

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1259

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”.

8-2-202. Purpose.

~~It is the purpose of this subchapter to authorize~~ This subchapter authorizes 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;

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

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

~~(4)~~(5)(A) "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;

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

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

(7)(A) "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 knowing falsification of~~ Knowingly falsifying any data submitted to the department or any data related to laboratory analysis;
 - (2) ~~For knowingly~~ 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 knowing misrepresentation of~~ 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~~ 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