

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Edwards**

# A Bill

**ACT 322 OF 1993**  
**SENATE BILL 350**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 8, CHAPTER 7,  
9 SUBCHAPTER 8 TO MAKE CERTIFICATION FOR CERTAIN  
10 ENVIRONMENTAL TESTING LABORATORIES MANDATORY; TO CLARIFY  
11 THE DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY\_S EXISTING  
12 POWER TO REFUSE TO ACCEPT INVALID TEST RESULTS; TO EXPAND  
13 THE DEPARTMENT\_S ENFORCEMENT POWERS OVER ENVIRONMENTAL  
14 TESTING; AND FOR OTHER PURPOSES."

## Subtitle

17 **"RELATING TO THE AUTHORITY OF THE DEPARTMENT OF**  
18 **POLLUTION CONTROL AND ECOLOGY WITH RESPECT TO**  
19 **ENVIRONMENTAL TESTING."**

21 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:**

23 **SECTION 1. Arkansas Code 8-2-202 is amended to read as follows:**

24 **"8-2-202. Purpose.**

25 **It is the purpose of this subchapter to authorize the Arkansas Department of Pollution**  
26 **Control and Ecology to establish and administer an environmental laboratory certification**  
27 **program so that laboratories that submit data and analyses to the department may be certified**  
28 **by the department as having demonstrated acceptable compliance with laboratory standards so**  
29 **that the validity of scientific data submitted to the department may be further assured."**

31 **SECTION 2. Arkansas Code 8-2-203 is amended to read as follows:**

32 **"8-2-203. Definitions.**

33 **As used in this subchapter, unless the context otherwise requires:**

34 **(1) \_Acceptable results\_ means results within limits determined on the basis of**  
35 **statistical procedures as prescribed by the department;**

36 **(2) \_Certificate\_ means a document issued by the department showing the parameters**

1 for which a laboratory has received certification;

2 (3) **\_Commission\_ means the Arkansas Commission on Pollution Control and Ecology**  
3 **or its successor;**

4 (4) **\_Consulting laboratory\_ means a laboratory, as defined herein, which performs**  
5 **analyses for any person other than itself, and does not include laboratories which are wholly**  
6 **owned by the person for whom the analyses are performed;**

7 (5) **\_Department\_ means the Arkansas Department of Pollution Control and Ecology;**

8 (6) **\_Evaluation\_ means a review of the quality control and quality assurance**  
9 **procedures, recordkeeping, reporting procedures, methodology, and analytical techniques of a**  
10 **laboratory for measuring or establishing specific parameters;**

11 (7) **\_Laboratory\_ means any facility that performs analyses to determine the chemical,**  
12 **physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil**  
13 **or subsoil materials or performs any other analyses related to environmental quality**  
14 **evaluations required by the department or which will be submitted to the department, except**  
15 **that evaluations to determine the engineering properties related to soil mechanics shall not be**  
16 **included herein;**

17 (8) **\_Parameter\_ means the characteristics of a laboratory sample determined by an**  
18 **analytic laboratory testing procedure;**

19 (9) **\_Performance audit sample\_ means a sample intended for laboratory analysis in which**  
20 **the concentrations of the constituents are known only to the department and which is used in a**  
21 **test procedure to determine a laboratory's analytic, quality control, and quality assurance**  
22 **precision and accuracy;**

23 (10) **\_Person\_ means any individual, corporation, company, firm, partnership,**  
24 **association, trust, joint-stock company or trust, venture, municipal, state, or federal**  
25 **government or agency, or any other legal entity, however organized;**

26 (11) **\_Program\_ means the State Environmental Laboratory Certification Program."**

27

28 **SECTION 3. Arkansas Code 8-2-204 is amended to read as follows:**

29 **"8-2-204. Powers and duties of department.**

30 **(a) The department shall have the following powers and duties under this subchapter:**

31 **(1) To establish and administer the State Environmental Laboratory Certification**  
32 **Program for laboratories applying for certification by the department;**

33 **(2) To enforce the provisions of this subchapter and all laws, rules, and regulations**  
34 **relating to the program and to environmental testing;**

35 **(3) To issue, deny, revoke, or suspend the certification of a laboratory for cause; and**

1 (4) To refuse to accept analytical results from a laboratory when the department  
2 reasonably determines that the results do not meet reasonable criteria for validation,  
3 regardless of whether the laboratory is certified.

4 (b) The commission shall have the following powers and duties under this subchapter:

5 (1) To establish by regulation reasonable fees for the certification procedures  
6 set forth in this subchapter and to cover the expenses of administering the program; and

7 (2) To promulgate as may be necessary regulations to effect the purpose and  
8 administration of the program including, but not limited to, provisions governing applications  
9 for certifications, modifications, and renewal of certification and recertification after  
10 revocation."

11

12 SECTION 4. Arkansas Code 8-2-205 is amended to read as follows: "8-2-205.  
13 Procedure for issuance of rules or regulations, appeals, hearings, etc.

14 (a) Any person who violates any provision of this chapter, or of any rule, regulation, or  
15 order issued pursuant thereto, or who commits an unlawful act hereunder, shall be subject to  
16 the same penalty and enforcement provisions as are contained in the Arkansas Water and Air  
17 Pollution Control Act, §8-4-103, as amended.

