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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
OCTOBER 17, 2001

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. It shall also include a NELAP accreditation program

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

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

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

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

30 (10) Allow the use of experimental procedures, on a

1 case-by-case basis, to satisfy the testing or analysis
2 requirements established under an environmental statute.

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

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

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

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

11 (2) Allowable fees for environmental laboratories.

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

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

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

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

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

29 Section 6. Requirements of certificate of accreditation.

30 (a) Forms.--Applications, certificates and other documents

1 shall be in a form prescribed by the department.

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

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

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

20 Section 7. Interim requirements.

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

27 (b) Time for application.--An environmental laboratory shall
28 apply for accreditation within six months after the
29 Environmental Quality Board establishes an accreditation
30 requirement by regulation for a type of laboratory. The

1 submission of an application shall provide interim authorization
2 to continue operations until the department takes final action
3 on the application.

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

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

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

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

17 Section 8. Advisory committee.

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

22 (1) One representative of a municipal authority.

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

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

27 (4) One representative from an academic laboratory.

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

30 (6) One environmental engineer.

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

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

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

6 (10) Two members of the general public.

7 Section 9. Unlawful conduct.

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

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

23 (c) Denial of access.--It shall be unlawful for an
24 accredited laboratory or other person subject to regulation
25 under this act to deny the department access to make inspections
26 and conduct tests or sampling, including the examination and
27 copying of books, papers, records and data pertinent to any
28 matter under investigation pursuant to this act. Failure to
29 provide the department with access shall result in the immediate
30 suspension of any accreditation of the laboratory. Upon notice

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

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

13 Section 10. Penalties.

14 (a) Criminal penalties.--

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

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

30 (3) A person who knowingly, willfully or recklessly

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

7 (b) Administrative penalties.--

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

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

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

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

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

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

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

27 Section 11. Records.

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

30 Section 12. Continuation of existing rules and regulations.

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

5 Section 13. Repeals.

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

8 Section 14. Effective date.

9 This act shall take effect immediately.