City Council
311 Vernon Street
Roseville, California 95678

September 14, 2016

Felicia Marcus, Chair
Frances Spivy-Weber, Vice Chair
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State Water Resource Control Board
P.O. Box 100
Sacramento, CA 95812

Subject: Comment Letter - ELAP Regulations Development/Laboratory Standards

Dear Chair Marcus and Members of the Board,

Thank you for the opportunity to comment on the Environmental Laboratory Accreditation Program (ELAP) recommendation of the adoption of 2016 NELAC Institute Standard, Vol. 1 (2016 TNI) as the California laboratory standard.

The City of Roseville is very concerned that SWRCB staff's proposed time schedule for the adoption of regulations does not allow the water and wastewater community adequate time to review the extensive, complex and copyrighted 2016 TNI documents. TNI will be extremely burdensome to laboratories without improving the Data Quality and Accuracy of the Laboratory testing.

Background

The City Of Roseville (City) owns and operates two Publicly Owned Treatment Works (POTW) facilities, Dry Creek Wastewater Treatment Plant (DCWWTP) and Pleasant Grove Wastewater Treatment Plant (PGWWTP). These POTWs are authorized to discharge pursuant to National Pollutant Discharge Elimination System (NPDES). Each POTW has an on-site Water Quality Laboratory (WQL) that supports the Wastewater Treatment Plants (WWTPs), Water Treatment Plant (WTP) and the Industrial Waste programs' operations and regulatory reporting requirements.

Roseville's laboratories are accredited under ELAP Certificate No. 1709 and 2717 respectively and are certified to perform both drinking water and wastewater analysis. Each laboratory is staffed with 2 full-time technicians and operates 365 days per year. The laboratories have the capability to perform basic general chemistry and microbiological analysis in support of the drinking water, wastewater and industrial waste programs' process control and regulatory requirements. The City of Roseville contracts out to ELAP certified commercial environmental testing laboratories for those permit required constituents the City laboratories are not certified to perform.

Roseville's concerns with the SWRCB staff proposal and what we are asking for the Board to consider

The City of Roseville would like to submit the following comments on the SWRCB staff proposal as well as ask the Board to consider the following requests:

1. Request for an extension of the Comment Letter submittal deadline and delay of the workshop

On September 6, 2016, the Notice of Opportunity for Public Comment and Notice of Public Workshop for October 6, 2016 from State Water Resources Control Board (SWRCB) was received with a deadline to comment on the SWRCB staff proposal by noon on September 16, 2016. The City of Roseville believes that less than ten calendar days to comment is not sufficient time given to the public to provide comments regarding the workshop for the following reasons:

- The comment period is too short given the complexity and comprehensive nature of the 2016 NELAC Institute (TNI) document.
- The 2016 TNI Standard is not publicly available, it is behind a paywall.
- The 2016 TNI standard being considered for adoption is voluminous and extensive in content. The proposed changes are enormous, therefore, the Laboratory Community as a whole will need access to the Standard and considerable time to review it.
- The workshop scheduled for October 6, 2016 does not give laboratories directly affected by the proposed changes an opportunity to group together and get expert guidance to understand the impact of the various inter-referenced sections of this extremely complex standard.

The NELAC Institute (TNI) just finalized this set of standards one month ago, so as yet there has not been any significant external vetting or review of the 2016 TNI standards. Adoption of the TNI standard represents a comprehensive change to existing procedures and policies with potentially enormous unintended consequences.

These written comments are an extremely important opportunity for members of the affected laboratory community (stakeholders) to review the TNI standards and raise specific concerns.

The City is requesting the comment period be extended up to October 7 and the workshop to be scheduled after that date. Providing more time for stakeholder to review the SWRCB staff proposal will allow for greater understanding of the proposed standard. The stakeholder laboratory community could meet to possibly develop alternative solutions for the SWRCB to consider that meet the state's objectives and not create unintended consequences of impacting the ability of captive municipal laboratories in supporting treatment facilities' goals of protecting the environment and public health and safety.

2. Compliance with the 2016 TNI standards is overly burdensome and could result in many small municipal laboratories dropping their ELAP certification and closing.

California has over 700 certified environmental testing labs and over 60% are small laboratories with fewer than five full time staff and many with less than two. Many public agencies have ELAP certified laboratories with less than 2 staff and in some cases, operators at the water and wastewater treatment plants perform the compliance sampling. Many of these laboratories provide important real time testing and quick turnaround results crucial for many regulated entities. This testing is difficult, if not impossible, to do off-site and is best performed on-site to provide timely results for process control and regulatory compliance.

The onerous and burdensome requirements of the 2016 TNI standard would most likely result in smaller labs being required to hire additional staff and resources just to deal with TNI compliance issues with possible detrimental effects on quality and timeliness of results. A few examples of the overly burdensome requirements are:

- Over 500 documented policies and procedures are required.

- Elevated educational requirements for key positons, i.e. 4 year degree for the laboratory Technical and QC Managers that may be beyond the resources of many small laboratories.

- Additional staffing requirements for Technical and Quality Control Managers that are beyond the means of many small labs.

- Public agencies with multiple labs being required to staff each lab with a Technical Director with no improvement in efficiency or quality.

- Resources and staff required to meet the data integrity requirements.

- Existing agency procurement policies/procedures that are in conflict with TNI requirements which can result in unknown potentially open-ended legal liabilities.

