

**Senate Bill No. 1304**

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Passed the Senate August 26, 1999

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*Secretary of the Senate*

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Passed the Assembly August 23, 1999

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 1999, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to amend Sections 100825, 100830, 100835, 100837, 100840, 100845, 100850, 100852, 100855, 100860, 100865, 100870, 100880, 100885, 100890, 100895, 100910, and 100915 of, and to add Sections 100831, 100832, 100847, 100851, 100862, 100863, 100872, and 100907 to, the Health and Safety Code, relating to environmental laboratories.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1304, Committee on Environmental Quality. Environmental laboratories.

Existing law authorizes the certification and regulation of environmental laboratories by the State Department of Health Services. Existing law also requires the department to adopt regulations governing the administration of these provisions, including, among other things, regulations regarding application criteria for acceptance and approval of 3rd-party laboratory accreditation organizations.

This bill would revise these provisions to require laboratories to obtain a certificate pursuant to statutory requirements, and would further authorize those laboratories to apply for accreditation under the National Environmental Laboratory Accreditation Program (NELAP). This bill would revise references to 3rd-party laboratory accrediting organizations to instead refer to approved 3rd-party laboratory accrediting organizations (ATPLAO's). This bill would define additional terms relating to certification and accreditation of environmental laboratories and ATPLAO's. This bill would require that NELAP accreditation by another jurisdiction be recognized for out-of-state laboratories with regard to certain program activities.

This bill would require the department, when NELAP standards are adopted by the National Environmental Laboratory Accreditation Conference (NELAC), to adopt or amend the regulations relating to environmental laboratories as necessary to enable



California environmental laboratories to participate in the National Environmental Laboratory Accreditation Program.

Existing law provides that a certificate issued by the department expires 24 months from the date of issuance unless renewed.

This bill would provide that the period of accreditation of a NELAP accredited laboratory shall be 12 months, and would require notification of the accrediting authority of changes in location or laboratory director.

This bill would revise the standards for the acceptance and approval of approved 3rd-party laboratory accrediting organizations (ATPLAO's), and would revise the authority of the department to adopt regulations regarding, among other things, NELAP accreditation, and accreditation of ATPLAO's. This bill would clarify and revise the required time periods for certain notifications relating to sale of a laboratory, change of location, or change of the director, and regarding forfeiture of certificates.

This bill would revise the grounds for denial and the procedures for denial, suspension, or revocation of laboratory certificates or NELAP accreditation. This bill would require laboratories that apply for NELAP accreditation to pay, at the time of application, and annually thereafter, a base fee and fees for each field of testing for which the laboratory seeks accreditation, and would authorize the adjustment of those fees in accordance with specified provisions of existing law.

Existing law authorizes the department and its duly authorized representatives to enter and inspect certified laboratories, and provides that it is a misdemeanor for any person to prevent, interfere with, or attempt to impede in any way, such an inspection.

This bill would also authorize the denial or revocation of a certification, or NELAP reaccreditation for refusing entry for an announced or unannounced inspection or refusal of permission to inspect records during normal business hours.



Existing law requires certified laboratories to analyze performance evaluation samples when applying for certification or renewal of certification.

This bill would require the immediate revocation of the certification or NELAP accreditation of a laboratory that submits proficiency testing samples generated by another laboratory as its own. This bill would require NELAP accredited laboratories to analyze proficiency testing samples not less than twice a year.

Existing law authorizes the imposition of criminal penalties for certain offenses relating to certified laboratories.

This bill would make those penalties applicable to NELAP accredited laboratories, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 100825 of the Health and Safety Code is amended to read:

100825. (a) Laboratories that perform, for regulatory purposes, analyses of drinking water, wastewater, hazardous wastes, and contaminated soils or sediments, or any combination of these, shall obtain a certificate pursuant to this article. Laboratories that perform analyses for pesticide residues pursuant to Section 110490 shall also obtain a certificate pursuant to this article. A laboratory may apply for NELAP accreditation if it chooses to meet NELAC standards and become eligible for recognition by other states and agencies that require or accept NELAP accreditation.

(b) In any arrangement between laboratories that involves the transfer of samples or portions of samples, the analyzing laboratory shall be identified in all sample



reports and shall be the laboratory for purposes of certification or NELAP accreditation.

(c) For the purposes of this article:

(1) “Accreditation” means the recognition of a laboratory that is approved by a NELAP approved accrediting authority to conduct environmental analyses in those fields of testing specifically designated in Section 100862.

(2) “Approved third-party laboratory accreditation organization” or “ATPLAO” means a nongovernmental organization which has been approved by the department to audit environmental laboratories.

(3) “Certificate” means a document issued to a laboratory that has received certification or accreditation pursuant to this article.

