

No. 2002-25

AN ACT

SB 1115

Establishing within the Department of Environmental Protection an accreditation program for environmental laboratories.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Environmental Laboratory Accreditation Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Accreditation.” A determination by the Department of Environmental Protection that an environmental laboratory is capable of performing one or more classes of testing or analysis of environmental samples in accordance with this act.

“Certificate of accreditation.” A document issued by the Department of Environmental Protection certifying that an environmental laboratory has met standards for accreditation.

“Department.” The Department of Environmental Protection of the Commonwealth.

“Environmental Hearing Board.” The board established under the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act.

“Environmental laboratory.” A facility engaged in the testing or analysis of environmental samples.

“Environmental Quality Board.” The board established under section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

“Environmental sample.” A solid, liquid, gas or other specimen taken for the purpose of testing or analysis as required by an environmental statute.

“Environmental statute.” A statute administered by the Department of Environmental Protection relating to the protection of the environment or of public health, safety and welfare.

“Laboratory supervisor.” A technical supervisor of an environmental laboratory who supervises laboratory procedures and reporting of analytical data.

“NELAC.” The National Environmental Laboratory Accreditation Conference.

“NELAP.” The National Environmental Laboratory Accreditation Program.

“Secretary.” The Secretary of Environmental Protection of the Commonwealth.

Section 3. Establishment of program.

(a) Establishment.—The department shall establish an accreditation program for environmental laboratories.

(b) Accreditation.—An environmental laboratory must be accredited under this act and be in compliance with all the provisions of this act in order to generate data or perform analyses to be used to comply with an environmental statute.

(c) Testing and analysis.—All testing and analysis requirements of an environmental statute shall be performed by an environmental laboratory accredited under this act. Testing and analysis shall be performed in accordance with the requirements of this act, the environmental statutes and any conditions imposed by the department.

Section 4. Powers and duties.

The department shall have the following powers and duties:

(1) Establish, administer and enforce an environmental laboratory accreditation program which shall include accreditation standards necessary for a State certification program. The program shall also include a NELAP accreditation program for those laboratories seeking this certification. The program may also include any other specific broad-based Federal or State accreditation program for certification.

(2) Issue, renew, deny, revoke, suspend or modify certificates of accreditation to environmental laboratories in accordance with regulations adopted by the Environmental Quality Board.

(3) Impose terms or conditions on accreditation as necessary to implement and enforce this act.

(4) Conduct inspections and tests or samplings, including the examination and copying of records and data pertinent to a matter under investigation. Duly authorized agents and employees of the department may at reasonable times enter and examine property, facilities, operations and activities subject to regulation under this act.

(5) Issue orders and initiate proceedings as necessary to implement and enforce this act.

(6) Require a fee for the processing of an application for a certificate of accreditation, including the issuance, renewal, modification or other action relating to the certificate, in an amount sufficient to pay the department's cost of implementing and administering the accreditation program.

(7) Provide technical assistance and advice to persons and environmental laboratories subject to this act.

(8) Contract with third parties to inspect and monitor environmental laboratories.

(9) Cooperate with appropriate Federal, State, interstate and local government units and private organizations to implement this act.

(10) Allow the use of experimental procedures on a case-by-case basis to satisfy the testing or analysis requirements established under an environmental statute.

(11) Seek approval as an accrediting authority from NELAP.

Section 5. Powers and duties of Environmental Quality Board.

(a) General rule.—The Environmental Quality Board shall adopt regulations as necessary to implement this act, to include the establishment of:

(1) Testing or analysis to be conducted by an environmental laboratory.

(2) Allowable fees for environmental laboratories.

(3) Requirements for education, training and experience of laboratory supervisors.

(4) Criteria and procedures to be used by the department to accredit environmental laboratories, which may include proficiency test samples and onsite audits.

(b) Accreditation.—An environmental laboratory shall be accredited pursuant to this act and in compliance with the provisions of this act in order to generate the data and perform analysis to be used to comply with an environmental statute.

(c) General certificate program.—The Environmental Quality Board may adopt regulations that establish a general certificate of accreditation program or certificates of accreditation by rule.

(d) Unique needs.—To the extent possible, the Environmental Quality Board shall establish requirements and procedures that address the unique needs of small businesses, municipalities, municipal authorities and in-house laboratories.

Section 6. Requirements of certificate of accreditation.

(a) Forms.—Applications, certificates and other documents shall be in a form prescribed by the department.

(b) General requirements.—An environmental laboratory shall have the staff, management structure, equipment, quality assurance and quality control procedures and recordkeeping procedures necessary to ensure that the environmental laboratory generates valid and accurate test results in accordance with all conditions of accreditation and this act.

(c) Laboratory supervisor.—Testing, analysis and reporting of data by an accredited laboratory shall be under the direct supervision of a laboratory supervisor. The laboratory supervisor shall certify that each test or analysis is accurate and valid and that the test or analysis was performed in accordance with all conditions of accreditation. The department may disqualify a laboratory supervisor who is responsible for the submission of inaccurate test or analysis results.

(d) Access to records and data.—An accredited laboratory shall provide the department with access to inspect records and data maintained under this act and to conduct tests and sampling related to inspections.

Section 7. Interim requirements.

(a) Registration.—All environmental laboratories shall register with the department within six months of the effective date of this act on a registration form prepared by the department. An environmental laboratory which begins testing or analysis of environmental samples after this date shall register with the department before beginning operations.

(b) Time for application.—All environmental laboratories shall apply for accreditation within six months after the Environmental Quality Board establishes an accreditation requirement by regulation for a type of laboratory. The submission of an application shall provide interim authorization to continue operations until the department takes final action on the application.

