

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2044 Session of 2001

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AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 23, 2001

AN ACT

1 Establishing within the Department of Environmental Protection
2 an accreditation program for environmental laboratories; AND <—
3 PROVIDING FOR WHISTLEBLOWER PROTECTION.

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

7 Section 1. Short title.

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

10 Section 2. Definitions.

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

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

18 "Certificate of accreditation." A document issued by the  
19 Department of Environmental Protection certifying that an  
20 environmental laboratory has met standards for accreditation.

21 "Department." The Department of Environmental Protection of  
22 the Commonwealth.

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

26 "Environmental laboratory." A facility engaged in the  
27 testing or analysis of environmental samples.

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

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

4 "Environmental statute." A statute administered by the  
5 Department of Environmental Protection relating to the  
6 protection of the environment or of public health, safety and  
7 welfare.

8 "Laboratory supervisor." A technical supervisor of an  
9 environmental laboratory who supervises laboratory procedures  
10 and reporting of analytical data.

11 "NELAC." The National Environmental Laboratory Accreditation  
12 Conference.

13 "NELAP." The National Environmental Laboratory Accreditation  
14 Program.

15 Section 3. Establishment of program.

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

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

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

28 Section 4. Powers and duties.

29 The department shall have the following powers and duties:

30 (1) Establish, administer and enforce an environmental

1 laboratory accreditation program which shall include  
2 accreditation standards necessary for a State certification  
3 program. It shall also include a NELAP accreditation program  
4 for those laboratories seeking this certification. It may  
5 also include any other specific or broad-based Federal or  
6 State accreditation program for certification.

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

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

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

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

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

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

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

30 (9) Cooperate with appropriate Federal, State,

1 interstate and local government units and private  
2 organizations to implement this act.

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

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

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

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

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

14 (2) Allowable fees for environmental laboratories.

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

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

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

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

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

1 municipal authorities.

2 Section 6. Requirements of certificate of accreditation.

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

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

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

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

23 Section 7. Interim requirements.

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

30 (b) Time for application.--An environmental laboratory shall

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

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

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

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

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

20 Section 8. Advisory committee.

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

25 (1) One representative of a municipal authority.

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

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

30 (4) One representative from an academic laboratory.

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

10 Section 9. Unlawful conduct.

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

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

26 (c) Denial of access.--It shall be unlawful for an  
27 accredited laboratory or other person subject to regulation  
28 under this act to deny the department access to make inspections  
29 and conduct tests or sampling, including the examination and  
30 copying of books, papers, records and data pertinent to any



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

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

17 (a) Criminal penalties.--

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

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

1 imprisonment for a period of not more than one year, or both,  
2 for each separate offense.

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

10 (b) Administrative penalties.--

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

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

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

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

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

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

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

30 Section 11. Records.

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

3 SECTION 12. WHISTLEBLOWER PROTECTION. ←

4 AN EMPLOYEE OF AN ENVIRONMENTAL LABORATORY COVERED BY THIS  
5 ACT SHALL BE DEEMED TO BE AN EMPLOYEE UNDER THE ACT OF DECEMBER  
6 12, 1986 (P.L.1559, NO.169), KNOWN AS THE WHISTLEBLOWER LAW, IN  
7 REGARD TO GOOD FAITH REPORTS OF POTENTIAL VIOLATIONS OF THIS  
8 ACT. ENVIRONMENTAL LABORATORIES COVERED BY THIS ACT SHALL BE  
9 DEEMED TO BE AN EMPLOYER UNDER THE WHISTLEBLOWER LAW IN REGARD  
10 TO GOOD FAITH REPORTS OF POTENTIAL VIOLATIONS OF THIS ACT.

11 Section ~~12~~ 13. Continuation of existing rules and regulations. ←

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

16 Section ~~13~~ 14. Repeals. ←

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

19 Section ~~14~~ 15. Effective date. ←

20 This act shall take effect immediately.