(4) “Certification” means the granting of approval by the department to a laboratory that has met the standards and requirements of this chapter and the regulations adopted thereunder. Certification shall not include NELAP accreditation.

(5) “Corrective action report” means a written document signed by or on behalf of a person, entity, or laboratory which states the corrective actions proposed by the person, entity, or laboratory to correct the deficiencies or violations stated in a report of deficiencies.

(6) “Deficiency” means noncompliance with one or more of the requirements of this article or any rule or regulation adopted thereunder.

(7) “Laboratory” means any facility or vehicle that is owned by a person or persons, or by a public or private entity, and that is equipped and operated to carry out analyses in any of the fields of testing listed in Section 100860 or Section 100862.

(8) “NELAC” means the National Environmental Laboratory Accreditation Conference.

(9) “NELAC standards” refer to the standards found in EPA publication number 600/R-98/151, November 1998, and any subsequent amendments.



(10) “NELAP” means the National Environmental Laboratory Accreditation Program established by NELAC.

(11) “NELAP accredited laboratory” means a laboratory which has met the standards of NELAP and has been accredited by a primary or secondary NELAP recognized authority.

(12) “NELAP approved accrediting authority” means a state agency which is authorized by NELAC to accredit laboratories.

(13) “NELAP recognized primary accrediting authority” means a state agency which is responsible for the accreditation of environmental laboratories within that state.

(14) “NELAP recognized secondary accrediting authority” means a state agency which is authorized by NELAP to accredit environmental laboratories, within that state, which have been accredited by a NELAP approved accrediting authority in another state.

(15) “Performance based measurement system” or “PBMS” means methods which are alternate analytical methods of demonstrated adequacy of equivalence, as determined by the department, other state agencies, or the United States government.

(16) “Pesticide” means any substance that alone, in chemical combination, or in any formulation with one or more substances, is an “economic poison” within the meaning of Section 12753 of the Food and Agricultural Code or a “pesticide” as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(17) “Regulatory agency” means any federal, state, or local governmental agency that utilizes environmental analyses performed by a laboratory regulated under this section.

(18) “Regulatory purposes” means the use of laboratory analysis required by a regulatory governmental agency for determining compliance with this section or Chapter 1 (commencing with Section 116275), Chapter 2 (commencing with Section 116300),



and Chapter 3 (commencing with Section 116350) of Part 11 of Division 104, Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.8 (commencing with Section 25300) of, Division 20, or Division 7 (commencing with Section 13000) of the Water Code, or the regulations adopted under any of the provisions set forth in this paragraph.

SEC. 2. Section 100830 of the Health and Safety Code is amended to read:

100830. The department shall adopt regulations governing the administration and enforcement of this article. Regulations adopted by the department under this article shall specify conditions for recognizing on the basis of reciprocity the certification or NELAP accreditation of laboratories located outside of the State of California for activities regulated under this article by another state or by an agency of the United States government. Certification or NELAP accreditation by another jurisdiction may be recognized for purposes of this article with regard to one or several program activities, including, but not limited to, onsite inspections, the analysis of proficiency testing samples, or the evaluation of personnel qualifications.

SEC. 3. Section 100831 is added to the Health and Safety Code, to read:

100831. NELAP accreditation by another jurisdiction shall be recognized, for purposes of this article, for out-of-state laboratories with regard to one or several program activities, including, but not limited to, onsite assessments, the analysis of proficiency testing samples, or the evaluation of personnel qualifications.

SEC. 4. Section 100832 is added to the Health and Safety Code, to read:

100832. When the National Environmental Laboratory Accreditation Program standards are adopted by the National Environmental Laboratory Accreditation Conference, the department shall adopt or amend the regulations relating to environmental laboratories as necessary to enable California



environmental laboratories to participate in the National Environmental Laboratory Accreditation Program.

SEC. 5. Section 100835 of the Health and Safety Code is amended to read:

100835. (a) The department may adopt regulations for the following:

(1) Quality assurance programs in effect at the laboratory.

(2) Laboratory facilities.

(3) Methods.

(4) Equipment.

(5) Proficiency testing.

(6) Fields of testing.

(7) Qualifications of laboratory directors and other laboratory personnel.

(8) Fees, inspections, hearings and other matters necessary to the administration and enforcement of this article.

(9) NELAP accreditation.

(10) Any other area concerning the operation or maintenance of a laboratory not inconsistent with this article as may be necessary to carry out this article.

(b) If any regulations governing the minimum standards for certification or NELAP accreditation, or both, of laboratories that perform analysis of food relate to the testing of raw agricultural commodities or dairy products, those regulations shall be adopted, in cooperation with the Department of Food and Agriculture.

