations from ELTAC's review should be distributed publicly with an opportunity for stakeholder response and engagement before ELAP formally brings a proposal before the State Water Board. Under the current schedule providing five business days for informal "feedback" before the August 22 ELTAC meeting and ten days for formal comment before the State Water Board's September 19 meeting, there is minimal opportunity for a dialogue between the State Water Board and the laboratory community regarding the feasibility and efficacy of the proposed regulations. The State Water Board previously convened the ELAP "Fees Structure Workgroup" in response to stakeholder concern regarding the proposed ELAP fee structure. However, the workgroup met only once in July. It was CVCWA's impression based on that initial meeting that the workgroup would reconvene to continue discussions regarding the fee structure, but no further meeting was scheduled before the proposed

regulatory language was issued. Accordingly, stakeholders and the regulated community have had minimal advanced notice and little meaningful opportunity to engage with ELAP staff regarding the proposal. A cooperative and iterative process between ELTAC, the State Water Board, and the broader regulatory community would provide an opportunity to discuss a volume based or other methodologies for a more sustainable fee, to clarify any requests for information, to confirm the information may be feasibly collected and reported, and, ultimately, to ensure sufficient information is provided to inform changes to the fee structure to achieve the desired goal.

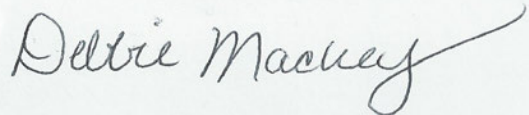
**B. If the Board Pursues the Formal, Regulatory Approach to Obtaining Data Regarding Laboratory Tests, the Proposed Language Is Inadequate**

If the State Water Board pursues the current regulatory approach to collecting laboratory testing information, revisions to the proposed language are necessary to address undefined terms and to specify the method of implementation. The draft regulatory language does not define the “regulatory purposes” for which test data is required to be reported. This term is fundamental to the scope of data to be tracked and reported under the draft regulatory language and requires specification. The State Water Board’s consideration of the draft regulations should be postponed unless and until clarifying revisions to the language are made.

CVCWA also supports the written comments submitted by the California Association of Sanitation Agencies (CASA), California Water Environment Association (CWEA), and Bay Area Clean Water Agencies (BACWA).

We appreciate your consideration of these comments. If you have any questions or if CVCWA can be of any further assistance, please contact me at (530) 268-1338 or [eoofficer@cvcwa.org](mailto:eoofficer@cvcwa.org).

Sincerely,

A handwritten signature in black ink that reads "Debbie Mackey". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Debbie Mackey  
Executive Officer

MEC