

Notice of Public Scoping for Possible Updates and Revisions to DEC Regulations

State of Alaska
Department of Environmental Conservation
Notice of Public Scoping for Possible
Updates and Revisions to DEC Regulations
18 AAC 78, Article 8 and 18 AAC 75.355(e)
Underground Storage Tank Laboratory Approval

The Alaska Department of Environmental Conservation (DEC) considering revising regulations which deal with the Laboratory Approval Program (LAP). Specifically, DEC is considering whether it should discontinue the LAP and instead require laboratories to have a National Environmental Laboratory Accreditation Program (NELAP) or Department of Defense Environmental Laboratory Accreditation Program (DOD ELAP) approval. DEC is asking members of industry and the public who would be affected by this change to provide comments and preliminary input regarding cost increases/savings, increase/decrease in the burden of laboratory approval, and increase/decrease in the quality of laboratory data.

Please note: Changes to the LAP would **not** result in any changes to the AK101, AK102, or AK103 analytical methods for petroleum.

Background

Under Article 8 of 18 AAC 78, labs which run analyses of soil and water samples for petroleum contamination under that chapter must be approved by the department. Additionally, under 18 AAC 75.355(e) laboratory analysis under the contaminated site cleanup rules must be performed by a laboratory approved under 18 AAC 78. Article 8 of 18 AAC 78 describes what is required for approval by the department. The LAP collects an \$800 fee from each lab it approves, and approvals are valid for one year.

The LAP employs a portion of one Chemist IV position and approves about 35 labs. According to Article 8 of 18 AAC 78 a lab can be approved if it submits acceptable documentation of:

- A complete application
- A copy of its Quality Assurance (QA) manual, which must include the minimum elements described in EPA's Guidance on Preparation of Laboratory Quality Assurance Plans, Revision No. 1, dated October 9, 1992
- A copy of the Standard Operating Procedures (SOPs) for each lab analysis method in Table 1 of the UST Procedures Manual.
- Acceptable results of Performance Evaluation (PE) audit samples in Table 1 of the UST Procedures Manual.
- An \$800 annual fee

The LAP then reviews the submissions and will approve, provisionally approve, or disapprove the lab. Once approved, the LAP assigns the approved lab a UST identification number and maintains a database of approved labs and the methods for which they are approved. To renew approval, labs must submit new PE sample results and any changes to the QA manual.

The LAP is estimated to cost the Department about \$120,690 in FY16 (depending on approval applications received). This amount is comprised of an estimated \$45,345 out of the EPA Leaking Underground Storage Tank (LUST) grant and \$45,345 out of the state Response Fund, supplemented by approximately \$30,000 in lab approval fees received.

The Need for Regulation Revisions

Several concerns have been raised about the existing LAP, including:

- Lack of regulatory requirements for performance sample testing for non-petroleum analyses, such as metals, volatile and semi-volatile compounds and other contaminants
- Lack of capacity to conduct rigorous reviews and inspections
- Outdated database of approved methods
- Inadequate funding to address the above concerns

Since the LAP was created, the list of analytes and methods requiring approval has grown dramatically, but funding, laboratory approval fees, and staffing levels have not increased commensurately. As a result, the LAP does not review any SOPs for non-petroleum analytes. PE audit sample results may be reviewed if a lab voluntarily provides them. The LAP's only requirement for non-petroleum methods is submission of the laboratory's QA manual. Additionally, the regulations do not require on-site audits of labs. Because of these issues, the DEC is concerned about the quality assurance of laboratory data submitted for both contaminated sites and leaking underground storage tanks.

Therefore, the department is considering a proposal to repeal the LAP and instead require labs running analysis of soil and water samples under 18 AAC 75 and 18 AAC 78 to obtain either NELAP or DOD ELAP approval. These are more rigorous approval programs which include full review of lab SOPs, lab logbooks, and on-site audits. It is the department's understanding that many labs approved under the LAP may already have NELAP or DOD ELAP approvals, making the LAP already redundant in many cases.

If the department decides to implement this plan, the LAP would sunset on June 30, 2017. Labs with approvals expiring after June 30, 2017 would be allowed to continue under their Alaska approval until it expires. Upon expiration, the lab would need a NELAP/DOD ELAP approval in place to analyze samples under 18 AAC 78 or 18 AAC 75.355(e). Language in these regulations would be updated to reflect the change.

Public input

The department is asking affected members of the public and the regulated community for their input regarding regulations for laboratory approval. Additionally, DEC is asking labs specifically to answer the questions below.

Questions for Laboratory Managers:

1. Do you have NELAP approval? If so, from which Accrediting Board(s) (ABs)/methods? Please list all.
2. Do you have DOD ELAP approval? If so, from which AB(s)/methods?

3. If you do not have NELAP or DOD ELAP approval, how much would it cost to get approved by one or both?
4. If you don't have NELAP or DOD ELAP, what approvals do you have?
5. How many samples do you run from sites listed or potentially subject to listing on the DEC Contaminated Sites Database (annual estimate)?
6. Will obtaining NELAP or DOD ELAP approvals increase the time and effort spent on obtaining method certification?
7. Will obtaining NELAP or DOD ELAP approvals improve analytical data quality?
8. What problems do you foresee going with this approach?
9. What advantages do you foresee going with this approach?

Written comments, suggestions, questions, and other input must be received by the department no later than 5:00 pm on February 7, 2016. Written comments, suggestions, questions, and other input may be submitted by mail or email to:

Sally Schlichting
Alaska Department of Environmental Conservation
Division of Spill Prevention and Response – Contaminated Sites Program
PO Box 111800
Juneau, AK 99811-1800
sally.schlichting@alaska.gov

Once public input has been received DEC will consider the information if and when it drafts proposed regulation revisions. Any proposed regulatory revisions will subsequently be released for public review and comment under AS 44.62, the Administrative Procedures Act.

The Division of Spill Prevention and Response reserves the right to waive technical defects in this publication. The State of Alaska, Department of Environmental Conservation, complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Natalie Wolfe at (907) 269-0291 or TDD Relay Service 1-800-770-8973/TTY or dial 711.