SEC. 6. Section 100837 of the Health and Safety Code is amended to read:

100837. (a) The department shall adopt regulations governing the application criteria for acceptance and approval of ATPLAO's. Applicants may be any private or public entity, whether or not for profit, that demonstrates to the department's satisfaction compliance with the criteria set forth in the regulations adopted pursuant to this section at the time of application and thereafter as provided by the department. The regulations adopted pursuant to this section shall include:



(1) Minimum requirements for the applicant ATPLAO's, and objective criteria for department approval that assure accreditation assessments comparable to those conducted by the department pursuant to this article.

(2) Criteria for the minimum content of accreditation examination and laboratory performance level that are, to the extent feasible, comparable to department accreditation practices and procedures that apply to environmental laboratories pursuant to this article.

(3) Procedures for the notification of the department when an ATPLAO approved laboratory fails to meet performance criteria.

(4) Provisions for the department to periodically review performance and procedures of an ATPLAO, and enforcement procedures including revocation of approval. The department shall recover the costs of approving and sustaining the approval of an ATPLAO from the person or entity seeking that approval.

(5) Procedures for inspection and auditing of laboratories, including inspection and auditing by the department.

(6) Procedures for interim certification of laboratories.

(7) Fees that result in a lower fee structure than, but parallel to, that adopted in subdivision (a) of Section 100860. These regulations shall include a basic fee plus an additional fee for each field of testing that the laboratory performs and the fees shall be sufficient to support the program.

(b) The department may consult with ATPLAO's, laboratories, and other interested parties and consider any national or international guidance for accreditation programs in adopting regulations as set forth in this section.

(c) An ATPLAO shall not be prohibited from establishing and implementing, on its own initiative or at the request of a laboratory, standards that exceed the minimum standards established by the department.



(d) The regulations adopted pursuant to this section shall be proposed on or before June 30, 2000. Recognition of ATPLAO's shall commence on or before December 31, 2000.

(e) Every ATPLAO that approves laboratories for NELAP accreditation shall comply with all NELAC standards.

SEC. 7. Section 100840 of the Health and Safety Code is amended to read:

100840. Any laboratory requesting certification or NELAP accreditation under this article shall file with the department a verified application on forms prescribed by the department containing all of the following:

(a) The names of the applicant and the laboratory.

(b) The location of the laboratory.

(c) A list of fields of testing for which the laboratory is seeking certification, selected from the activities listed in subdivision (a) of Section 100860 or 100862.

(d) Evidence satisfactory to the department that the applicant has the ability to comply with this article and the regulations adopted under this article.

(e) Any other information required by the department for administration or enforcement of this article or regulations adopted under this article.

SEC. 8. Section 100845 of the Health and Safety Code is amended to read:

100845. (a) Each certificate issued pursuant to this article for state certification shall be issued to the owner of the laboratory and shall expire 24 months from the date of issuance. Application for renewal shall be filed with the department within a time period specified by regulation. Failure to make timely application for renewal shall result in expiration of the certificate.

(b) A certificate shall be forfeited by operation of law prior to its expiration date when one of the following occurs:

(1) The owner sells or otherwise transfers the ownership of the laboratory, except that the certificate shall remain in force 90 calendar days, if the department receives written assurance and appropriate



documentation within 30 calendar days after the change has occurred that one or more of the conditions in subdivision (c) are met. The department shall accept or reject the assurance in writing within 30 calendar days after it has been received.

(2) There is a change in the location of the laboratory (except a mobile laboratory) or structural alteration that may affect adversely the quality of analysis in the fields of testing for which the laboratory has been certified or is seeking certification, without written notification to the department within 30 calendar days.

(3) The certificate holder surrenders the certificate to the department.

(c) Upon change of ownership of a laboratory, the department may extend a certificate to the expiration date of the original certificate upon written assurance by the new owner that the operation of the laboratory will continue so as not to adversely affect the conditions regulated by this article.

(d) The department shall be notified in writing within 30 calendar days whenever there is a change of director or other person in charge of a laboratory certified under this article. The notification shall include documentation of the qualifications of the new director or other person in charge of the laboratory.

SEC. 9. Section 100847 is added to the Health and Safety Code, to read:

100847. (a) The period of accreditation for NELAP accredited laboratories shall be 12 months.

(b) The accrediting authority shall be notified in writing within 30 calendar days of the sale or other transfer of ownership of a NELAP accredited laboratory.

(c) The accrediting authority shall be notified in writing within 30 calendar days of the change in location of a NELAP accredited laboratory, other than a mobile laboratory.

(d) The accrediting authority shall be notified within 30 calendar days whenever there is a change of laboratory director, or other individual in charge of the laboratory.



(e) NELAP accredited laboratories must conspicuously display their most recent NELAP accreditation certificate or their accreditation fields of testing or both in a permanent place in their laboratory.

