



APHL Position Statement

Non-governmental Accrediting Bodies for Environmental Laboratories

A. Statement of Position

APHL supports the ongoing role and responsibility of government in the accreditation of environmental laboratories, and therefore opposes privatization of environmental laboratory accreditation. Although there is a role for third-party assessors at environmental laboratories, they must participate in the regulatory program with the oversight of government agencies.*

B. Implementation

APHL will present and make this Position Statement available to all interested parties and stakeholders, including: the State Assessors Forum, The NELAC Institute, EPA's Office of Water, Forum on Environmental Measurements, and Environmental Laboratory Advisory Board, the National Environmental Monitoring Conference, and the American Council of Independent Laboratories.

C. Background/Data Supporting Position

Accreditation helps assure and document that a given laboratory remains capable of performing quality testing. Consistent and accurate testing is important to **environmental laboratories, which play a critical role in detecting potentially harmful contaminants in our air, water and soil.** The results generated by these laboratories can have far-ranging impacts including: understanding the human health effects of pollution, preventing or

limiting exposure to harmful chemicals or microbiological agents, having trustworthy data and evidence for enforcement actions, having data to make decisions regarding treatment of water and wastewater, and helping quantify the economic impact of pollution such as decreased property values and costs to remediate hazardous waste sites.

Because of the potential adverse impacts on society related to poor laboratory practices, environmental laboratory accreditation historically remained within the public sphere. However, the **American Council of Independent Laboratories recently began an organized lobbying campaign to create a private-sector approach to laboratory accreditation.**¹ The idea of completely shifting responsibility for environmental laboratory accreditation from the public to the private sector is also receiving attention from other important groups, including The NELAC Institute,² U.S. Environmental Protection Agency's (EPA's) Environmental Laboratory Advisory Board (which is assessing the viability of national environmental laboratory accreditation),³ and the State Assessors Forum (a volunteer group that discusses regulatory and technical issues related to the assessment of environmental laboratories). While third-party assessment is acceptable with sufficient government oversight, including an appropriate

*In some states certification has the same meaning as accreditation.

validation and standardization process, APHL opposes the complete privatization of environmental laboratory accreditation. States must maintain regulatory authority over any third-party assessor.

Unlike the private sector, the role of government is “to regulate private interests for the public good” (e.g. to protect the public health, welfare, and promote the common good).⁴ Governments answer to the general public, not to corporate shareholders or Boards of Directors. At its core, public health law assures the necessary conditions for people to be healthy, both clinically and environmentally, and it assures that the state has the power to promote and enforce those conditions.⁵ **Within a government’s duty to promote a healthy environment and community is the inherent interest to ensure that laboratories are operating at the highest possible quality and in the best interest of public health.** This remains especially true where test results are used to determine compliance with laws and regulations—a strictly governmental function.

There are two legal issues to consider regarding non-governmental accreditation of environmental laboratories. First, the legal authority associated with accreditation is fundamentally linked to the legal authority to pursue enforcement; **a non-governmental accrediting body cannot cite laboratories that are not in compliance with accreditation standards.** Second, in order to enforce corrective actions and provide needed technical assistance when a laboratory has deficiencies in its operation, assessing bodies must be consistent in their application of the regulations. Consistency in the interpretation of standards prevents legal conflicts that could arise if a laboratory expended time and resources to correct a deficiency only to find it judged unacceptable by a state regulator. Adding non-governmental accreditors to the system, without government

regulating the system, would only create uncertainty with the interpretation of legal standards and requirements, the violation of which could lead to an enforcement action. **Breaking the fundamental link between accreditation and enforcement will lead to inconsistent interpretation within the accreditation community.** For this reason, government must maintain its authority to govern the standards and application of laboratory accreditation.

For additional consequences associated with completely privatized non-governmental accreditation of environmental laboratories, please refer to the Appendix below.

Eliminating the states’ role in laboratory oversight would have far-reaching impacts for protection of environmental and public health. Shifting accreditation responsibilities to the private sector would limit a state’s ability to enforce its regulations affecting people’s health and safety, put states in jeopardy of losing in-house expertise, cause states to lose accredited laboratory capacity due to the high cost of evaluations, and may ultimately cost a state loss of primacy and access to federal assistance money. For these reasons, environmental laboratory accreditation should properly remain a government function.

* This position is limited to the environmental field, and does not include clinical, food or occupational laboratories.

D. References

*In some states certification has the same meaning as accreditation.

