

**PROPOSED RULEMAKING  
ENVIRONMENTAL QUALITY BOARD  
[ 25 Pa. Code Chapter 252 ]**

**Environmental Laboratory Accreditation Fees**

The Environmental Quality Board (Board) proposes to amend Chapter 252 (relating to environmental laboratory accreditation). This proposed rulemaking would revise the current fee structure in § 252.204 (relating to fees). The proposed amendments to Chapter 252 would increase the fees for environmental laboratories seeking accreditation for testing, analyzing, or reporting results for environmental samples identified in § 252.3 (relating to scope). Accredited environmental laboratories remit payment of fees to the Department of Environmental Protection (Department) to support the costs of administering the accreditation program.

This proposed rulemaking was adopted by the Board at its meeting of **DATE**.

*A. Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

*B. Contact Persons*

For further information contact Annmarie Beach, Chief, Laboratory Accreditation Program, P.O. Box 1467, Harrisburg, PA 17105-1467, (717) 346-8212, or Leda Lacomba, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in section J of this preamble. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposed rulemaking is available on the Department's website at <https://www.pa.gov/agencies/dep.html> (select "Public Participation," then "Environmental Quality Board" then navigate to the Board meeting of **DATE**).

*C. Statutory Authority*

This proposed rulemaking is authorized under 27 Pa.C.S. § 4105(a) (relating to powers and duties of Environmental Quality Board), commonly referred to as the Environmental Laboratory Accreditation Act (27 Pa.C.S. §§ 4101—4113) (ELAA), and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), authorizing and directing the Board to adopt regulations necessary for the proper performance of the work of the Department.

*D. Background and Purpose*

In 2002, the General Assembly enacted the ELAA, which required the Department to establish and implement the Commonwealth's Environmental Laboratory Accreditation Program (Program). As required by 27 Pa.C.S. § 4104(6) (relating to powers and duties), laboratory accreditation fees and compliance activities must be "in an amount sufficient to pay the department's cost of implementing and administering the accreditation program." The

environmental laboratory accreditation fees were first promulgated in 2006 at 36 Pa.B. 465 (January 28, 2006), and then updated in 2010 at 40 Pa.B. 1898 (April 10, 2010) and 2017 at 47 Pa.B. 4085 (July 29, 2017).

The Program provides accreditation for the State environmental laboratory certification program and for the National Environmental Laboratory Accreditation Program (NELAP). Small laboratories associated with drinking water or wastewater treatment facilities (government or privately owned) and a range of commercial or private laboratories seek State or NELAP accreditation. Additionally, commercial laboratories, municipal laboratories and small laboratories associated with drinking water treatment plants can also be accredited to the United States Environmental Protection Agency's drinking water program. Accredited laboratories perform regulated environmental testing as required by Federal and State laws. Accreditation by the Program ensures that the data generated from the testing at these laboratories is accurate, of high quality and legally defensible to support environmental policy decisions and enforcement actions for the 12 environmental statutes listed in § 252.3(a).

Laboratories engage the Program to apply for, then annually renew, their accreditation certificates and can request additions to or deletions from their certificate. Certificate amendments include a change in laboratory ownership, a change in administrative information or the addition of different fields (that is, categories) of accreditation. By assessing each accredited laboratory's operations in accordance with the ELAA and the Department's regulations in Chapter 252, the Program protects the environment and ensures the health, safety and welfare of the residents of this Commonwealth while supporting an important laboratory industry in the State.

The accredited laboratories send their payments to the Program based on the fee schedule to support the activities of 11 personnel. Program staff process applications for State and NELAP accreditation, assess each laboratory's categories or fields of accreditation, document changes in laboratory ownership or administration and perform supplemental onsite assessments. The accreditation fees also cover operational costs, which include assessor trainings, travel to laboratories for assessments, leased building office space, office supply expenditures and IT consulting and administrative services.

#### *Fee and cost analysis report*

The Department presented the most recent fee report on the Program's revenue and costs to the Board on September 10, 2024, which is available on the Board's website at <https://www.pa.gov/agencies/dep/public-participation/environmental-quality-board/archived-meetings.html>. The report's analysis indicates that in fiscal year (FY) 2024-2025, program costs are expected to exceed projected fee revenue and will steadily increase through FY 2026-2027.

The Department has historically classified environmental laboratories based on the scope of the laboratory's accreditation. There are three classifications: small laboratories, which include small commercial laboratories, public drinking water systems and wastewater systems; medium laboratories; and large laboratories. Small laboratories perform testing in microbiology and/or basic inorganic non-metals; medium laboratories perform testing in microbiology, inorganic non-metals, trace metals, and sometimes volatile and semi-volatile organic compounds; large

laboratories perform the same tests as medium laboratories and/or more complex testing such as radiochemistry and asbestos. There are currently 340 laboratories accredited by the Program. Two of those laboratories are state government-owned and do not pay accreditation fees. The remaining accredited clients include 224 small laboratories, 62 medium laboratories, and 52 large laboratories.

At the time of drafting the fee report in the spring of 2024, the total estimated revenue for the Program for FY 2023-2024 was approximately \$1,600,000, which matched the estimated program costs. However, the Program's fee revenue is projected to decrease to \$1,580,000 by FY 2026-2027, while the projected program costs for are expected to increase to approximately \$1,950,000. This leaves a projected deficit of \$370,000. Most of the increase in Program costs are related to personnel, but operational costs also are projected to increase from approximately \$330,000 in FY 2023-2024 to \$570,000 in FY 2026-2027. As a result of the projected revenue shortfall, the Department recommended a proposed rulemaking to increase the Program's fees to ensure that all program costs will be covered.