(f) NELAP accredited laboratories shall not use their NELAP accreditation document or their accreditation status to imply any endorsement by the accrediting authority.

SEC. 10. Section 100850 of the Health and Safety Code is amended to read:

100850. (a) (1) Upon the filing of an application for certification and after a finding by the department that there is full compliance with this article and regulations adopted under this article, the department shall issue to the owner a certificate in the fields of testing identified in Section 100860 or 100862.

(2) Evidence of compliance by a laboratory with this article and any regulations adopted thereunder shall be forwarded by the ATPLAO to the department for review and approval prior to issuance of a certificate by the department pursuant to this section. The department shall retain ultimate authority to decide whether a laboratory shall be certified or decertified. Whenever an approved laboratory that has been issued a certificate pursuant to this section no longer is approved by an ATPLAO, the certificate issued pursuant to this section shall be automatically revoked by the department, pursuant to appropriate administrative due process as may be prescribed by the department by regulation. However, the laboratory may apply to the department for immediate recertification pursuant to this section. Immediate recertification may occur if the department determines that the loss of certification does not result in the laboratory's failure to be in compliance with this article and the regulations adopted thereunder.

(b) The department shall deny or revoke a certificate if it finds any of the following:

(1) The laboratory fails to report acceptable results in the analysis of proficiency testing samples.

(2) The laboratory fails to pass an onsite assessment.



(3) The laboratory is not in compliance with any other provision of this article or regulations adopted under this article.

(c) Provided that there is compliance with all other provisions of this article, a certificate may be restricted by the department to the fields of testing of Section 100860 or 100862 or subgroups thereof as defined by regulation for which acceptable results have been produced and the onsite assessment was passed.

(d) Upon the filing of a complete application for a certificate pursuant to subdivision (a), the department may issue an interim certificate pending the completion of onsite assessment and an analysis of proficiency testing samples. An interim certificate shall be nonrenewable and shall remain in effect until a certificate is either granted under subdivision (a) or denied under subdivision (b), but not later than one year after the date of issuance.

SEC. 11. Section 100851 is added to the Health and Safety Code, to read:

100851. (a) An application for NELAP accreditation or renewal of NELAP accreditation shall be denied by the accrediting authority for any of the following reasons:

(1) Failure to submit all information necessary to determine the laboratory's eligibility for its accreditation or continued compliance with this section or regulations adopted thereunder.

(2) Failure of the laboratory staff to meet NELAC standards for personnel requirements. These qualifications may include education, training, and experience requirements.

(3) Failure to successfully analyze and report proficiency testing samples.

(4) Failure to respond to a deficiency report from the onsite assessment with a corrective action report within 30 calendar days of the receipt of the report.

(5) Failure to implement the corrective actions detailed in the corrective action report within the specified amount of time.



(6) Misrepresentation of any material fact pertinent to receiving or maintaining NELAP accreditation.

(b) The NELAP approved accrediting authority may suspend the accreditation of a NELAP accredited laboratory, in whole or in part, for failure to correct the deficiencies, within a specified amount of time, as identified in the onsite assessment. The laboratory shall retain those areas of accreditation where it continues to meet the requirements of the accrediting authority. A suspended NELAP accredited laboratory shall not be required to reapply for accreditation if the causes for suspension are corrected within six months.

(c) The NELAP approved accrediting authority shall suspend a NELAP accreditation in whole or in part for the following reasons:

(1) Failure to complete proficiency testing studies.

(2) Failure to maintain a history of at least two successful, out of the most recent three, proficiency testing studies for each affected accreditation field of testing, subgroup, or analyte for which the laboratory is accredited.

(3) Failure to successfully analyze and report proficiency testing sample results pursuant to Chapter 2 of the NELAC standards.

(4) Failure to submit an acceptable corrective action report in response to a deficiency report and failure to implement corrective action related to any deficiencies found during laboratory assessments within the required time period, as required by the NELAC standards.

(5) Failure to notify the accrediting authority of any changes in key accreditation criteria, as required by Chapter 4 of the NELAC standards.

(6) Failure to perform all accredited tests in accordance with NELAC standards.

(7) Failure to meet all of the requirements of Chapter 5 of the NELAC standards.

(d) A suspended laboratory shall not be required to reapply for any NELAP accreditation if the causes for suspension are corrected within six months. A suspended laboratory may not continue to analyze samples for the



affected fields of testing for which it holds accreditation. A suspended laboratory shall remain suspended without a right to appeal if the suspension is caused by unacceptable proficiency testing sample results.

(e) If a laboratory is unable to correct the reason for suspension, the laboratory's accreditation shall be revoked in whole or in part.

(f) A laboratory's accreditation may not be suspended without the right to due process, as set forth in Chapter 4 of the NELAC standards.

