

**STATE WATER RESOURCES CONTROL BOARD MEETING
BOARD MEETING SESSION - DIVISION OF ADMINISTRATIVE SERVICES
DECEMBER 1, 2015**

ITEM 7

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING AMENDMENTS TO THE ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM (ELAP) FEE SCHEDULES IN TITLE 22, CALIFORNIA CODE OF REGULATIONS SECTION 64806.

DISCUSSION

Health and Safety Code section 100860.1 requires the State Water Resources Control Board (State Water Board) to adjust fees annually as specified in section 100425. Health and Safety Code section 100425 states that fees "shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department." The current fee schedule became effective on October 31, 2002.

The Budget Act of 2015, SB 101, directs the State Water Board to "adjust the Environmental Laboratory Improvement Fund fees of the board that are subject to the annual fee adjustment pursuant to subdivision (a) of Section 100425" and provides that the fees "may be increased by up to 57.84 percent ... if the fund condition statement for the fund projects a reserve less than 10 percent of estimated expenditures and the revenues projected for the 2015–16 fiscal year are less than the appropriation contained in this act."

Financial Condition of the Environmental Laboratory Improvement Fund

[Attachment 1](#) shows an analysis of the fund condition for the Environmental Laboratory Improvement (ELI) Fund. The adjusted beginning balance for Fiscal Year (FY) 2015-16 was \$852,000. Total estimated revenue is approximately \$2.2 million and total expenditures are approximately \$3.3 million, resulting in a \$1.1 million decrease in the fund, a deficit of (\$248,000), and complete exhaustion of the fund reserve.

As a result, ELAP has not been able to fill vacant positions, leaving it under-staffed and the laboratories under-served. Furthermore, since the last fee increase, employee costs have continued to increase, adding to the shortfall. To make up the balance in funding support, the Program has had to rely on additional funding from the General Fund.

ELAP fees are used for the following: meeting operating expenses, including employee wage rates and fringe benefits; purchasing or leasing supplies, equipment, or materials; and meeting financial reserve needs and requirements.

Proposed Changes

State Water Board staff proposes to increase by 57.84% the base/administrative fee as well as the Field of Testing fees for environmental laboratories accredited, or applying for accreditation, by the ELAP Program. This equates to an increase from the current rate of \$959 for the base/administrative fee and \$432 for each Field of Testing.

POLICY ISSUE

Should the State Water Board approve a resolution to adopt amendments to laboratory accreditation fee [regulations](#) as proposed by staff?

FISCAL IMPACT

- 1) Increase annual ELAP fees by 57.84 % in accordance with the the Budget Act of 2015:
Under the current fee schedules, if fees are not raised for FY 2015-16, the fund is projected to end with a negative fund reserve and revenue will be short of budgetary expenditures by \$1.1 million.
 - Increase the base/administrative charge from \$959 to \$1512
 - Increase the Field of Testing fee from \$432 to \$681

REGIONAL BOARD IMPACT

No.

STAFF RECOMMENDATION

Staff recommends the State Water Board approve the resolution to adopt regulations to change the current ELAP fee schedules as proposed by staff.

State Water Board action on this item will assist the Water Boards in reaching Goals 5 and 6 of the Strategic Plan Update: 2008-2012 to improve transparency and accountability and promote fair and equitable application of laws, regulations, policies, and procedures.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2015-

ADOPTING AMENDMENTS TO THE ENVIRONMENTAL LABORATORY ACCREDITATION PROGRAM (ELAP) FEE SCHEDULES IN TITLE 22, CALIFORNIA CODE OF REGULATIONS SECTION 64806

WHEREAS:

1. Pursuant to the Environmental Laboratory Accreditation Act, in particular, Health and Safety Code Sections 100829, 100830, and 100860.1, and Health and Safety Code Section 116271, the State Water Resources Control Board (State Water Board) is authorized to adopt regulations establishing fees for accreditation of environmental laboratories.
2. Health and Safety Code section 100860.1 requires the State Water Board to adjust environmental laboratory accreditation fees annually in accordance with Health and Safety Code Section 100425.
3. Health and Safety Code Section 100425 provides that fees subject to that statute "shall be adjusted annually by the percentage change printed in the Budget Act The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department."
4. Health and Safety Code Section 100829 mandates that the accreditation program operated pursuant to the Environmental Laboratory Accreditation Act be fully fee-supported. Health and Safety Code Section 100920 requires that environmental laboratory accreditation fees be deposited in the Environmental Laboratory Improvement Fund.
5. The Budget Act of 2015, SB 101, directs the State Water Board to "adjust the Environmental Laboratory Improvement Fund fees of the board that are subject to the annual fee adjustment pursuant to subdivision (a) of Section 100425" and provides that the fees "may be increased by up to 57.84 percent ... if the fund condition statement for the fund projects a reserve less than 10 percent of estimated expenditures and the revenues projected for the 2015–16 fiscal year are less than the appropriation contained in this act."
6. State Water Board staff prepared recommended revisions to the State Water Board's Environmental Laboratory Accreditation Program (ELAP) fee regulations in accordance with the Health and Safety Code Section 100425 and SB 101.
7. The ELAP fee [regulations](#) will be contained in Title 22, California Code of Regulations, Section 64806.
8. 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.

D R A F T

9. 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 (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."
10. The State Water Board finds that the charges identified in Title 22, California Code of Regulations, Section 64806 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 adopts amendments to Title 22, California Code of Regulations, Section 64806.

The State Water Board determines that adoption of Title 22, California Code of Regulations, Section 64806 is statutorily exempt from CEQA for the reasons given above.

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 December 1, 2015.

Jeanine Townsend
Clerk to the Board