

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

A Bill

ACT 440 OF 1993
HOUSE BILL 1451

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 POLLUTION
18 CONTROL AND ECOLOGY WITH RESPECT TO ENVIRONMENTAL
19 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
26 Department of Pollution Control and Ecology to establish and administer an
27 environmental laboratory certification program so that laboratories that
28 submit data and analyses to the department may be certified by the department
29 as having demonstrated acceptable compliance with laboratory standards so that
30 the validity of scientific data submitted to the department may be further
31 assured."

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

34 "8-2-203. Definitions.

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

36 (1) Acceptable results means results within limits determined on the

1 basis of statistical procedures as prescribed by the department;

2 (2) Certificate means a document issued by the department showing the
3 parameters for which a laboratory has received certification;

4 (3) Commission means the Arkansas Commission on Pollution Control and
5 Ecology or its successor;

6 (4) Consulting laboratory means a laboratory, as defined herein,
7 which performs analyses for any person other than itself, and does not include
8 laboratories which are wholly owned by the person for whom the analyses are
9 performed;

10 (5) Department means the Arkansas Department of Pollution Control and
11 Ecology;

12 (6) Evaluation means a review of the quality control and quality
13 assurance procedures, recordkeeping, reporting procedures, methodology, and
14 analytical techniques of a laboratory for measuring or establishing specific
15 parameters;

16 (7) Laboratory means any facility that performs analyses to determine
17 the chemical, physical, or biological properties of air, water, solid waste,
18 hazardous waste, wastewater, or soil or subsoil materials or performs any
19 other analyses related to environmental quality evaluations required by the
20 department or which will be submitted to the department, except that
21 evaluations to determine the engineering properties related to soil mechanics
22 shall not be included herein;

23 (8) Parameter means the characteristics of a laboratory sample
24 determined by an analytic laboratory testing procedure;

25 (9) Performance audit sample means a sample intended for laboratory
26 analysis in which the concentrations of the constituents are known only to the
27 department and which is used in a test procedure to determine a laboratory's
28 analytic, quality control, and quality assurance precision and accuracy;

29 (10) Person means any individual, corporation, company, firm,
30 partnership, association, trust, joint-stock company or trust, venture,
31 municipal, state, or federal government or agency, or any other legal entity,
32 however organized;

33 (11) Program means the State Environmental Laboratory Certification
34 Program."

35

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

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

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

5 (1) To establish and administer the State Environmental Laboratory
6 Certification Program for laboratories applying for certification by the
7 department;

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

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

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

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

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

20 (2) To promulgate as may be necessary regulations to effect the
21 purpose and administration of the program including, but not limited to,
22 provisions governing applications for certifications, modifications, and
23 renewal of certification and recertification after revocation."
24

25 SECTION 4. Arkansas Code 8-2-205 is amended to read as follows:

26 "8-2-205. Procedure for issuance of rules or regulations, appeals,
27 hearings, etc.

28 (a) Any person who violates any provision of this chapter, or of any
29 rule, regulation, or order issued pursuant thereto, or who commits an unlawful
30 act hereunder, shall be subject to the same penalty and enforcement provisions
31 as are contained in the Arkansas Water and Air Pollution Control Act, §8-4-
32 103, as amended.

33 (b) Except as otherwise provided in this chapter, the procedure of the
34 Arkansas Pollution Control and Ecology Commission for issuance of any rules
35 and regulations, conduct of hearings, notice, review of actions on

1 certificates, right of appeal, presumptions, finality of actions, and related
2 matters shall be as provided in Part I of the Arkansas Water and Air Pollution
3 Control Act as amended, §§ 8-4-101 - 8-4-106, 8-4-201 - 8-4-229, including
4 without limitation §§ 8-4-202, 8-4-205 - 8-4-210, 8-4-212 - 8-4-214, 8-4-218 -
5 8-4-229."

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7 SECTION 5. Arkansas Code 8-2-206 is amended to read as follows:

8 "8-2-206. Certification - Criteria and procedure.

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

15 (2) Certification for laboratories other than consulting
16 laboratories shall not be mandatory.

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

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

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

26 (2) The laboratory must submit to the department acceptable
27 results from its analysis of performance audit samples for the specific
28 parameters selected for certification. The department shall make available to
29 the applicant laboratory performance audit samples for the selected
30 parameters. In accordance with procedures required by the department, the
31 laboratory shall return the analyzed results to the department, and the
32 department shall determine if the laboratory has achieved acceptable results
33 in the analysis of each sample.

34 (d) Upon completion of the laboratory evaluation and the review of the
35 audit sample results, the department shall notify the laboratory of its

1 determination to award or deny certification.

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

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

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

10 "8-2-208. Certification - Revocation.

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

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

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

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

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

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

27 (b) It shall be unlawful for any person:

28 (1) To knowingly falsify any data submitted to the department or
29 any data related to laboratory analysis;

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

33 (3) To knowingly misrepresent sampling procedures or methods used
34 in laboratory analysis;

35 (4) To knowingly render inaccurate any certification issued under

1 this subchapter; or

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

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

6 "8-2-209. Fees.

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

11 (b) Fees may be assessed at the time of initial application, renewal
12 application, application for modification, or at the time a certificate is
13 awarded.

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

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20 SECTION 8. All provisions of this act of a general and permanent
21 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
22 Code Revision Commission shall incorporate the same in the Code.

23

24 SECTION 9. If any provision of this act or the application thereof to
25 any person or circumstance is held invalid, such invalidity shall not affect
26 other provisions or applications of the act which can be given effect without
27 the invalid provision or application, and to this end the provisions of this
28 act are declared to be severable.

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

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APPROVED: 03/10/93

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