

January 30, 2013

Philip Oshida
Director
Standards and Risk Management Division
Office of Water (MC 4601M)
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Mr. Oshida:

As the trade association for the commercial environmental laboratory industry, the American Council of Independent Laboratories (ACIL) is writing to petition the Environmental Protection Agency to change the Safe Drinking Water Act (SDWA) implementation regulations in 40 CFR 142.10.

Under the changes that we are requesting, states that have primary responsibility for public drinking water systems would, be permitted to accept laboratory accreditations from recognized professional accreditation organizations in lieu of having to perform the laboratory assessment and accreditation themselves. In addition, ACIL is requesting EPA to clarify the wording of the current regulatory requirements to make it clear that states operating their own laboratory accreditation program may employ non-state staff and organizations to conduct the document review and on-site laboratory audit portions of the accreditation program. This would allow qualified accreditation bodies to perform these functions and make accreditation recommendations, regarding laboratory qualifications, to the state. Finally, we recommend that EPA change the wording of 142.10(3)(ii) to clarify that the Tribal waiver refers to use of accredited laboratories rather than certified laboratories to comport with current usage of the terms accreditation and certification as they refer to laboratories.

These changes would not require the state to change their current processes. This will however, allow states the flexibility to change the manner in which they comply with the EPA requirement for all laboratories conducting drinking water testing be accredited.

The changes we are requesting do not place any new mandates on the states, Indian Tribes, or the laboratories conducting drinking water compliance monitoring. Rather,

the changes would give states the additional flexibility to recognize accreditations issued by professional laboratory accreditation organizations with proven expertise, in auditing environmental testing laboratories, rather than having to establish and operate their own accreditation program and to fund those programs.

The changes also clarify the intent of the regulations: that states have the right to employ non-state staff and organizations to review documents, conduct on-site audits of laboratories, and issue accreditation recommendations to the state.

The current system where accreditation is performed by the laboratory's home state and by subsequent states for laboratories doing interstate business is very inefficient for both state governments and the commercial laboratory sector. The recent economic downturn has prevented states from maintaining their accreditation systems at the level necessary to provide timely accreditations of all laboratories thus inhibiting the ability to maintain confidence in all compliance results being produced. Generally budget constraints have affected all activities that are necessary to operate an effective and efficient accreditation system.

By changing the regulations to permit states to recognize accreditations issued by professional laboratory accreditation organizations, the above problems can be addressed by the states without the need for states to expend additional resources.

With the proposed change, states could allow laboratories to apply to a professional accreditation organization (otherwise known as a non-governmental Accreditation Body or AB) for accreditation. The laboratory would pay the accrediting organization a fee to accredit them to the requirements of the Drinking Water Program. Once accredited, a laboratory would apply to the State and pay a fee for licensure. The licensure process would require the laboratory to provide their accreditation and any necessary supporting documents. An accreditation and license would be valid for an established time period, but is only valid as long as the laboratory remains accredited. Non-state issued accreditations would be conducted to comply with a recognized standard for accreditation such as those established by The NELAC Institute (TNI).

A state may decide to maintain their own accreditation system in addition to permitting non-governmental accreditations. This allows the laboratories the option to be assessed and accredited by the State, with the State charging a fee they decide is appropriate for accreditation, otherwise the laboratory could choose to obtain accreditation from a non-governmental accreditation body (AB) and submit the appropriate documentation for state recognition. By honoring this petition, the following benefits are possible:

- States that elect to adopt an externalized accreditation program using established non-governmental ABs would no longer have to devote staff resources to the development and promulgation of accreditation standards and regulations. It would reduce/eliminate the cost of maintaining teams of trained laboratory assessors with expertise in a variety of analytical disciplines, and would further reduce/eliminate the costs of maintaining an administrative staff to manage the accreditation system.
- Accepting non-governmental AB issued accreditations would save states the cost of accrediting any laboratory that elects to be accredited by an outside AB.
- Since laboratories would have the option of obtaining their accreditation from a non-governmental AB, delays in obtaining or maintaining accreditations due to lack of sufficient state resources would be eliminated, without states having to hire and train additional staff.
- If all states were to implement such a system, a laboratory operating in multiple states would only have to obtain one accreditation from a recognized AB since it would be valid nationally and would be subject to uniform national standards.
- Compliance of laboratories with changes in national environmental laboratory accreditation standards would be implemented within 2 years without requiring any action on part of the State.
- Since the proposed change does not require states to change their current systems, a state may elect to continue to perform all accreditations and assessments.

We respectfully offer the following regulatory language for your consideration:

Section 142.10 would be amended by revising paragraphs (b)(3)(i) and (ii) to read as follows:

(3)(i) ~~The establishment and maintenance of a State program for the certification of laboratories~~ Has established and maintains a program which requires that laboratories conducting analytical measurements of drinking water contaminants pursuant to the requirements of the State primary drinking water regulations including the designation by the State of a laboratory officer, or officers, certified by the Administrator, as the official(s) responsible for the State's certification program. be accredited either by the State or by a recognized accreditation body. Such recognized accrediting bodies include other governmental and nongovernmental organizations recognized as accrediting bodies under the National Environmental Laboratory Accreditation Program (NELAC), the International Laboratory Accreditation Cooperation (ILAC), or the National Cooperation for Laboratory Accreditation (NACLA). States operating laboratory accreditation programs may employ contracted staff and organizations to review documents, conduct on-site audits of laboratories, and issue accreditation recommendations to the state. The requirements of this paragraph may be waived by the Administrator for any State where all analytical measurements required by the State's primary drinking water regulations are conducted at laboratories operated by the State and certified by the Agency. Until such time as the Agency establishes a National quality assurance program for laboratory certification the State shall maintain an interim program for the purpose of approving those laboratories from which the required analytical measurements will be acceptable.

(ii) Upon a showing by an Indian Tribe of an intergovernmental or other agreement to have all analytical tests performed by an accredited ~~certified~~ laboratory, the Administrator may waive this requirement.

Thank you for your consideration of our petition and we would greatly appreciate the opportunity to discuss this request with you or your staff.

Sincerely yours,

A handwritten signature in blue ink, appearing to be 'M. Bush', written over a faint, light blue circular stamp or watermark.

Milton M. Bush, JD, CAE,
Chief Executive Officer, ACIL

cc: Michael Shapiro
Peter C. Grevatt
Gregory Carroll