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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1115 Session of  
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INTRODUCED BY M. WHITE, MUSTO, EARLL, TOMLINSON, LAVALLE, BELL,  
BODACK, COSTA, HOLL, D. WHITE, ERICKSON, MOWERY, THOMPSON,  
LEMMOND, SCHWARTZ, WAUGH, BOSCOLA AND ROBBINS,  
OCTOBER 9, 2001

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AS AMENDED ON THIRD CONSIDERATION, FEBRUARY 4, 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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1       The General Assembly of the Commonwealth of Pennsylvania  
2 hereby enacts as follows:

3       Section 1.   Short title.

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

6       Section 2.   Definitions.

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

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

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

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

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

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

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

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

30       "Environmental statute."   A statute administered by the

1 Department of Environmental Protection relating to the  
2 protection of the environment or of public health, safety and  
3 welfare.

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

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

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

11 "SECRETARY." THE SECRETARY OF ENVIRONMENTAL PROTECTION OF  
12 THE COMMONWEALTH. <—

13 Section 3. Establishment of program.

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

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

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

26 Section 4. Powers and duties.

27 The department shall have the following powers and duties:

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

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

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

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

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

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

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

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

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

29 (9) Cooperate with appropriate Federal, State,  
30 interstate and local government units and private

1 organizations to implement this act.

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

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

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

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

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

13 (2) Allowable fees for environmental laboratories.

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

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

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

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

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

1 Section 6. Requirements of certificate of accreditation.

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

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

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

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

22 Section 7. Interim requirements.

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

29 (b) Time for application.--~~An environmental laboratory~~ ALL  
30 ENVIRONMENTAL LABORATORIES shall apply for accreditation within

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1 six months after the Environmental Quality Board establishes an  
2 accreditation requirement by regulation for a type of  
3 laboratory. The submission of an application shall provide  
4 interim authorization to continue operations until the  
5 department takes final action on the application.

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

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

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

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

19 Section 8. Advisory committee.

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

24 (1) One representative of a municipal authority.

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

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

29 (4) One representative from an academic laboratory.

30 (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



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

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

15 Section 10. Penalties.

16 (a) Criminal penalties.--

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

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

1 for each separate offense.

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

9 (b) Administrative penalties.--

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

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

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

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

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

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

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

29 Section 11. Records.

30 Records required under this act shall be maintained for five

1 years unless otherwise specified in regulation.

2 Section 12. Continuation of existing rules and regulations.

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

7 Section 13. Repeals.

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

10 Section 14. Effective date.

11 This act shall take effect immediately.