
State Water Resources Control Board

NOTICE OF ASSIGNMENT AND REQUEST FOR BRIEFING

The State Water Resources Control Board's
Executive Director has assigned to the
Administrative Hearings Office

A hearing on the February 20, 2024 Suspension of
Environmental Laboratory Accreditation Program (ELAP) Certificate 3092 of the
laboratory currently located at 3340 El Cajon Boulevard, San Diego, California, of the

Environmental Laboratory Network, Inc.

The Administrative Hearings Office requests briefing due by
August 16, 2024, at 1 p.m.

BACKGROUND

On January 18, 2023, ELAP staff issued a Certificate of Environmental Laboratory Accreditation, Certificate 3092, to ELN, then located at 9590 Chesapeake Drive, Suite 300, San Diego.¹ The certificate states that the “[s]cope of the certificate is limited to the ‘Fields of Accreditation’ which accompany this Certificate” and that it expires January 17, 2025. The certificate also states that “[c]ontinued accredited status depends on compliance with applicable laws and regulations, proficiency testing studies, and payment of applicable fees.” (2024-02-20 Notice of Immediate Suspension of ELAP Certification, Appendix 1, p. 2.)

On February 9, 2024, ELAP staff conducted an inspection of ELN’s facility, which ELAP staff learned had relocated to 3340 El Cajon Boulevard, San Diego. During this investigation of the facility at 3340 El Cajon Boulevard, staff noted “multiple failures” by ELN in complying with the requirements of the Environmental Laboratory Accreditation

¹ Although the February 20, 2024 Notice of Immediate Suspension of ELAP Certificate 3092 identifies the address of the lab as 9560 Chesapeake Drive, Suite 300, San Diego, ELAP Certificate 3092 identifies the address of the lab as 9590 Chesapeake Drive, Suite 300, San Diego (2024-02-20 Notice of Immediate Suspension of ELAP Certification, Appendix 1).

Act (ELAA) (Health & Saf. Code, § 100825 et seq.) and the implementing regulations (Cal. Code Regs, tit. 22, § 64801.00 et seq.) related to ELN's operational decisions.

Specifically, staff noted failures related to the relocation of ELN's laboratory from 9590 Chesapeake Drive, Suite 300, San Diego and failures related to continued testing of samples for regulatory purposes at the new laboratory location at 3340 El Cajon Boulevard, San Diego.

On February 20, 2024, ELAP Program Manager Christine Sotelo issued a Notice of Immediate Suspension of ELAP Certification (Notice) to ELN, addressed to Jenny Douglas. The Notice included a description of "ELN's violations of the ELAA" upon which Ms. Sotelo based the decision to issue a suspension. (Notice, pp.1-3.)

The Notice stated that "ELN shall immediately discontinue the analysis of samples for all Fields of Accreditation" and stated that ELN could request a hearing. Ms. Douglas requested a hearing on February 29, 2024.

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. This statute authorizes the Board, after notice and the opportunity for a hearing, to temporarily suspend an ELAP certification prior to a hearing on the merits, "when it has determined that this action is necessary to protect the public." (Health & Saf. Code, § 100915, subd. (a)(1).)

The AHO issued its notice of public hearing and set the hearing date on the temporary suspension for March 18, 2024. At the repeated request of the parties as they discussed settlement, the AHO continued the hearing date on the temporary suspension to March 20, 2024, April 11, 2024 and 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.)²

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 agreed to proceed to a hearing on the merits under Health and Safety Code section 100910. On June 27, 2024, the AHO issued its final procedural ruling, which stated that the AHO had completed its assigned proceeding and that 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."

² Documents related to the temporary suspension hearing are saved in the administrative record for that proceeding in a folder of the same name on the FTP site.

On July 1, 2024, ELAP staff notified ELN of its certificate suspension (dated February 20, 2024) and that ELN had a right to request a hearing on the suspension under Health and Safety Code section 100910. On July 16, 2024, the Executive Director assigned this matter to the AHO, contingent upon receiving a request for hearing. On July 18, 2024, the AHO received ELN's request for a hearing.