SEC. 12. Section 100852 of the Health and Safety Code is amended to read:

100852. (a) Notwithstanding any other provision of law, the department may issue a certificate to the owner of a laboratory in a field of testing or method adopted by the federal Environmental Protection Agency pursuant to Part 136 of Title 40 of the Code of Federal Regulations, as amended September 11, 1992, as published in the Federal Register (57 FR 41830), or Part 141 of Title 40 of the Code of Federal Regulations, as amended July 17, 1992, as published in the Federal Register (57 FR 31776), and as subsequently amended and published in the Federal Register.

(b) After the department has become a NELAP approved accrediting authority, performance based measurement system methods will be accepted, when mandated methods are indicated. A fee, as specified in regulations adopted by the department, may be charged for the review of each performance based measurement system method.

(c) Notwithstanding any other provision of law, the department shall not be required to meet the requirements of Chapter 3.5 (commencing with Section 11340) of the Government Code in order to issue a certificate pursuant to subdivision (a).

SEC. 13. Section 100855 of the Health and Safety Code is amended to read:

100855. (a) Upon the denial of any application for a certificate or the denial of approval as an ATPLAO, or the revocation of a certificate or the revocation of approval



as an ATPLAO, the department shall immediately notify the applicant or organization by certified mail, return receipt requested, of the denial and the reasons for the denial. Within 20 calendar days of receipt, the applicant or organization may present the department with a written petition for a hearing. Upon receipt in proper form by the department, the petition shall be set for hearing. The proceedings shall be conducted in accordance with Section 100171 and the department has all the powers granted in that section.

(b) The proceedings under this section for denial, suspension, or revocation of NELAP accreditation shall also be conducted in accordance with Section 100171.

SEC. 14. Section 100860 of the Health and Safety Code is amended to read:

100860. (a) At the time of application and annually thereafter, from the date of the issuance of the certificate, a laboratory shall pay an annual certification fee. The fee shall consist of a basic nonrefundable fee of eight hundred seventy-nine dollars (\$879) and an additional fee of three hundred ninety-six dollars (\$396) for certification in each of the following fields of testing for which accreditation is sought: (1) microbiology of drinking water and wastewater; (2) inorganic chemistry and physical properties of drinking water excluding toxic chemical elements; (3) analysis of toxic chemical elements in drinking water; (4) organic chemistry of drinking water (measurement by gc/ms combination); (5) organic chemistry of drinking water (excluding measurements by gc/ms combination); (6) radiochemistry; (7) shellfish sanitation; (8) aquatic toxicity bioassays; (9) physical properties testing of hazardous waste; (10) inorganic chemistry and toxic chemical elements of hazardous waste; (11) extraction tests of hazardous waste; (12) organic chemistry of hazardous waste (measurement by gc/ms combination); (13) organic chemistry of hazardous waste (excluding measurements by gc/ms combination); (14) bulk asbestos analysis; (15) substances regulated under the California Safe Drinking Water and Toxic Enforcement Act and not included in other listed



groups; (16) wastewater inorganic chemistry, nutrients, and demand; (17) toxic chemical elements in wastewater; (18) organic chemistry of wastewater (measurements by gc/ms combination); (19) organic chemistry of wastewater (excluding measurements by gc/ms combination); (20) inorganic chemistry and toxic chemical elements of pesticide residues in food; (21) organic chemistry of pesticide residues in food (measurement by gc/ms combination); (22) organic chemistry of pesticide residues in food (excluding measurement by gc/ms combination); and (23) operation of a mobile laboratory in any one of the above fields of testing in addition to activity in the same field of testing in a certified stationary laboratory under the same owner.

Fees for certification in a specified field of testing may be refunded if the department nullifies the application due to failure by the laboratory to complete the application process in the time and manner prescribed by regulation.

(b) In addition to the payment of certification fees, laboratories located outside the State of California shall reimburse the department for travel and per diem necessary to perform onsite inspections.

(c) If reciprocity with another jurisdiction is established by regulation as described in Section 100830, the regulations may provide for the waiver of certification fees for program activities considered equivalent.

(d) Fees collected under this section shall be adjusted annually as specified in Section 100425. The adjustment shall be rounded to the nearest whole dollar. It is the intent of the Legislature that the programs operated under this article be fully fee-supported.

(e) State and local government-owned laboratories in California established under Section 101150 or performing work only in a reference capacity as a reference laboratory are exempt from the payment of the fee prescribed under subdivision (a).



(f) In addition to the payment of certification fees, laboratories certified or applying for certification in fields of testing (20), (21), or (22) under subdivision (a) shall pay the department a fee of four hundred dollars (\$400) for the preparation and handling of each proficiency testing sample set.

