



August 15, 2023

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

VIA EMAIL: elapca_comments@waterboards.ca.gov and Christine.Sotelo@waterboards.ca.gov

Subject: BACWA Comments on Proposed ELAP Regulations and Volume-Based Charges

Dear Christine Sotelo:

On behalf of the Bay Area Clean Water Agencies (BACWA) Laboratory Committee, we thank you for the opportunity to comment on draft language for inclusion in the Environmental Laboratory Accreditation Program (ELAP) regulations. BACWA understands that ELAP is proposing to add new language to ELAP's fee regulations during the State Water Board's upcoming regulatory fee-setting process, with the State Water Board to consider adoption in September 2023. The BACWA Laboratory Committee has reviewed the proposed language requiring tracking and reporting of sample counts (email from C. Sotelo, August 1, 2023). We are grateful for ELAP staff for conducting public outreach at the August 4th fee stakeholder meeting, and for participating in our August 2023 BACWA Laboratory Committee.

BACWA is a joint powers agency whose members own and operate publicly-owned treatment works and sanitary sewer systems that collectively provide sanitary services to over 7.1 million people in the nine-county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health. BACWA's Laboratory Committee is one of eight committees that meets regularly to share information among BACWA members. The BACWA Laboratory Committee also hosts training opportunities for members, including a monthly training session devoted to implementation of TNI standards. The BACWA Laboratory Committee has enjoyed a positive working relationship with ELAP, and appreciates the time that ELAP staff have contributed by attending multiple committee meetings over the last few years.

BACWA agrees with the intent of the proposed regulations, which we understand is to minimize fees on small laboratories. Unfortunately, the cost of complying with the proposed regulations will undermine this intent. BACWA believes that the proposed regulations pose an unreasonable cost burden on laboratories, and recommends the following course of action:

1. Delay implementation of the proposed regulations until the Environmental Laboratory Technical Advisory Committee (ELTAC) can provide clear guidance on the definition of “regulatory purposes.”

The proposed regulations require tracking and reporting the number of “tests run per method performed at the laboratory for regulatory purposes.” It is premature to adopt these regulations before the phrase “regulatory purposes” is vetted with the laboratory community through a forum such as ELTAC. In the broadest sense, wastewater treatment facilities and their laboratories exist to exercise a regulatory function – namely, compliance with California Water Code and the Clean Water Act. Even so, many of the samples run by laboratories are for process control or laboratory quality control, and it is unclear whether such samples meet the definition of “regulatory purposes.”

Laboratories need clarity on how to classify tests run “for regulatory purposes” *before* these proposed regulations are implemented, because this will affect the cost of compliance with the new regulations. It would require significant effort from laboratory staff to apply the definitions outlined by ELAP staff at our August 8th 2023 BACWA Laboratory Committee meeting. BACWA’s member agencies frequently run more tests than are strictly required by their NPDES permits. For example, monitoring of Total Suspended Solids may be required twice a week, but an agency may complete monitoring five times weekly; all of these test results would be submitted into CIWQS for NPDES permit compliance monitoring. Classifying the extra test results as “non-regulatory,” as proposed by ELAP staff, would be confusing and could jeopardize routine compliance monitoring.

2. Use ELTAC to continue stakeholders discussions on revising the ELAP fee structure.

BACWA believes that there may be a more efficient way to reduce the cost burden on small laboratories, such as adjusting the fee structure that is based on Fields of Accreditation (FOAs). Ideally, any future fee structure would be predictable for laboratories. The current fee structure is easy to understand and is easily incorporated into budgets; a fee structure based on sample counts would introduce uncertainty into the budgeting process. A more complex fee structure would also increase the cost for ELAP to administer the program, which would subsequently raise costs for laboratories.

The ELTAC by-laws state that “Where possible, ELAP shall seek advice from ELTAC on all regulations and fees developed by ELAP related to environmental laboratory technology and practice.” ELTAC is the proper forum for stakeholders to continue discussions about revisions to the ELAP fee structure. Ideally, ELTAC would be able to identify a fee structure that would result in lower fees for small laboratories without imposing a significant new administrative burden on all laboratories.

3. If not delayed, the proposed regulations should automatically sunset after one year.

BACWA’s understanding is that the proposed regulations are meant to inform future adjustment of the ELAP fee structure, and are not intended to be final regulations for the purposes of

collecting fees. Given that there is a possibility that the State Water Board will *not* elect to adjust its fee structure to volume-based charges based on the data, the requirement to report test counts should automatically sunset after one year.

“(a) Beginning January 1, 2024 [and ending January 1, 2025](#), 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.

(b) Laboratories shall report to ELAP quarterly the total number from subsection (a) for the previous three months ending March 31, June 30, September 30, and December 31, aggregated by method in computer readable tabular format. Laboratories shall report these aggregate totals by 20th day of the month following the end of each three-month period beginning on April 20, 2024 [and ending April 20, 2025](#) .

(c)The laboratory’s reported totals in subsection (b) shall be verifiable in accordance with the laboratory’s system of record compliant with Section 64814.00(n).”

We appreciate your attention to our comments. If you have any questions or would like to discuss further, please contact our Laboratory Committee leadership, Blake Brown (bbrown@centralsan.org) or Kristy Fournier (fournier@dsrsd.com).

Respectfully Submitted,



Lorien Fono, Ph.D., P.E.
Executive Director
Bay Area Clean Water Agencies

cc: Christine Sotelo, ELAP
Blake Brown, Central Contra Costa Sanitary District, BACWA Lab Committee Chair
Kristy Fournier, Dublin San Ramon Services District, BACWA Lab Committee Vice Chair