
State Water Resources Control Board

June 27, 2024

Re: Procedural Ruling in the Public Hearing on the Temporary Suspension of Environmental Laboratory Accreditation Program Certificate 3092 of the laboratory currently located at 3440 El Cajon Boulevard, San Diego, California, of the Environmental Laboratory Network, Inc. (ELN)

TO ALL PARTIES:

On January 18, 2023, staff from the State Water Resources Control Board's (State Water Board) Environmental Laboratory Accreditation Program (ELAP) granted Certificate 3092 to ELN, then located at 9590 Chesapeake Drive, Suite 300, San Diego, California. On February 20, 2024, ELAP staff issued a Notice of Immediate Suspension to ELN, which by then had relocated to 3440 El Cajon Boulevard in San Diego. The February 20, 2024 notice alleged failures to comply with applicable requirements related to "ELN's relocation of its laboratory." (2024-02-20 Notice of Immediate Suspension of ELAP Certification ELAP Certificate 3092, p. 1.)¹ The letter explained that, under California Health and Safety Code section 100915, ELN could request a hearing on the suspension and that the hearing would "deal only with the issue of whether the temporary suspension shall remain in place pending a hearing under Health and Safety Code section 100910." (*Id.* at p. 4.)

On February 29, 2024, Jenny Douglas of ELN requested a hearing on the temporary suspension of ELAP Certificate 3092.

On March 4, 2024, the State Water Board's Executive Director assigned to the Administrative Hearings Office (AHO) a hearing on ELAP staff's February 20, 2024 suspension of ELAP Certificate 3092 under California Health and Safety Code section 100915.

On March 8, 2024, the AHO issued its notice of public hearing and set the hearing date on the temporary suspension for March 18, 2024. The AHO held a pre-hearing conference on March 14, 2024. At the repeated request of the parties as they discussed settlement, the AHO continued the hearing date on the temporary suspension to March

¹ Documents cited here are filed in the administrative record in this proceeding.

20, 2024, April 11, 2024 and June 11, 2024. Following a second pre-hearing conference on June 6, 2024, the parties agreed to proceed to the hearing set for June 11, 2024.

On June 7, 2024, ELN's counsel e-mailed the AHO and the service list to state that ELN was "prepared to forego the June 11-12 hearing on the temporary suspension reserving all rights relative to a merits based hearing based on applicable timelines in Health & Safety Code § 100910." (2024-06-07 S. Scheper e-mail to M. Knize.)

On June 10, 2024, the AHO issued its Notice of Status Conference and Cancellation of Public Hearing on the temporary suspension originally scheduled to begin on June 11, 2024. The AHO stated it would accept the June 7 communication as ELN's withdrawal of its request for hearing on the temporary suspension of ELAP Certificate 3092.

The hearing officer held a status conference on June 11, 2024. During this conference, counsel for the State Water Board's Office of Enforcement Prosecution Team and ELN stated that they agree that they intend to proceed to a hearing on the merits under Health and Safety Code section 100910. On June 19, 2024, the AHO circulated for comment a draft of this procedural ruling to ensure that it captured the parties' agreement. The parties stated that they had no further comments.

Analysis

California Health and Safety Code section 100915 allows the State Water Board to temporarily suspend an ELAP certification prior to any hearing, "when it has been determined that this action is necessary to protect the public." (Health & Saf. Code, § 100915, subd. (a)(1).) The State Water Board is to provide notice to the laboratory owner and a statement of facts and information to show a basis for the suspension, and the laboratory owner must timely request a hearing. (*Ibid.*) The "temporary suspension shall remain in effect until the hearing is completed and the [State Water Board] has made a final determination on the merits under Section 100910." (*Id.* at subd. (a)(1)(C).) The statute states that "[d]uring the suspension, the laboratory shall discontinue the analysis of samples for the fields of testing specified in the notice." (*Id.* at subd. (b).)

California Health and Safety Code section 100910, subdivision (a) provides that the State Water Board may suspend or revoke an ELAP certification after providing notice to the laboratory owner and an opportunity for a hearing. (Health & Saf. Code, § 100910, subd. (a).) The notice shall provide a statement of facts and information that show a basis for the suspension or revocation, and the laboratory owner must timely request a hearing. (*Ibid.*) Subdivision (b) further provides that if the State Water Board has temporarily suspended the certification under section 100915, the notice of the suspension or revocation shall be "provided within 15 days of the effective date of the temporary suspension order" and that the hearing "shall be commenced as soon as practicable, but no later than 60 days after the effective date of the temporary suspension order, unless the owner requests an extension of the 60-day period." (*Id.* at subd. (b).)

ELN has withdrawn its request for a hearing on the temporary suspension, and therefore ELAP's February 20, 2024 temporary suspension remains in place. The February 20, 2024 suspension remains in effect until the State Water Board makes a final determination on the merits under section 100910. Further, the AHO construes the parties' three requests to continue the hearing date on the temporary suspension as tolling the 60-day period to hold a hearing on the merits under section 100910, subdivision (b).

The AHO has now completed the hearing assignment as described in the Executive Director's March 4, 2024 assignment memorandum. If ELAP staff prepare a notice under Health and Safety Code section 100910, subdivision (a), that notice shall contain a statement of facts and information that show the basis for the suspension or revocation and shall inform the laboratory owner that the owner may request a hearing not later than 20 days from the date on which the notice under Health and Safety Code section 100910, subdivision (a) is received.

If the laboratory owner requests a hearing, this request should be directed to the State Water Board. The State Water Board's Executive Director may assign the hearing on the merits under Health and Safety Code section 100910 to the AHO.

June 27, 2024
Date

/s/ Megan S. Knize
Megan S. Knize
Hearing Officer

SERVICE LIST

By e-mail only

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