Stricken language would be deleted from and underlined language would be added to present law.

Act 244 of the Regular Session

State of Arkansas
91st General Assembly
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By: Representative Fortner

For An Act To Be Entitled
AN ACT TO AMEND AND MODERNIZE THE STATE ENVIRONMENTAL LABORATORY CERTIFICATION PROGRAM ACT TO ACCURATELY REFLECT LABORATORY ACCREDITATION; TO ENSURE THAT ANALYTES, METHODS, AND MATRICES ARE EVALUATED ACCORDING TO ACCREDITATION PROCEDURES; AND FOR OTHER PURPOSES.

Subtitle
TO AMEND AND MODERNIZE THE STATE ENVIRONMENTAL LABORATORY CERTIFICATION PROGRAM ACT.

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

SECTION 1. Arkansas Code §§ 8-2-201 – 8-2-204 are amended to read as follows:

8-2-201. Title.
This subchapter may be called the “State Environmental Laboratory Certification Accreditation Program Act”.


It is the purpose of this subchapter to authorize the Arkansas Department of Environmental Quality to establish and administer an environmental laboratory certification accreditation program so that laboratories that submit data and analyses to the department may be certified accredited by the department as having demonstrated acceptable compliance with laboratory standards so that the validity of scientific data
submitted to the department may be further assured.

8-2-203. Definitions.

As used in this subchapter:

(1) “Acceptable results” means results within limits determined on the basis of statistical procedures as prescribed by the Arkansas Department of Environmental Quality;

(2) “Accreditation” means the process by which the department recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory;

(3) "Analyte" means the characteristics of a laboratory sample determined by an analytical laboratory testing procedure;

(4) “Certificate” means a document issued by the department showing the parameters analytes for which a laboratory has received certification accreditation;

(5) “Commission” means the Arkansas Pollution Control and Ecology Commission or its successor;

(6) “Consulting laboratory” means a laboratory, as defined in subdivision (7) of this section, that performs analyses for any person other than itself, and;

(B) “Consulting laboratory” does not include laboratories that are a laboratory that is wholly owned by the person for whom the analyses are performed;

(7) “Laboratory” means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or that performs any other analyses related to environmental quality evaluations required by the department or which will be submitted to the department;

(B) “Laboratory” does not include except that evaluations to determine the engineering properties related to soil mechanics shall not
be included herein;

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

(8)(A) “Matrix” means the components of a sample other than the one (1) or more analyte of interest.

(B) “Matrix” includes without limitation nonpotable water, soil, or oil;

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

(9) “Method” means procedures and techniques for performing an activity systematically presented in the order in which the procedures and techniques are to be executed;

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

(11) “Program” means the State Environmental Laboratory Certification Program.

(11) “Proficiency test sample” means a sample of composition that is unknown to the laboratory and is provided to test whether the laboratory can produce analytical results within the specified acceptance criteria.

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

(a) The Arkansas Department of Environmental Quality shall have the following powers and duties under this subchapter:

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

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

(3) To issue, deny, revoke, or suspend the certification accreditation of a laboratory for cause; and
(4) To refuse to accept analytical results from a laboratory when the department reasonably determines that the results do not meet reasonable criteria for validation, regardless of whether the laboratory is certified accredited.

(b) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties under this subchapter:

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

(2) To promulgate, as may be necessary, regulations to effect the purpose and administration of the program, including, but not limited to without limitation, provisions governing applications for certification accreditation, modification, and renewal of certification accreditation and recertification reaccreditation after revocation.

SECTION 2. Arkansas Code §§ 8-2-206 – 8-2-209 are amended to read as follows:

8-2-206. Certification Accreditation – Criteria and procedure.

(a)(1)(A)(i) All consulting laboratories performing analyses for which results are to be submitted to the Arkansas Department of Environmental Quality shall obtain a laboratory certification accreditation under this subchapter.

(ii) A parameter An analyte, method, or matrix for which the Environmental Laboratory Accreditation Program does not provide accreditation shall be evaluated by the department for acceptance.

(B) The department, in its sole discretion, may refuse to accept results of analyses performed by a consulting laboratory that does not hold a certification pursuant to a laboratory accreditation under the program for the reason that the laboratory is not certified accredited.

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

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

(c) Upon receipt of an application for certification accreditation, the department shall evaluate and act upon the application in accordance with the following procedures and criteria:
(1)(A) The laboratory must successfully complete an evaluation.

(B) The department shall establish evaluation criteria on proper analytical techniques, quality assurance, recordkeeping, and reporting methods and procedures and facilities, equipment, and personnel requirements; and

(2)(A) The laboratory must submit to the department acceptable results from its analysis of performance audit proficiency test samples for the specific parameters analytes, methods, and matrices selected for certification accreditation.

(B) The department shall make available to the applicant laboratory performance audit samples for the selected parameters.

(C) In accordance with procedures required by the department, the laboratory shall return the analyzed results to the department, and the department shall determine if the laboratory has achieved acceptable results in the analysis of each sample.

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

(e)(1) If the adequacy of the laboratory’s capability and its adequacy recordkeeping have been sufficiently established to the satisfaction of the department, a certificate will be issued to the laboratory for the evaluated categories of parameters analytes, methods, and matrices.

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

8-2-207. Certification Accreditation — Duration — Renewal.

(a) A certificate of accreditation shall be effective for a period of one (1) year from the date of issuance, after which time the certificate accreditation will lapse.

(b) Certification Accreditation may be renewed for additional periods of one (1) year’s duration upon application for renewal made to the Arkansas Department of Environmental Quality.

8-2-208. Certification Accreditation — Revocation.

(a) Once certified a After a laboratory is accredited, the laboratory’s certification accreditation may be revoked or suspended by the
Arkansas Department of Environmental Quality for:

(1) For knowingly falsifying any data submitted to the department or any data related to laboratory analysis;

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

(3) For knowingly misrepresenting procedures or documentation used in sampling or laboratory analysis;

(4) If the laboratory in question is no longer entitled to the certification by reason of its failure failing to comply with any one (1) or more of the following requirements under which the accreditation was issued:
   (A) by action of its failure to comply with the proper analytical methods or procedures pertaining to analytical techniques, quality assurance, recordkeeping, and or reporting methods; or
   (B) methods and procedures and the facilities facility, equipment, and or personnel requirements on which the certification was issued; or

(5) If the laboratory demonstrably fails failing to achieve acceptable results for specific parameters analytes, methods, or matrices for which it has been certified accredited.

(b) It shall be unlawful for any person:

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

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

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

(4) To knowingly render inaccurate any certification accreditation issued under this subchapter; or

(5) While knowing that a person is not certified pursuant to the Environmental Laboratory Accreditation Program, to knowingly represent that that a person is so certified accredited when that person is not accredited.
8-2-209. Fees.

(a)(1) The Arkansas Department of Environmental Quality shall be authorized to may assess and collect reasonable fees to from participating laboratories for the administrative costs of the State Environmental Laboratory Certification Accreditation Program.

(2) The costs will shall include, but are not limited to without limitation, the expense of conducting evaluations and the procurement of performance audit samples.

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

(c) Following a public hearing and based upon a record calculating the reasonable administrative costs of conducting certification accreditation procedures set forth herein under this subchapter and costs of enforcing the terms and conditions of certificates accreditations, the Arkansas Pollution Control and Ecology Commission may establish reasonable fees for initial issuance, annual review, and modification of certificates accreditations authorized by this subchapter.

APPROVED: 02/21/2017