

Joint Commission on Administrative Rules

Environmental Laboratory Certification Regulations

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Wastewater Agencies (VAMWA)**

Relevant Speaker Credentials

- 24 years of environmental lab, monitoring and regulatory experience in Virginia
- Chair, U.S. EPA Environmental Laboratory Advisory Board Federal Advisory Committee
- Member, U.S. EPA Federal Advisory Committee on Detection and Quantitation
- Chair, VAMWA Water Quality Committee
- Representative on several professional accreditation organization committees

VAMWA

- **Membership**
 - Comprised of 57 localities and wastewater authorities
 - Serves approximately 95% of the sewered population of Virginia
- **Mission**
 - Assist its member agencies in their efforts to protect public health and the environment for the users they serve in the most efficient and cost-effective manner possible

Background: The Statute

- 1997 JLARC Report recommended adoption of a lab certification program
- 1997 statute required DCLS to establish a program by regulation
- Once program established, certification is required before any data may be used for purposes of air, water and waste laws

The Virginia Statute (cont.)

- Statute did not require NELAC
- Statute delayed adoption of Virginia regulation until adoption of standards by NELAC
“sponsored by the U.S. EPA”
- This delay would make NELAC available as an option

What Is (Was) NELAC?

- National Environmental Laboratory Accreditation Conference
- Originally U.S. EPA and about 12 states
- NELAC developed extremely prescriptive but VOLUNTARY lab standards
- Helpful for multi-state accreditation, but not for the hundreds of in-house labs
- Related NELAP (Program) implements accreditation programs using NELAC standards

U.S. EPA Recently Pulled Out of NELAC

- EPA eliminated its funding for NELAC
- EPA eliminated its Executive Director position for NELAC
- EPA refused to adopt NELAC as national standards

*This major change with the passage of time
has overtaken the proposed regulation*

NELAC Lacks Proper Oversight

- NELAC is no longer “sponsored by the U.S. EPA” as stated in VA statute
- U.S. EPA no longer provides oversight
- U.S. EPA does not provide guidance or dispute resolution
- Who is in charge?: Other States

NELAC Lacks Broad Support

- NELAC is not industry consensus
- Most stakeholders could not vote on standards
- Vast majority of public and private labs have rejected idea of mandatory NELAC standards
- EPA refused to adopt NELAC as national regs
- State support has stagnated or declined

***Virginia should not make this troubled program
a requirement for Virginia labs***

Consequences of NELAC's Decline

- NELAC standards are frozen at 2003 version
- No ability to update and adapt
- Poor ability to respond to
- New problems and emerging pollutants
- New technologies

NELAC Never Was Well-Suited for In-House Labs

- In-house labs
 - Do same tests over and over
 - Need quick turnaround
 - Need info for process control
- NELAC-based regulation
 - Is too prescriptive
 - Needlessly takes away flexibility

NELAC Is Too Prescriptive Example #1: Permit Limits

- Permit limits define environmentally safe performance levels for water discharges
- Permittee must meet the assigned limit
- BUT permittee has the flexibility to decide how to design and operate its treatment facility to meet the limit

NELAC Is Too Prescriptive

Example #2: Pages of Detailed Requirements

- Non-commercial regulation (Chapter 45) was developed to achieve less burden

- But that goal was not realized
 - Over 70 pages were added in the latest draft
 - Regulation now totals 151 pages for in-house labs!

NELAC Is Too Stringent

Example: Program Comparison

- Number of annual Proficiency Tests required for pollution control under THIS REGULATION: 2

- Number of annual Proficiency Tests required under Drinking Water Regulation: 1

NELAC imposes twice the requirements for wastewater than exist for drinking water!

Too Much for Too Little

- Average VAMWA member reported increased costs of approximately \$50,000 per year
 - In wastewater alone, there are approximately 773 wastewater permittees covered
 - Every \$10,000 of annual costs per lab amounts to expenditures of \$7.7 million
- Localities and authorities pass costs on to ratepayers
- Industries with in-house labs face added cost of doing business in VA

The Numbers Tell the Story

- Length of rulemaking: 10 years
- Number of commenters in 2004: 56
- Number of comments in 2004: 1,112

Virginia Results Are Improving

Number of permittees with acceptable Proficiency Test results on ALL parameters has increased dramatically over the past decade without NELAC:

- In 1995: 46% (Source: JLARC)
- In 2007: 65% (Source: DEQ)

VA Universities No Longer Covered by Regulation?

- Virginia Tech commented negatively on draft, but has since reportedly concluded it is not covered by regulation
- Virginia's universities produce a lot of data used for air, water & waste programs
- Either this is a huge gap in the regulation, OR NELAC is not necessary after all
- It's the latter (VAMWA agrees with Tech)

The Alternative: The Performance Approach

- Outline the required elements of a lab quality system
- Establish specific objectives for quality
- BUT let labs design their own programs to meet these requirements
- EPA calls this “Flexibility Approach to Environmental Measurements”

The Performance Approach Has Broad Support

- U.S. EPA
- U.S. EPA Environmental Laboratory Advisory Board
- Many States
- Many labs of all types

VAMWA gave a detailed performance-based proposal to the State in 2000

Performance Approach Benefits

- More adaptable to different size, scale and type of lab
- Lower costs
- More flexible to meet future needs

Conclusions

- NELAC-based regulation is needlessly prescriptive, too costly, and inflexible
- The U.S. EPA and Virginia Tech pull-outs are telling
- The concerns about VA's draft regulation are well justified
- Over the past decade, NELAC has withered, not blossomed

Recommendations

- Do NOT mandate the NELAC approach

- Do NOT impose NELAC-based regulations on any municipal or industrial labs

- Use the performance approach for lab certification instead