WEST VIRGINIA CODE: §22-1-15

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

(a) The director shall promulgate rules to require the certification of laboratories conducting waste and wastewater tests and analyses to be used for purposes of demonstrating compliance under the covered statutory programs, including reasonable annual certification fees based upon the type or classification of tests or analyses being conducted by laboratories, to be assessed against laboratory owners or operators in an amount necessary to cover the actual costs of administration of this program and the processing of certification applications, to be deposited in the state Environmental Laboratory Certification Fund created pursuant to this section. By July 1, of each year, the director shall provide to the secretary a written report reflecting funds collected, how the funds were expended, and an assessment of the adequacy of the funding to administer the program.

(b) After the effective date of the rules promulgated pursuant to this section, waste and wastewater tests and analyses conducted in laboratories that are not certified for the parameters or toxicity being tested or analyses shall not be accepted by the division, except as otherwise provided, as being in compliance with the requirements, rules or orders of the division issued under authority of one or more of the covered statutory programs: Provided, That field tests and remote monitoring or testing equipment which is conducted or located away from any laboratory may be considered a laboratory for purposes of assessing the fee, but shall be subject to such quality assurance and quality control standards as may be established by the director in rules promulgated pursuant to this section. The director shall provide by rule for the granting of certification for laboratories located outside of West Virginia pursuant to this section if the laboratories provide written documentation that approval has been received under requirements in their state and determined by the director to be equivalent to the West Virginia laboratory certification program. The reciprocal certification shall be granted only for testing methods and parameters for which the laboratory holds a valid authorization in the other state and only for laboratories in states which allow reciprocity with respect to laboratories located in this state.

(c) Application shall be made to the director for approval or certification by laboratories on forms and in a manner prescribed by the director.

(d) Certification shall be renewed on an annual basis. The existing certification remains in effect until the director notifies the applicant for renewal that renewal of certification has been granted or denied.

(e) Certification shall be granted for those tests or parameters for which the laboratory demonstrates adequate performance on performance evaluation tests based on the criteria established in rules by the director. The director shall, by rule, establish criteria governing what shall be considered in any decision to deny or issue a certification.

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(f) Failure to comply with the requirements of the applicable analytical methods and procedures or standards specified in the rules of the director is grounds for revocation or suspension of certification for the affected test procedures or parameters.

(g) No person subject to the covered statutory programs shall be allowed to use data or test results from waste and wastewater tests and analyses conducted at laboratories lacking certification for purposes of demonstrating compliance under the covered statutory programs: Provided, That any person whose data or test results are invalidated because that person had relied upon a laboratory which loses its certification, shall be granted 30 days after notice of the invalidated test results by the director during which data or test results may be repeated or reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered statutory programs.

(h) A special revenue fund designated the Environmental Laboratory Certification Fund shall be continued in the State Treasury on July 1, 1994. The net proceeds of all fees collected pursuant to this section shall be deposited in the environmental laboratory certification fund. Upon line-item appropriation by the Legislature, the director shall expend the proceeds, including the interest thereon, of the environmental laboratory certification fund solely for the administration of the requirements of this section.

(i) For purposes of this section, "covered statutory program" means one of the regulatory programs developed under statutory authority of one of the following acts of the Legislature: Water Pollution Control Act, §22-11-1 *et seq*. of this code; Hazardous Waste Management Act, §22-18-1 *et seq*. of this code; Hazardous Waste Emergency Response Fund Act, §22-19-1 et seq. of this code; Underground Storage Tank Act, §22-17-1 *et seq*. of this code; the Solid Waste Management Act, §22-15-1 et seq. of this code; or the Groundwater Protection Act, §22-12-1 *et seq*. of this code.

(j) Any person adversely affected by an order or action by the director pursuant to this section, or aggrieved by the failure or refusal of the director to act within a reasonable time, or by the action of the director in granting or denying a certification or renewal of a certification, may appeal to the environmental quality board pursuant to §22B-1-1 *et seq*. of this code.

(k) The provisions of this section apply only to tests and analyses of waste or wastewater subject to regulation by the Division of Environmental Protection. The provisions of this section do not apply to tests or analyses of potable or drinking water.

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