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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1115 Session of  
2001

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OCTOBER 9, 2001

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SENATOR THOMPSON, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
JANUARY 28, 2002

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AN ACT

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

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

4 Section 1. Short title.

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

7 Section 2. Definitions.

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

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

15 "Certificate of accreditation." A document issued by the  
16 Department of Environmental Protection certifying that an  
17 environmental laboratory has met standards for accreditation.

18 "Department." The Department of Environmental Protection of  
19 the Commonwealth.

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

23 "Environmental laboratory." A facility engaged in the  
24 testing or analysis of environmental samples.

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

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

1 "Environmental statute." A statute administered by the  
2 Department of Environmental Protection relating to the  
3 protection of the environment or of public health, safety and  
4 welfare.

5 "Laboratory supervisor." A technical supervisor of an  
6 environmental laboratory who supervises laboratory procedures  
7 and reporting of analytical data.

8 "NELAC." The National Environmental Laboratory Accreditation  
9 Conference.

10 "NELAP." The National Environmental Laboratory Accreditation  
11 Program.

12 Section 3. Establishment of program.

13 (a) Establishment.--The department shall establish an  
14 accreditation program for environmental laboratories.

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

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

25 Section 4. Powers and duties.

26 The department shall have the following powers and duties:

27 (1) Establish, administer and enforce an environmental  
28 laboratory accreditation program which shall include  
29 accreditation standards necessary for a State certification  
30 program. The program shall also include a NELAP accreditation

1 program for those laboratories seeking this certification.  
2 The program may also include any other specific broad-based  
3 Federal or State accreditation program for certification.

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

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

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

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

18 (6) Require a fee for the processing of an application  
19 for a certificate of accreditation, including the issuance,  
20 renewal, modification or other action relating to the  
21 certificate in an amount sufficient to pay the department's  
22 cost of ~~implementation of~~ IMPLEMENTING AND ADMINISTERING the <—  
23 accreditation program.

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

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

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

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

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

6 Section 5. Powers and duties of Environmental Quality Board.

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

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

12           (2) Allowable fees for environmental laboratories.

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

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

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

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

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

30 Section 6. Requirements of certificate of accreditation.

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

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

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

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

21 Section 7. Interim requirements.

22 (a) Registration.--All environmental laboratories shall  
23 register with the department within six months of the effective  
24 date of this act, on a registration form prepared by the  
25 department. An environmental laboratory which begins operations  
26 in this Commonwealth after this date shall register with the  
27 department before beginning operations.

28 (b) Time for application.--An environmental laboratory shall  
29 apply for accreditation within six months after the  
30 Environmental Quality Board establishes an accreditation

1 requirement by regulation for a type of laboratory. The  
2 submission of an application shall provide interim authorization  
3 to continue operations until the department takes final action  
4 on the application.

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

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

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

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

18 Section 8. Advisory committee.

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

23 (1) One representative of a municipal authority.

24 (2) One representative from a commercial environmental  
25 laboratory.

26 (3) One representative from an industrial environmental  
27 laboratory.

28 (4) One representative from an academic laboratory.

29 (5) One representative from a small environmental  
30 laboratory.

- 1           (6) One environmental engineer.
- 2           (7) One member of an association of community water
- 3       supply systems.
- 4           (8) One member of an association of wastewater systems.
- 5           (9) One member with technical expertise in the testing
- 6       and analysis of environmental samples.
- 7           (10) Two members of the general public.

8       Section 9. Unlawful conduct.

9       (a) General rule--It shall be unlawful for a person to

10   violate or to cause or assist in the violation of this act, to

11   fail to comply with an order or condition of accreditation

12   within the time specified by the department or to hinder,

13   obstruct, prevent or interfere with the department in the

14   performance of its duties under this act.

15       (b) Refusal of accreditation.--The department may refuse to

16   issue a certificate of accreditation to an environmental

17   laboratory which has demonstrated a lack of intention or ability

18   to comply with this act or engaged in unlawful conduct or which

19   has an employee, officer, contractor, agent or other person set

20   forth in regulation who has engaged in unlawful activity under

21   this act unless the applicant demonstrates to the satisfaction

22   of the department that the unlawful conduct is being or has been

23   corrected.

24       (c) Denial of access.--It shall be unlawful for an

25   accredited laboratory or other person subject to regulation

26   under this act to deny the department access to make inspections

27   and conduct tests or sampling, including the examination and

28   copying of books, papers, records and data pertinent to any

29   matter under investigation pursuant to this act. Failure to

30   provide the department with access shall result in the immediate



1 suspension of any accreditation of the laboratory. Upon notice  
2 from the department, the laboratory shall immediately cease  
3 testing or analysis of environmental samples. The department may  
4 revoke an accreditation for failure to provide the department  
5 with access to make inspections and conduct tests or sampling,  
6 including the examination and copying of books, papers, records  
7 and data pertinent to any matter under investigation pursuant to  
8 this act.

9 (d) Notice.--The environmental laboratory shall notify each  
10 of its customers in writing within 72 hours of receipt of the  
11 department's notice if the department suspends or revokes in  
12 whole or in part a certificate of accreditation. The notice  
13 shall be on a form and in a manner approved by the department.  
14 Section 10. Penalties.

15 (a) Criminal penalties.--

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

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

1           (3) A person who knowingly, willfully or recklessly  
2 misrepresents that an environmental laboratory holds a  
3 certificate of accreditation under this act commits a  
4 misdemeanor of the third degree and, upon conviction, shall  
5 be subject to a fine of not less than \$1,250 nor more than  
6 \$12,500, or to imprisonment for a period of not more than one  
7 year, or both, for each separate offense.

8       (b) Administrative penalties.--

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

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

24           (3) The amount of the penalty assessed after a hearing  
25 before the Environmental Hearing Board, or after waiver of  
26 the right to appeal the assessment, shall be payable to the  
27 Commonwealth and collectable in any manner provided at law  
28 for collection of debts. If any person liable to pay any such  
29 penalty neglects or refuses to pay the penalty after demand,  
30 the amount of the penalty, together with interest and cost

1 that may accrue, shall constitute a judgment in favor of the  
2 department upon the property of such person from the date it  
3 has been entered and docketed of record by the prothonotary  
4 of the county in which the property is situated. The  
5 department may, at any time, transmit to the prothonotaries  
6 of any county in which the person holds property, certified  
7 copies of all such judgments, and it shall be the duty of  
8 each prothonotary to enter and docket the judgment of record  
9 in his or her office and to index the judgment as judgments  
10 are indexed, without requiring the payment of costs by the  
11 department.

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

16 (d) Rebuttable presumption.--Failure of an environmental  
17 laboratory or laboratory supervisor to maintain adequate records  
18 or proficiency test samples as required creates a rebuttable  
19 presumption that the test or analysis was not conducted as  
20 required.

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

#### 28 Section 11. Records.

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

1 Section 12. Continuation of existing rules and regulations.

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

6 Section 13. Repeals.

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

9 Section 14. Effective date.

10 This act shall take effect immediately.