(c) NELAP accreditation.—An environmental laboratory may apply to the department for NELAP accreditation after the department is approved as an accrediting authority by NELAP. The department may grant NELAP accreditation to a laboratory that meets the requirements of this act and the most current version of the NELAC standards that are hereby incorporated by reference.

(d) Temporary fees.—Until regulations are promulgated under this act, the following fees shall be charged:

(1) Five thousand dollars for the processing of an application for NELAP accreditation.

(2) Fifty dollars for the processing of an application for registration.

Section 8. Advisory committee.

The secretary shall appoint a Laboratory Accreditation Advisory Committee to provide technical assistance under this act. The committee shall consist of 11 members, including the following:

(1) One representative of a municipal authority.

(2) One representative from a commercial environmental laboratory.

(3) One representative from an industrial environmental laboratory.

(4) One representative from an academic laboratory.

(5) One representative from a small environmental laboratory.

(6) One environmental engineer.

(7) One member of an association of community water supply systems.

(8) One member of an association of wastewater systems.

(9) One member with technical expertise in the testing and analysis of environmental samples.

(10) Two members of the general public.

Section 9. Unlawful conduct.

(a) General rule—It shall be unlawful for a person to violate or to cause or assist in the violation of this act, to fail to comply with an order or condition of accreditation within the time specified by the department or to hinder, obstruct, prevent or interfere with the department in the performance of its duties under this act.

(b) Refusal of accreditation.—The department may refuse to issue a certificate of accreditation to an environmental laboratory which has demonstrated a lack of intention or ability to comply with this act or engaged in unlawful conduct or which has an employee, officer, contractor, agent or other person set forth in regulation who has engaged in unlawful activity under this act unless the applicant demonstrates to the satisfaction of the department that the unlawful conduct is being or has been corrected.

(c) Denial of access.—It shall be unlawful for an accredited laboratory or other person subject to regulation under this act to deny the department access to make inspections and conduct tests or sampling, including the examination and copying of books, papers, records and data pertinent to any matter under investigation pursuant to this act. Failure to provide the department with access shall result in the immediate suspension of any accreditation of the laboratory. Upon notice from the department, the laboratory shall immediately cease testing or analysis of environmental samples. The department may revoke an accreditation for failure to provide the department with access to make inspections and conduct tests or sampling, including the examination and copying of books, papers, records and data pertinent to any matter under investigation pursuant to this act.

(d) Notice.—The environmental laboratory shall notify each of its customers in writing within 72 hours of receipt of the department's notice if the department suspends or revokes in whole or in part a certificate of accreditation. The notice shall be on a form and in a manner approved by the department.

Section 10. Penalties.

(a) Criminal penalties.—

(1) A person who knowingly, willfully or recklessly misrepresents that a test or an environmental sample is accurate or was performed in accordance with procedures authorized pursuant to this act commits a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than \$1,250 nor more than \$12,500 or to imprisonment for a period of not more than one year, or both, for each separate offense.

(2) A person who knowingly, willfully or recklessly performs or reports an inaccurate test or analysis of an environmental sample commits a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than \$1,250 nor more than \$12,500 or to imprisonment for a period of not more than one year, or both, for each separate offense.

(3) A person who knowingly, willfully or recklessly misrepresents that an environmental laboratory holds a certificate of accreditation under this act commits a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than \$1,250 nor more than \$12,500 or to imprisonment for a period of not more than one year, or both, for each separate offense.

(b) Administrative penalties.—

(1) In addition to any other remedy available at law or equity, the department may assess an administrative penalty for a violation of this act. The penalty may be assessed whether or not the violation was willful or negligent. When determining the amount of the penalty, the department shall consider the willfulness of the violation, the damage or injury or threat of damage or injury to public health or the environment, the costs to the department for investigation and enforcement, the economic benefit of the violation to the person and other related factors. The department shall inform the person of the amount of the penalty. The administrative penalty shall not exceed \$5,000 per day per violation.

(2) Every day a violation continues shall be a separate violation.

(3) The amount of the penalty assessed after a hearing before the Environmental Hearing Board or after waiver of the right to appeal the assessment shall be payable to the Commonwealth and collectable in any manner provided at law for collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the penalty after demand, the amount of the penalty, together with interest and cost that may accrue, shall constitute a judgment in favor of the department upon the property of such person from the date it has been entered and docketed of record

by the prothonotary of the county in which the property is situated. The department may at any time transmit to the prothonotaries of any county in which the person holds property certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket the judgment of record in his or her office and to index the judgment as judgments are indexed, without requiring the payment of costs by the department.

(c) **Concurrent penalties.**—Penalties and other remedies under this act shall be concurrent and shall not prevent the department from exercising any other available remedy at law or equity.

(d) **Rebuttable presumption.**—Failure of an environmental laboratory or laboratory supervisor to maintain adequate records or proficiency test samples as required creates a rebuttable presumption that the test or analysis was not conducted as required.

(e) **Falsifying results.**—It shall be unlawful to falsify the results of testing or analysis of environmental samples or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in the context of the submission of the results of testing and analysis of environmental samples under an environmental statute.

Section 11. Records.

Records required under this act shall be maintained for five years unless otherwise specified in regulation.

Section 12. Whistleblower protection.

An employee of an environmental laboratory covered by this act shall be deemed to be an employee under the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law, in regard to good faith reports of potential violations of this act. Environmental laboratories covered by this act shall be deemed to be an employer under the Whistleblower Law in regard to good faith reports of potential violations of this act.

Section 13. Continuation of existing rules and regulations.

All existing rules and regulations promulgated pursuant to any environmental statute remain in full force and effect until superseded and repealed by the rules and regulations promulgated pursuant to this act.

Section 14. Repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 15. Effective date.

This act shall take effect immediately.

APPROVED—The 2nd day of April, A.D. 2002.

MARK S. SCHWEIKER