- Existing agency personnel policies/procedures that are in conflict with TNI requirements which can lead to unknown potential open-ended legal issues. Many public agency employees are represented by union bargaining units under long term contracts. The consequences of abrogating or modifying these contracts are unknowable given the short review period.

Many smaller communities do not have the resources to add staff to comply with these onerous requirements and would have to resort to closing their environmental labs.

When Florida adopted TNI standards, approximately 30% of the environmental laboratories dropped their certification and closed resulting in job losses. Many were small municipal laboratories. New York saw similar closure numbers as Florida when they required TNI compliance.

The retention of in-house laboratory testing is an important aspect of operating a robust water and wastewater system for communities. These laboratories provide the treatment facilities with the essential ability to respond quickly and effectively to meet treatment challenges, thereby protecting public health and maintaining water quality for the communities they serve.

3. The push for adoption of TNI standards was flawed and lacked a transparent and conflict-free stakeholder process.

From the start, the California accreditation standard selection process has lacked true stakeholder involvement. Our observation, based on the following factors and shared by many in the laboratory community, is that TNI has always been ELAP's preferred standard:

- The Expert Review Panel (ERP) was biased towards TNI as all five panel members were TNI affiliated or associated with TNI accredited laboratories. Their recommendation for TNI adoption was not a surprise and was a blatant conflict of interest.

- The ELAP Work Plan had an extremely aggressive timeline for standards adoption that limited stakeholder comment and input which could lead to open-ended and unknowable legal liabilities as well as potential unintended operational consequences and adverse effects on water quality.

- The two stakeholder meetings were heavily biased towards TNI. The April 2016 meeting was a sponsored TNI training and the ill-defined May 2016 meeting that resulted in greater confusion for the stakeholders was also heavily slanted towards TNI. Both meetings limited the number of stakeholder participants.

- The Environmental Laboratory Technical Advisory Committee (ELTAC) membership does not properly represent the small laboratory community and therefore is not a true stakeholder group. From the first meeting, ELTAC was tasked with a variety of technical questions with choosing a California Laboratory Standard being given a low priority.

  ELTAC was pressured to agree on updated Fields of Testing, required number of annual Proficiency Tests (PT), technical standards and a Quality Management System (QMS). In the July meeting (4th), ELTAC was informed that if they do not come up with a recommendation for a QMS, ELAP would propose TNI as the Standard to the State Board in September.

  ELTAC met again in August to discuss Standards and recommended one annual Proficiency Test requirement, that the technical standards be the same as approved analytical methods and the QMS be either the favored California Plus or a TNI "Lite" version (actual voting results were 7-5 in favor of CA Plus and 6-6 for TNI "Lite").

  By recommending adoption of 2016 TNI standards, ELAP has set aside all of ELTACs recommendations.

- ELAP has not provided the Stakeholder Laboratory Community with a thorough Gap Analysis of what the current standards are lacking with respect to laboratory compliance. ELAP needs to be commended for correcting the main issues of ELAP's previous poor management and creating an Enforcement division. Instead of updating the current standard to include missing QMS elements, ELAP has chosen to adopt the highly cumbersome and uneconomical 2016 TNI standard as the California Laboratory Accreditation Standard.

Conclusion

ELAP provides evaluation and accreditation of all environmental testing laboratories to ensure the quality of analytical data used for regulatory purposes meets the requirements of the State's environmental programs. Furthermore, ELAP is responsible for the oversight and enforcement of the accreditation standard that results in legally defensible data from all environmental testing laboratories.

Updating ELAP regulations to 21st Century lab standards is needed. ELAP should adopt a minimum standard that achieves these goals and is applicable to all laboratories. 2016 TNI standard is not this minimum standard because it is overly burdensome, does not increase data accuracy, quality or defensibility and could result in the closure of many small municipal labs.

Closure of these small labs would result in lost jobs, higher analytical costs with loss of competition, increased ELAP fees and the loss of real time laboratory feedback required to maintain process quality.

Most importantly, since The TNI standards are designed by and represent medium to large commercial laboratories, closure of these smaller labs could result in shifting the focus of testing from maintaining Water Quality Objectives to commerce, thereby endangering public health and the environment of the State of California.

In conclusion, the City of Roseville strongly encourages the State Board to consider the serious impact that adoption of the 2016 TNI standard would have on small laboratories and communities they serve. TNI, if adopted, will not necessarily improve the data quality and accuracy of the environmental testing laboratories but most likely will be a disaster for small and medium sized laboratories in California.

We do not believe the proposal from ELAP is in the best interests of the protection of public health, the environment, the majority of environmental testing laboratories and the goals of ELAP.

City of Roseville asks that you as Board Members allow more time for stakeholders to thoroughly review 2016 TNI and to offer alternative California Laboratory Standards that are manageable, adaptable and meet the data user's requirements as well as the certified laboratories' and the State's needs, while maintaining the core mission of protecting the environment and public health and safety.

Sincerely,

Carol Garcia, Mayor

cc:
Roseville City Council
Senator Jim Nielsen
Assemblymember Beth Gaines
Rob Jensen, Roseville City Manager
Richard D. Plecker, P.E., Environmental Utilities Director, City of Roseville
Roberta Larsen, California Association of Sanitation Agencies
Debbie Webster, Central Valley Clean Water Association
Adam Robin, Association of California Water Agencies
Danielle Blacet, California Municipal Utilities Association
Jason Gonsalves, Joe A. Gonsalves and Son