(g) For the purpose of this section, a reference laboratory is a laboratory owned and operated by a governmental regulatory agency for the principal purpose of analyzing samples referred by other laboratories for confirmatory analysis. Reference laboratories carry out quality assurance functions for other laboratories and may carry out unusual, highly specialized, and difficult analyses not generally available through commercial laboratories, and a limited number of routine analyses, for regulatory purposes only, and without assessing per-sample fees for the services.

(h) Notwithstanding subdivision (a), a laboratory that is applying for or has received certification pursuant to third-party laboratory accreditation as set forth in paragraph (2) of subdivision (a) of Section 100850 shall pay an initial fee at the time of application and an annual fee thereafter. The initial and annual fee shall be established by the department in the regulations authorized by paragraph (9) of subdivision (a) of Section 100837. The fees collected under these regulations shall be adjusted annually as specified in Section 100425. The adjustment shall be rounded to the nearest whole dollar. It is the intent of the Legislature that the programs operated under this article be fully fee-supported.

SEC. 15. Section 100862 is added to the Health and Safety Code, to read:

100862. (a) At the time of application for NELAP accreditation and annually thereafter, from the date of the issuance of the accreditation, a laboratory shall pay a base fee and a fee for each field of testing listed below for which a laboratory has requested NELAP accreditation. The fees shall be nonrefundable and set in regulations, and shall be sufficient to allow the NELAP program to be fully fee supported. The fields of testing for NELAP



accreditation and their code numbers are all of the following:

- (101) Microbiology of drinking water.
- (102) Inorganic chemistry of drinking water.
- (103) Toxic chemical elements of drinking water.
- (104) Volatile organic chemistry of drinking water.
- (105) Nonvolatile organic chemistry of drinking water.
- (106) Radiochemistry of drinking water.
- (107) Microbiology of wastewater.
- (108) Inorganic chemistry of wastewater.
- (109) Toxic chemical elements of wastewater.
- (110) Volatile organic chemistry of wastewater.
- (111) Nonvolatile organic chemistry of wastewater.
- (112) Radiochemistry of wastewater.
- (113) Whole effluent toxicity of wastewater.
- (114) Inorganic chemistry and toxic chemical elements of hazardous waste.
- (115) Extraction test of hazardous waste.
- (116) Volatile organic chemistry of hazardous waste.
- (117) Nonvolatile organic chemistry of hazardous waste.
- (118) Radiochemistry of hazardous waste.
- (119) Toxicity bioassay of hazardous waste.
- (120) Physical properties of hazardous waste.
- (121) Bulk asbestos analysis of hazardous waste.

(b) Fees for NELAP accreditation shall be adjusted annually as specified in Section 100425.

SEC. 16. Section 100863 is added to the Health and Safety Code, to read:

100863. The department shall appoint a multidisciplinary committee to assist, advise, and make recommendations regarding technical, scientific, and administrative matters concerning the accreditation or certification of environmental laboratories. Appointments to the committee shall be made from lists of nominees solicited by the department, and shall provide adequate representation of interested parties and environmental laboratories subject to this chapter. Subcommittees of the committee may be appointed



consisting of committee members and other persons having particular knowledge of a subject area, for the purpose of assisting the department on special problems and making recommendations to the committee for consideration in the establishment of rules and regulations. The department shall determine the terms of office of appointees to the committee and any subcommittee. Members of the committee and of any subcommittee shall serve without compensation and shall pay their own expenses incurred as a result of attending meetings or engaging in any other activity pursuant to this section.

SEC. 17. Section 100865 of the Health and Safety Code is amended to read:

100865. (a) In order to carry out the purpose of this article, any duly authorized representative of the department may do the following:

(1) Enter and inspect a laboratory that is certified or NELAP accredited pursuant to this article or that has applied for certification or NELAP accreditation.

(2) Inspect and photograph any portion of the laboratory, equipment, any activity, or any samples taken, copy and photograph any records, reports, test results, or other information related solely to certification under this article or regulations adopted pursuant to this article.

(b) It shall be a misdemeanor for any person to prevent, interfere with, or attempt to impede in any way, any duly authorized representative of the department from undertaking the activities authorized by this section.

(c) If a laboratory that is seeking certification, NELAP accreditation, recertification, or NELAP reaccreditation refuses entry of a duly authorized representative during normal business hours for either an announced or unannounced onsite assessment, the certification, accreditation, recertification, or reaccreditation shall be denied or revoked.

(d) Refusal of a request by a NELAP approved accrediting authority, the department, or any employee,



agent, or contractor of the department, for permission to inspect, pursuant to this section, the laboratory and its operations and pertinent records during the hours the laboratory is in operation shall result in denial or revocation of certification or NELAP accreditation.