#### *Advisory committee consultation*

A draft of the proposed regulation to update the fee schedule was presented at the Laboratory Accreditation Advisory Committee meeting on November 19, 2024. Based on the FY 2023-2024 application figures and projected future costs, the proposal included a 27% increase in fees to generate approximately \$460,000 and ensure sufficient fee income to cover the expected revenue short fall in FY 2026-2027. Committee members offered suggestions about the draft proposed regulation. Members requested that the proposed fees be rounded to the nearest \$50 increment to simplify calculation of payments. This change was incorporated into the proposed fee schedule. Members inquired why there was no increase for the application fee for "Ownership Transfer or Change in Administrative Information." No change was necessary for this item as the cost to process a new certificate has not increased since 2017.

Members also suggested a change to the fee schedule to create a separate category for emerging new technologies such as PFAS testing and recommended the Department evaluate the current testing packages for drinking water and non-potable water analytes to determine if the fees are appropriate in relation to other types of analytes. The Department informed the members that the Program does not have the data needed to support these proposed changes yet and would need to gather additional information and analysis to potentially include these suggestions in a future rulemaking.

Without an adjustment to the fee schedule, the gap between the collected fees and program costs will continue to grow. There has been a steady decrease in the number of laboratories seeking State and NELAP accreditation over the last decade, from 450 laboratories in 2017 to only 340 currently, which could continue to decline. The Department proposes a fee increase to ensure the Program costs are covered through FY 2026-2027, when they are estimated to reach \$1,950,000. Based upon the accreditation applications submitted in FY 2023-2024, the estimated revenue with the proposed increase of 27% rounded to the nearest \$50 is approximately \$2 million.

## *E. Summary of Regulatory Requirements*

### *§ 252.204. Fees.*

In subsection (a), the fees for all but one of the categories listed in the fee schedule are proposed to be increased by 27% and rounded to the nearest \$50 increment. As discussed previously, only the “Ownership Transfer or Change in Administrative Information” application fee of \$150 is not proposed to be increased because the time and cost to perform this accreditation activity has not increased since the last fee update.

The proposed fee increase would generate approximately \$460,000 in additional annual revenue and ensure sufficient fee income to cover the expected revenue short fall in FY 2026-2027. The increase would also provide a small margin of safety in case laboratory accreditations decrease more than expected.

## *F. Benefits, Costs, and Compliance*

### *Benefits*

The proposed fee schedule increase is necessary to ensure that adequate funding is available for the Department to implement the Commonwealth’s Environmental Laboratory Accreditation Program, as required by the ELAA. Laboratory accreditation is important because it demonstrates a laboratory’s technical competence, reliability, and adherence to National and State standards. Accreditation provides the laboratory’s clients with confidence in the quality of test results and assures them that the laboratory is producing accurate and dependable data as well as meeting regulatory requirements. Certified laboratories perform standard testing methods to detect biological and chemical contaminants in samples related to drinking water, recreational water, air and soil. Assessment of each laboratory’s compliance to accepted testing methods, quality control measures, and operational standards minimizes the risk of reporting inaccurate data that can detrimentally affect human and environmental health.

The Program fee schedule has not been increased since 2017, although costs to maintain the Program have steadily increased. If fees are not increased to cover program costs, the availability to carry out the Commonwealth’s Environmental Laboratory Accreditation Program will be jeopardized.

For these reasons, the Department would benefit from the proposed rulemaking by having the additional revenue to cover the cost of the Program, as mandated by the ELAA. The residents of this Commonwealth would benefit from this proposed rulemaking by ensuring laboratories providing testing for regulatory monitoring and enforcement in this Commonwealth are competent, impartial and independent.

### *Compliance costs*

The cost of compliance with this proposed rulemaking is the proposed 27% increase in the Program fee schedule to provide sufficient revenue beginning in FY 2026-2027. Taking into consideration inflation since the last time the fee schedule was increased in 2017, the cost of compliance is being increased in line with inflation rates.

### *Compliance assistance plan*

The Department will inform the regulated community of the fee schedule increase by informing LAAC, sending email notices to accredited laboratories and publishing notification in the *Pennsylvania Bulletin*.

### *Paperwork requirements*

This proposed rulemaking does not require additional recordkeeping or reporting requirements.

### *G. Pollution Prevention*

The Pollution Prevention Act of 1990, 42 U.S.C. §§ 13101—13109, established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This proposed rulemaking ensures that accredited laboratories will be held to minimum requirements of the standards and that test results are defensible by collecting enough revenue to sustain the laboratory accreditation program. These reliable test results will provide compliance data to ensure regulated entities are adhering to environmental protection standards and individually permitted pollution limits, which protect the health and safety of the residents in this Commonwealth.

### *H. Sunset Review*

The Board is not establishing a sunset date for this proposed rulemaking because it is needed for the Department to carry out its statutory authority. As required by § 252.204(b), the Department will evaluate the fees in § 252.204(a) at least every 3 years and, when necessary, recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department's cost of administering the Program with the objective of ensuring sufficient fees to meet all Program costs.

### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (RRA) (71 P.S. § 745.5(a)), on **DATE**, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairpersons of the Environmental Resources and Energy Committee of the Senate and the Environmental and Natural Resource Protection Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the RRA, IRRC may convey any comments, recommendations, or objections to the proposed rulemaking within 30 days of the close of the public comment period.

The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the RRA (71 P.S. § 745.5b) which have not been met. The RRA specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

#### *J. Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by **DATE**.

Comments may be submitted to the Board online, by email, by mail or express mail as follows. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board online by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may also be submitted by email to [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by email is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

Comments may also be submitted to the Board by mail or express mail. Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

JESSICA SHIRLEY,  
*Chairperson*