REQUEST FOR BRIEFING

Before scheduling the hearing in this proceeding, the hearing officer requests clarification of the understanding of both parties on the following issues:

1. What is the status of ELN's efforts, if any, to renew its accreditation for regulatory testing at its new address at 3440 El Cajon Boulevard, San Diego?
2. If this matter proceeds to a hearing, the AHO is considering the following as the issues and sub-issues to be addressed by the parties at the hearing. Do the parties think the proposed issues and sub-issues are appropriate? Are there any other issues or sub-issues that the parties think should be addressed as part of the hearing? This list of hearing issues and sub-issues is not exhaustive.

A. As of February 9, 2024, the date of verbal notice of the substance of the violations identified in the February 20, 2024 Notice of Suspension, did ELN violate any applicable provision of the Environmental Laboratory Accreditation Act (ELAA) (Health & Saf. Code, § 100825 et seq.) or implementing regulations (Cal. Code Regs, tit. 22, § 64801.00 et seq.)?

- i. Did ELN fail to timely submit an amendment application package to ELAP as required under Code of Regulations, title 22, section 64808.15?*
- ii. Did ELN violate Health and Safety Code section 100825 by failing to obtain accreditation prior to analyzing regulatory samples at its new laboratory location at 3340 El Cajon Boulevard?*
- iii. Did ELN violate Code of Regulations, title 22, section 64812.00 by failing to designate a technical manager who meets the regulatory requirements for its laboratory at 3340 El Cajon Boulevard?*
- iv. Did ELN violate Health and Safety Code section 100845 by failing to notify ELAP in writing within 30 calendar days whenever there was a change of director or other person in charge of ELN certified under ELAA?*
- v. Did ELN violate Code of Regulations, title 22, section 64814.05, subdivision (a), by failing to timely provide ELAP supporting documents concerning a change in technical manager?*
- vi. Did ELN's representations to the public, including representations about its accreditation status on its website, violate Health and Safety Code section 100890, subdivision (c)?*

B. If ELN violated any of the regulations or Health and Safety Code sections listed in Question A, should the State Water Board suspend Certificate 3092?

- i. What evidence, if any, is there of prior violations of ELAA and its supporting regulations by ELN?*
 - ii. What corrective actions, if any, has ELN taken to address the allegations of wrongdoing as outlined in the February 20, 2024 Notice of Immediate Suspension?*
 - iii. At what point, if any, did ELN cease all testing of samples for regulatory purposes after February 20, 2024?*
3. If this matter proceeds to a hearing, will the parties object to agreeing to a set of stipulated facts that would be used as the basis for the hearing?
4. If this matter proceeds to a hearing and the hearing officer issues a proposed order recommending the Board lift the temporary suspension of Certificate 3092, what is the value to ELN of a certificate for accreditation for a laboratory located at 9590 Chesapeake Drive, while ELN seeks to perform testing for regulatory purposes at its laboratory currently located at 3340 El Cajon Boulevard? Would ELN seek additional forms of relief regarding the status of its accreditation? If so, does the Board have authority to issue any relief other than lifting the temporary suspension of Certificate 3092?
5. Under Water Code section 1114, the AHO hearing officer has 90 days from the date the matter is submitted to prepare a proposed order, which it then transmits to the Board. Within 90 days after receipt of the hearing officer's proposed order, the Board may, among other outcomes, adopt the order or reject and remand it. (Wat. Code, § 1114.) Certificate 3092 expires January 17 2025. What comments do the parties have on the timing of the hearing process, given that the Board may not act be able to on the AHO's draft proposed order before Certificate 3092 expires?

Please send responses to these questions to the AHO at adminhrgoffice@waterboards.ca.gov by **August 16, 2024 at 1:00 p.m.** The responses should be written in size 12-font, double-spaced with a preferred limit of 15 pages or less. Once the AHO receives these responses, the AHO will post them to the FTP site.

August 1, 2024
Date

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

SERVICE LIST

By e-mail only

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