SEC. 18. Section 100870 of the Health and Safety Code is amended to read:

100870. (a) Any laboratory that is certified or holds NELAP accreditation or has applied for certification or NELAP accreditation or for renewal of certification or NELAP accreditation under this article, shall analyze proficiency testing samples provided directly or indirectly by the department. The department shall have the authority to contract with third parties for the provision of proficiency testing samples. The samples shall be tested by the laboratory according to methods specifically approved for this purpose by the United States government or the department, or alternate methods of demonstrated adequacy or equivalence, as determined by the department. Proficiency testing sample sets shall be provided not less than twice, nor more than four times, a year to each certified laboratory that performs analyses of food for pesticide residues.

(b) The department may provide directly or indirectly proficiency testing samples to a laboratory for the purpose of determining compliance with this article with or without identifying the department.

(1) When the department identifies itself, all of the following shall apply:

(A) The results of the testing shall be submitted to the department on forms provided by the department on or before the date specified by the department, and shall be used in determining the competency of the laboratory.

(B) There shall be no charge to the department for the analysis.

(2) When the department does not identify itself, the department shall pay the price requested by the laboratory for the analyses.

(c) If a certified or NELAP accredited laboratory submits proficiency testing sample results generated by



another laboratory as its own, the certification or NELAP accreditation shall be immediately revoked.

(d) Laboratories shall obtain their proficiency testing samples from a list of NELAP, federal, or state-approved proficiency testing sample providers. Laboratories shall bear the cost of any proficiency testing study fee charged for participation. Each laboratory shall authorize the proficiency testing providers to report the study results directly to the accrediting authority and NELAP, as well as to the laboratory.

SEC. 19. Section 100872 is added to the Health and Safety Code, to read:

100872. (a) A NELAP accredited laboratory shall analyze proficiency testing samples not less than twice a year for those fields of testing approved in Section 100862. Proficiency testing procedures shall be approved by the United States government or by the department.

(b) The laboratory must be successful in at least two out of the most recent three proficiency testing studies for each field of testing, subgroup, or analyte for which it is accredited.

(c) The NELAP accredited laboratory shall discontinue the analyses of samples for the fields of testing or subgroups which have been suspended for failure to comply with the proficiency testing requirements in this section.

SEC. 20. Section 100880 of the Health and Safety Code is amended to read:

100880. If the department determines that a laboratory is in violation of this article or any regulation or order issued or adopted pursuant to this article, the department may, in addition to suspension, denial, or revocation of the certificate or NELAP accreditation, issue a citation to the owner of the laboratory. It shall be the function of the approved accrediting authority to issue citations. The Legislature finds and declares that since NELAC is a standard setting body, it cannot, as such, enforce civil or criminal penalties.

(a) The citation shall be served personally or by registered mail.



(b) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, order, or regulation alleged to have been violated.

(c) The citation shall fix the earliest feasible time for elimination or correction of the condition constituting the violation.

(d) Citations issued pursuant to this section shall specify a civil penalty for each violation, not to exceed one thousand dollars (\$1,000), for each day that the violation occurred.

(e) If the owner fails to correct a violation within the time specified in the citation, the department may assess a civil penalty as follows:

(1) For failure to comply with any citation issued for a violation of this article or a regulation, an amount not to exceed two hundred fifty dollars (\$250) for each day that the violation continues beyond the date specified for correction in the citation.

(2) For failure to comply with any citation issued for violation of any department-issued order, an amount not to exceed two hundred dollars (\$200) for each day the violation continues beyond the date specified for correction in the citation.

SEC. 21. Section 100885 of the Health and Safety Code is amended to read:

100885. (a) Any person who operates a laboratory that performs work that requires certification or NELAC accreditation under Section 25198, 25298.5, 25358.4, 110490, or 116390 of this code, or Section 13176 of the Water Code, who is not certified or NELAC accredited to do so, may be enjoined from so doing by any court of competent jurisdiction upon suit by the department.

(b) (1) Any organization that represents itself as an ATPLAO without being granted approval pursuant to Section 100837 shall be in violation of this article and may be enjoined from making those representations by any court of competent jurisdiction at the suit of the department. Nothing in this section shall limit the



department from exercising any other remedy for a violation of this article.

(2) Nothing in this article shall limit the activities of any ATPLAO within the state, whether or not approved pursuant to Section 100837, if the purpose is not to obtain state environmental testing laboratory certification or NELAP accreditation.

(c) When the department determines that any person has engaged in, or is engaged in, any act or practice that constitutes a violation of this article, or any regulation or order issued or adopted thereunder, the department may bring an action in the superior court for an order enjoining these practices or for an order directing compliance and affording any further relief that may be required to ensure compliance with this article.

SEC. 22. Section 100890 of the Health and Safety Code is amended to read:

100890. (a) Any person who knowingly makes any false statement or representation in any application, record, or other document submitted, maintained, or used for purposes of compliance with this article, may be liable, as determined by the court, for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation or, for continuing violations, for each day that violation continues.

