

1 State of Arkansas
2 91st General Assembly
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4

A Bill

HOUSE BILL 1259

5 By: Representative Fortner
6

For An Act To Be Entitled

8 AN ACT TO AMEND AND MODERNIZE THE STATE ENVIRONMENTAL
9 LABORATORY CERTIFICATION PROGRAM ACT TO ACCURATELY
10 REFLECT LABORATORY ACCREDITATION; TO ENSURE THAT
11 ANALYTES, METHODS, AND MATRICES ARE EVALUATED
12 ACCORDING TO ACCREDITATION PROCEDURES; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15
16 TO AMEND AND MODERNIZE THE STATE
17 ENVIRONMENTAL LABORATORY CERTIFICATION
18 PROGRAM ACT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

26 8-2-201. Title.

27 This subchapter may be called the “~~State~~ Environmental Laboratory
28 ~~Certification~~ Accreditation Program Act”.

29
30 8-2-202. Purpose.

31 ~~It is the purpose of this subchapter to authorize~~ This subchapter
32 authorizes the Arkansas Department of Environmental Quality to establish and
33 administer an environmental laboratory ~~certification~~ accreditation program so
34 that laboratories that submit data and analyses to the department may be
35 ~~certified~~ accredited by the department as having demonstrated acceptable
36 compliance with laboratory standards so that the validity of scientific data



1 submitted to the department may be further assured.

2
3 8-2-203. Definitions.

4 As used in this subchapter:

5 (1) "Acceptable results" means results within limits determined
6 on the basis of statistical procedures as prescribed by the Arkansas
7 Department of Environmental Quality;

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

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

13 ~~(2)(4)~~ "Certificate" means a document issued by the department
14 showing the ~~parameters~~ analytes for which a laboratory has received
15 ~~certification~~ accreditation;

16 ~~(3) "Commission" means the Arkansas Pollution Control and~~
17 ~~Ecology Commission or its successor;~~

18 ~~(4)(5)(A)~~ "Consulting laboratory" means a laboratory, ~~as defined~~
19 ~~in subdivision (7) of this section,~~ that performs analyses for any person
20 other than itself, ~~and.~~

21 (B) "Consulting laboratory" does not include laboratories
22 that are a laboratory that is wholly owned by the person for whom the
23 analyses are performed;

24 ~~(5) "Department" means the Arkansas Department of Environmental~~
25 ~~Quality;~~

26 (6) "Evaluation" means a review of the quality control and
27 quality assurance procedures, recordkeeping, reporting procedures,
28 methodology, and analytical techniques of a laboratory for measuring or
29 establishing specific ~~parameters~~ analytes;

30 (7)(A) "Laboratory" means any facility that performs analyses to
31 determine the chemical, physical, or biological properties of air, water,
32 solid waste, hazardous waste, wastewater, or soil or subsoil materials or
33 that performs any other analyses related to environmental quality evaluations
34 required by the department or which will be submitted to the department.

35 (B) "Laboratory" does not include ~~except that~~ evaluations
36 to determine the engineering properties related to soil mechanics shall not

1 ~~be included herein;~~

2 ~~(8) "Parameter" means the characteristics of a laboratory sample~~
 3 ~~determined by an analytic laboratory testing procedure;~~

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

6 (B) "Matrix" includes without limitation nonpotable water,
 7 soil, or oil;

8 ~~(9) "Performance audit sample" means a sample intended for~~
 9 ~~laboratory analysis in which the concentrations of the constituents are known~~
 10 ~~only to the department and that is used in a test procedure to determine a~~
 11 ~~laboratory's analytic, quality control, and quality assurance precision and~~
 12 ~~accuracy;~~

13 (9) "Method" means procedures and techniques for performing an
 14 activity systematically presented in the order in which the procedures and
 15 techniques are to be executed;

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

20 ~~(11) "Program" means the State Environmental Laboratory~~
 21 ~~Certification Program.~~

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

26
 27 8-2-204. Powers and duties of department and commission.

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

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

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

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

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

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

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

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

15
 16 SECTION 2. Arkansas Code §§ 8-2-206 – 8-2-209 are amended to read as
 17 follows:

18 8-2-206. ~~Certification~~ Accreditation – Criteria and procedure.

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

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

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

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

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

34 (c) Upon receipt of an application for ~~certification~~ accreditation,
 35 the department shall evaluate and act upon the application in accordance with
 36 the following procedures and criteria:

1 (1)(A) The laboratory must successfully complete an evaluation.

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

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

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

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

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

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

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

25
 26 8-2-207. ~~Certification~~ Accreditation - Duration - Renewal.

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

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

33
 34 8-2-208. ~~Certification~~ Accreditation - Revocation.

35 (a) ~~Once certified a~~ After a laboratory is accredited, the
 36 laboratory's ~~certification~~ accreditation may be revoked or suspended by the

1 Arkansas Department of Environmental Quality for:

2 (1) ~~For knowing falsification of~~ Knowingly falsifying any data
 3 submitted to the department or any data related to laboratory analysis;

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

8 (3) ~~For knowing misrepresentation of~~ Knowingly misrepresenting
 9 procedures or documentation used in sampling or laboratory analysis;

10 (4) ~~If the laboratory in question is no longer entitled to the~~
 11 ~~certification by reason of its failure~~ Failing to comply with any one (1) or
 12 more of the following requirements under which the accreditation was issued:

13 (A) ~~by action of its failure to comply with the proper~~
 14 ~~analytical~~ Methods or procedures pertaining to analytical techniques, quality
 15 assurance, recordkeeping, ~~and~~ or reporting methods; or

16 (B) ~~methods and procedures and the facilities~~ Facility,
 17 equipment, ~~and~~ or personnel requirements ~~on which the certification was~~
 18 ~~issued~~; or

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

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

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

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

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

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

32 (5) ~~While knowing that a person is not certified pursuant to the~~
 33 ~~Environmental Laboratory Accreditation Program, to~~ To knowingly represent
 34 ~~that~~ that ~~a person is so certified~~ accredited when that person is not
 35 accredited.

36

1 8-2-209. Fees.

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

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

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

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

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