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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, OCTOBER 9, 2001

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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 Section 3. Establishment of program.

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

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

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

24 Section 4. Powers and duties.

25 The department shall have the following powers and duties:

26 (1) Establish, administer and enforce an environmental  
27 laboratory accreditation program which at a minimum shall  
28 consist of the accreditation standards necessary for  
29 obtaining recognition by a State certification program,  
30 including, where appropriate, NELAP accreditation or that of

1 any comparable national accreditation program.

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

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

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

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

16 (6) Require a fee for the processing of an application  
17 for a certificate of accreditation, including the issuance,  
18 renewal, modification or other action relating to the  
19 certificate in an amount sufficient to pay the department's  
20 cost of implementation of the accreditation program.

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

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

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

28 (10) Allow the use of experimental procedures, on a  
29 case-by-case basis, to satisfy the testing or analysis  
30 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 and  
municipal authorities.

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

1 have the staff, management structure, equipment, quality  
2 assurance and quality control procedures and recordkeeping  
3 procedures necessary to ensure that the environmental laboratory  
4 generates valid and accurate test results in accordance with all  
5 conditions of accreditation and this act.

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

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

18 Section 7. Interim requirements.

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

25 (b) Time for application.--An environmental laboratory shall  
26 apply for accreditation within six months after the  
27 Environmental Quality Board establishes an accreditation  
28 requirement by regulation for a type of laboratory. The  
29 submission of an application shall provide interim authorization  
30 to continue operations until the department takes final action

1 on the application.

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

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

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

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

15 Section 8. Advisory committee.

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

20 (1) One representative of a municipal authority.

21 (2) One representative from a commercial environmental  
22 laboratory.

23 (3) One representative from an industrial environmental  
24 laboratory.

25 (4) One representative from an academic laboratory.

26 (5) One representative from a small environmental  
27 laboratory.

28 (6) One environmental engineer.

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

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

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

4           (10) Two members of the general public.

5   Section 9. Unlawful conduct.

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

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

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

1 revoke an accreditation for failure to provide the department  
2 with access to make inspections and conduct tests or sampling,  
3 including the examination and copying of books, papers, records  
4 and data pertinent to any matter under investigation pursuant to  
5 this act.

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

11 Section 10. Penalties.

12 (a) Criminal penalties.--

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

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

28 (3) A person who knowingly, willfully or recklessly  
29 misrepresents that an environmental laboratory holds a  
30 certificate of accreditation under this act commits a

1 misdemeanor of the third degree and, upon conviction, shall  
2 be subject to a fine of not less than \$1,250 nor more than  
3 \$12,500, or to imprisonment for a period of not more than one  
4 year, or both, for each separate offense.

5 (b) Administrative penalties.--

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

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

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

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

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

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

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

#### 25 Section 11. Records.

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

#### 28 Section 12. Continuation of existing rules and regulations.

29 All existing rules and regulations promulgated pursuant to  
30 any environmental statute remain in full force and effect until

1 superseded and repealed by the rules and regulations promulgated  
2 pursuant to this act.

3 Section 13. Repeals.

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

6 Section 14. Effective date.

7 This act shall take effect immediately.