1. American Council of Independent Laboratories. ACIL Newsletter: Highlights from 74th Annual Meeting. [Online] Nov/Dec 2011. <http://acil.affiniscape.com/associations/1304/acil-shn/>.
2. The NELAC Institute. Accreditation Body Task Force Issues Report. [Online] July 2011. <http://nelac-institute.org/docs/news/ABTFReport071311r1.pdf>.
3. See ELAB's meeting minutes from June, July, August, September, November, and December 2011 at: <http://www.epa.gov/elab/minutes.htm>. ELAB discusses national accreditation topics in each meeting.
4. Institute of Medicine. The Future of Public Health. [Online] 1988. http://www.nap.edu/openbook.php?record_id=1091; Centers for Disease Control & Prevention. Law as the Basis of Public Health Action. [Online] <http://www2a.cdc.gov/phlp/ph101/>.
5. Centers for Disease Control & Prevention. Law as the Basis of Public Health Action. [Online] <http://www2a.cdc.gov/phlp/ph101/>.

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Appendix

Beyond stripping government of its responsibility to its citizens to determine that laboratories are working in society's interest, there are other implications and unintended consequences associated with privatizing laboratory accreditation:

- If a non-governmental accrediting body does not have the legal authority to enforce standards, as discussed above, increased fraud could result. Laboratories with unscrupulous personnel could prosper, threatening the health of the public who rely on accurate data. Additionally, such facilities would have an unfair competitive advantage compared to laboratories that are in compliance with the regulations.
- Relinquishing leadership and control of accreditation over the long term will likely result in states losing technical knowledge associated with laboratory practices, including how to interpret results of analyses. Such intellectual loss could result in governments being unable to assist laboratories when needed.
- By moving oversight of laboratory operations outside of government, accompanied with an erosion of laboratory expertise, states may lose the knowledge needed to properly enforce environmental laws and regulations. Without in-house expertise in laboratory methods and results, enforcement agencies will become more dependent on outside resources to properly perform the state-specific role of prosecuting society's laws. Such agencies will necessarily have to rely on private-party interpretation of laboratory methods, standards, and results, injecting levels of uncertainty into enforcement efforts that are not a concern today.
- While APHL is not opposed to third-party assessors, we want to emphasize the importance of maintaining the State's role in the assessment process. While third-party assessors can be used to supplement State oversight activities, it is important to maintain State assessors to continue educational and training connections with the regulated community. Without the occasion to evaluate laboratory operations, State Assessors would lose their primary opportunity for educational interaction with front-line laboratory personnel. Assessments frequently provide an opportunity to offer technical assistance. Fully privatizing the assessments would mean that laboratory personnel would not receive necessary training and interpretation of regulations and requirements directly from state regulators themselves. Instead, laboratory personnel will be relying on a private individual's interpretation of governing laws and regulations.
- States would lose valuable, regular contact with the laboratories they accredit. Currently, if governments notice a recurring error or question in laboratory practices, they can issue guidance to a wide range of constituents at one time. If several private accreditors are servicing the laboratories in a state like New York, which has hundreds of laboratories, correcting common themes and mistakes may be delayed or omitted altogether.
- If the free market governs laboratory accreditation, small laboratories may be disproportionately affected. Traveling to laboratories can be time consuming and expensive, especially in large states. Laboratories may not be able to afford the cost of private accreditation, thereby risking a decrease in, or complete loss of, accredited laboratories within a state. Government accreditation helps to lower or eliminate the costs of reviews that are attributed directly to the laboratory, thus ensuring adequate laboratory capacity.
- Pushing accreditation responsibilities to the private sector could result in a state losing Safe Drinking Water Act (SDWA) enforcement primacy. Maintaining primacy requires compliance with mandatory requirements, including that states

“have a program to certify laboratories that will analyze water samples required by the regulations.” (40 CFR 142.10).** If a state loses primacy, it loses direct regulatory control over its drinking water programs and opportunities for federal funding, including access to the State Drinking Water Revolving Fund, Public Water System Supervision Grants, and State Underground Water Source Protection Grants.*** Consequently, the costs to state agencies would not necessarily decrease, as proponents of non-governmental laboratory accreditation programs claim, because states would lose access to millions of dollars in federal aid. In FY2010, the Public Water System Supervision program alone provided \$105 million to be split among the states and territories. In states lacking primacy for SWDA enforcement, these funds would be redirected to the EPA region that will be tasked with administering the program for the state.

** For the full list of requirements see: <http://water.epa.gov/infrastructure/drinkingwater/pws/primacy.cfm>

*** Environmental Protection Agency. Tentative FY2010 PWSS Grant Allotments. [Online] http://www.epa.gov/safewater/pws/grants/allotments_state-terr_2010.pdf .