WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED
Com. Sub. For
HOUSE BILL No. 4213

(By Delegate Kiss)

Passed March 9, 1996
In Effect Ninety Days from Passage
AN ACT to amend and reenact section fifteen, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to laboratory certification; expanding the aggregate amount which can be received annually in the environmental laboratory certification fund; requiring out-of-state laboratories performance testing and payment of certification fees; and allowing the division of environmental protection to expend any interest accumulated in the environmental laboratory certification fund.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§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 not to exceed an annual program aggregate of three hundred thousand dollars, 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 the first day of July 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 shall not 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 ap-
provai 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 direc-
tor notifies the applicant for renewal that renewal of certif-
ication has been granted or denied.

(e) Certification shall be granted for those tests or
parameters for which the laboratory demonstrates ade-
quate 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.

(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 revoca-
tion or suspension of certification for the affected test
procedures or parameters.

(g) No person subject to the covered statutory pro-
grams shall be allowed to use data or test results from
waste and wastewater tests and analyses conducted at labo-
ratories lacking certification for purposes of demonstrat-
ing compliance under the covered statutory programs:
Provided, That any person whose data or test results are
invalidated because that person had relied upon a labora-
tory which loses its certification, shall be granted thirty
days after notice of the invalidated test results by the di-
rector during which data or test results may be repeated or
reanalyzed by a certified laboratory for purposes of dem-
onstrating compliance under the covered statutory pro-
grams.

(h) A special revenue fund designated the "environ-
mental laboratory certification fund" shall be continued in the state treasury on the first day of July, one thousand nine hundred ninety-four. 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, article eleven of this chapter; Hazardous Waste Management Act, article eighteen of this chapter; Hazardous Waste Emergency Response Fund Act, article nineteen of this chapter; Underground Storage Tank Act, article seventeen of this chapter; the Solid Waste Management Act, article fifteen of this chapter; or the Groundwater Protection Act, article twelve of this chapter.

(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 article one, chapter twenty-two-b 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 21st day of March, 1996.

Governor
PRESENTED TO THE GOVERNOR

Date 3/4/96
Time 3:20 pm