(b) Any person who operates a laboratory for purposes specified pursuant to Section 25198, 25298.5, 25358.4, 110490, or 116390 of this code, or Section 13176 of the Water Code that requires certification, who is not certified by the department pursuant to this article, may be liable, as determined by the court, for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation or, for continuing violations, for each day that violation continues.

(c) A laboratory that advertises or holds itself out to the public or its clients as having been certified for any of the fields of testing referred to in Section 100860 or 100862 without having a valid and current certificate in each field of testing identified by the advertisement or other representation may be liable, as determined by the court,



for a civil penalty not to exceed one thousand dollars (\$1,000) or, for continuing violations, for each day that violation continues.

(d) Each civil penalty imposed for any separate violation pursuant to this section shall be separate and in addition to any other civil penalty imposed pursuant to this section or any other provision of law.

SEC. 23. Section 100895 of the Health and Safety Code is amended to read:

100895. (a) Any person who knowingly does any of the following acts may, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in the county jail not to exceed one year, or by both the fine and imprisonment:

(1) Makes any false statement or representation in any application, record, report, or other document submitted, maintained, or used for the purposes of compliance with this article.

(2) Has in his or her possession any record required to be maintained pursuant to this article that has been altered or concealed.

(3) Destroys, alters, or conceals any record required to be maintained pursuant to this article.

(4) Withholds information regarding an imminent and substantial danger to the public health or safety when the information has been requested by the department in writing and is required to carry out the department's responsibilities pursuant to this article.

(b) If the conviction under subdivision (a) is for a violation committed after a first conviction of the person under this section, the person may be punished by imprisonment in the state prison for up to 24 months, or in the county jail for not to exceed one year, or by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, or by both the fine and imprisonment.

(c) A NELAP accredited laboratory, upon suspension, revocation, or withdrawal of its NELAP accreditation, shall do both of the following:



(1) Discontinue use of all catalogs, advertising, business solicitations, proposals, quotations, or their materials that contain reference to their past accreditation status.

(2) Return its certificate of NELAP accreditation to the accrediting authority.

(d) The penalties cited in subdivisions (a) and (b) shall also apply to NELAP accredited laboratories.

SEC. 24. Section 100907 is added to the Health and Safety Code, to read:

100907. (a) The department shall revoke, in whole or in part, the accreditation of a NELAP accredited laboratory for either of the following reasons:

(1) Failure to submit an acceptable corrective action report in response to a deficiency report, and failure to implement corrective action related to any deficiencies found during a laboratory assessment. The laboratory may submit two corrective actions within the time limits specified by the accrediting authority.

(2) Failure to successfully analyze and report proficiency testing sample results pursuant to Chapter 2 of the NELAC standards.

(b) The department shall revoke, in whole, the accreditation of a NELAP accredited laboratory for any of the following reasons:

(1) Failure to respond with a corrective action report within the required 30-day period.

(2) Failure to participate in the proficiency testing program, as required by Chapter 2 of the NELAC standards.

(3) Submittal of proficiency test sample results generated by another laboratory as its own.

(4) Misrepresentation of any material fact pertinent to receiving or maintaining accreditation.

(5) Denial of entry during normal business hours for an onsite assessment, as required by Chapter 3 of the NELAC standards.

(6) Conviction of charges for the falsification of any report of, or that relates to, a laboratory analysis.



(c) The department may also revoke, in whole, a laboratory's accreditation for failure to remit the accreditation fees within the time limit established by the accrediting authority.

(d) After correcting the reason or reasons for revocation, the NELAP accredited laboratory may reapply for accreditation no sooner than six months from the official date of revocation.

(e) A laboratory's NELAP accreditation shall not be revoked without the right to due process, as required by Chapter 4 of the NELAC standards.

SEC. 25. Section 100910 of the Health and Safety Code is amended to read:

100910. Proceedings for the suspension or revocation of a certificate under this article shall be conducted in accordance with Section 100171, and the department shall have all powers granted pursuant to that section.

SEC. 26. Section 100915 of the Health and Safety Code is amended to read:

100915. The department may temporarily suspend certification or NELAP accreditation prior to any hearing, when it has determined that this action is necessary to protect the public. The department shall notify the owner of the temporary suspension and the effective date thereof and at the same time shall serve the owner with an accusation. Upon receipt of a notice of defense by the owner, the matter shall be set for hearing within 15 calendar days. The hearing shall be held as soon as possible but no later than 30 calendar days after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the department has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the department fails to make a final determination on the merits within 60 calendar days after the original hearing has been completed.

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred



because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved \_\_\_\_\_, 1999

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*Governor*

