

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF ADMINISTRATIVE SERVICES
SEPTEMBER 20, 2016**

ITEM 9

SUBJECT

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

DISCUSSION

Senate Bill 839 (2016) (Resources Trailer Bill) amended Health and Safety Code (HSC) section 100829 and requires the State Water Resources Control Board (State Water Board) to adopt a schedule of fees to recover costs incurred for the accreditation of environmental laboratories. 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 from the Environmental Laboratory Improvement Fund for expenditure, taking into account the reserves in the Environmental Laboratory Improvement Fund. The State Water Board is required to review and revise the fees each fiscal year as necessary to conform to the amounts appropriated by the Legislature. HSC section 100829 further states the State Water Board shall adopt the schedule of fees by emergency regulation not subject to review by the Office of Administrative Law.

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) 2016-17 is \$111,000. Total estimated revenue is approximately \$3.4 million and total expenditures are approximately \$3.3 million, resulting in a \$59,000 increase in the fund with an ending balance of \$170,000 and a fund reserve of 5.1%.

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 a 25% increase in the base/administrative fee and Field of Testing fee for environmental laboratories accredited, or applying for accreditation, by the ELAP Program. Once accredited, the laboratory must pay the fee each year. Currently, the base/administrative fee is \$1512 and \$681 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

An increase in the annual ELAP fees by 25% to conform to the amounts appropriated by the Legislature would:

- Increase the base/administrative charge from \$1512 to \$1890
- Increase the Field of Testing fee from \$681 to \$851

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.

The State Water Board's mission statement, "To preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations" supports this goal.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

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

WHEREAS:

1. The State Water Board is responsible for administering the Environmental Laboratory Accreditation Act (Health and Safety 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 Environmental Laboratory Accreditation Program (ELAP) certification and annually thereafter.
2. Pursuant to HSC sections 100829, 100830, and 116271, the State Water Board is authorized to adopt regulations establishing fees for accreditation of environmental laboratories.
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. Senate Bill (SB) 839 (2016) (Resources Trailer Bill) amended HSC section 100829 and requires the State Water Board to adopt a schedule of fees to recover costs incurred for the accreditation of environmental laboratories.
5. 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 from the Environmental Laboratory Improvement Fund for expenditure, 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.
6. HSC section 100829 further states the State Water Board shall adopt the schedule of fees by emergency regulation, not subject to review by the Office of Administrative Law.
7. State Water Board staff recommends adopting the amendments to the State Water Board's ELAP fee regulations in accordance with HSC section 100829 as amended by SB 839 (2016) (Resources Trailer Bill).
8. The amendments to the ELAP [fee regulations](#) will be contained in Title 22, California Code of Regulations Section 64806.

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9. 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.
10. 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."
11. 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:

1. The State Water Board adopts amendments to Title 22, California Code of Regulations, Section 64806.
2. 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, and directs the State Water Board staff to prepare and submit to the State Clearinghouse a Notice of Exemption reflecting this determination.
3. The State Water Board Executive Director shall sign the Form 400 and the State Water Board staff shall submit the adopted regulations to OAL for filing with the Secretary of State,
4. If, prior to OAL filing the regulations with the Secretary of State, State Water Board staff, the State Water Board, or OAL staff determine that non-substantive corrections to the language of the regulations are needed for clarity or consistency, the State Water Board Executive Director 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 20, 2016.

Jeanine Townsend
Clerk to the Board