18 (b) Except as otherwise provided in this chapter, the procedure of the Arkansas  
19 Pollution Control and Ecology Commission for issuance of any rules and regulations, conduct  
20 of hearings, notice, review of actions on certificates, right of appeal, presumptions, finality of  
21 actions, and related matters shall be as provided in Part I of the Arkansas Water and Air  
22 Pollution Control Act as amended, §§ 8-4-101 - 8-4-106, 8-4-201 - 8-4-229, including without  
23 limitation §§ 8-4-202, 8-4-205 - 8-4-210, 8-4-212 - 8-4-214, 8-4-218 - 8-4-229."

24

25 SECTION 5. Arkansas Code 8-2-206 is amended to read as follows: "8-2-206.  
26 Certification - Criteria and procedure.

27 (a)(1) All consulting laboratories performing analyses for which results are to be  
28 submitted to the department shall obtain a laboratory certification under this subchapter. The  
29 department, in its sole discretion, may refuse to accept results of analyses performed by a  
30 consulting laboratory which does not hold a certification pursuant to the program for the  
31 reason that the laboratory is not certified.

32 (2) Certification for laboratories other than consulting laboratories shall not  
33 be mandatory.

34 (b) Applications for certification shall be made in the form and manner established by  
35 the department.

1 (c) Upon receipt of an application for certification, the department shall evaluate and act  
2 upon the application in accordance with the following procedures and criteria:

3 (1) The laboratory must successfully complete an evaluation. The department shall  
4 establish evaluation criteria on proper analytical, quality assurance, recordkeeping and  
5 reporting methods and procedures and facilities, equipment, and personnel requirements .

6 (2) The laboratory must submit to the department acceptable results from its  
7 analysis of performance audit samples for the specific parameters selected for certification.  
8 The department shall make available to the applicant laboratory performance audit samples  
9 for the selected parameters. In accordance with procedures required by the department, the  
10 laboratory shall return the analyzed results to the department, and the department shall  
11 determine if the laboratory has achieved acceptable results in the analysis of each sample.

12 (d) Upon completion of the laboratory evaluation and the review of the audit sample  
13 results, the department shall notify the laboratory of its determination to award or deny  
14 certification.

15 (e)(1) If the adequacy of the laboratory's capability and its adequacy have been sufficiently  
16 established to the satisfaction of the department, a certificate will be issued to the laboratory  
17 for the evaluated categories of parameters.

18 (2) If certification is denied, the department shall set forth, in writing, the reasons for  
19 denial."

20

21 SECTION 6. Arkansas Code 8-2-208 is amended to read as follows:

22 "8-2-208. Certification - Revocation.

23 (a) Once certified, a laboratory's certification may be revoked or suspended by the  
24 department:

25 (1) For knowing falsification of any data submitted to the department or any data  
26 related to laboratory analysis;

27 (2) For knowingly making any false statement, representation, or certification  
28 in any application, record, report, plan, or other document issued by or sent to the department  
29 or related to laboratory analysis;

30 (3) For knowing misrepresentation of procedures or documentation used in  
31 sampling or laboratory analysis;

32 (4) If the laboratory in question is no longer entitled to the certification by  
33 reason of its failure to comply with the proper analytical, quality assurance, recordkeeping and  
34 reporting methods and procedures and facilities, equipment, and personnel requirements on  
35 which the certification was issued; or

1           **(5) If the laboratory demonstrably fails to achieve acceptable results for specific**  
2 **parameters for which it has been certified.**

3           **(b) It shall be unlawful for any person:**

4                   **(1) To knowingly falsify any data submitted to the department or any data**  
5 **related to laboratory analysis;**

6                   **(2) To knowingly make any false statement, representation, or certification in**  
7 **any application, record, report, plan, or other document issued by or sent to the department or**  
8 **related to laboratory analysis;**

9                   **(3) To knowingly misrepresent sampling procedures or methods used in**  
10 **laboratory analysis;**

11                   **(4) To knowingly render inaccurate any certification issued under this**  
12 **subchapter; or**

13                   **(5) While knowing that a person is not certified pursuant to the program, to**  
14 **knowingly represent that that person is so certified."**

15

16           **SECTION 7. Arkansas Code 8-2-209 is amended to read as follows:**

17           **"8-2-209. Fees.**

18           **(a) The department shall be authorized to assess reasonable fees to participating**  
19 **laboratories for the administrative costs of the program. The costs will include, but are not**  
20 **limited to, the expense of conducting evaluations and the procurement of performance audit**  
21 **samples.**

22           **(b) Fees may be assessed at the time of initial application, renewal application, application**  
23 **for modification, or at the time a certificate is awarded.**

24           **(c) Following a public hearing and based upon a record calculating the reasonable**  
25 **administrative costs of conducting certification procedures set forth herein and costs of**  
26 **enforcing the terms and conditions of certificates, the commission may establish reasonable**  
27 **fees for initial issuance, annual review, and modification of certificates authorized by this**  
28 **subchapter."**

29

30           **SECTION 8. All provisions of this act of a general and permanent nature are**  
31 **amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision**  
32 **Commission shall incorporate the same in the Code.**

33

34           **SECTION 9. If any provision of this act or the application thereof to any person or**  
35 **circumstance is held invalid, such invalidity shall not affect other provisions or applications of**

1 **the act which can be given effect without the invalid provision or application, and to this end**  
2 **the provisions of this act are declared to be severable.**

3

4 **SECTION 10. All laws and parts of laws in conflict with this act are hereby repealed.**

5

6

7 **APPROVED: 03/02/93**

8

9

10

11

12