

MEMORANDUM OF UNDERSTANDING

between

Commonwealth of Virginia
Department of General Services
Division of Consolidated Laboratory Services

and

Commonwealth of Virginia
Department of Environmental Quality

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish mutually acceptable guidelines for the effective review and certification¹ of environmental laboratories under § 2.2-1105 of the Code of Virginia and the air, waste and water laws of the Commonwealth (§10.1-1300 *et seq.*, §10.1-1400 *et seq.*, and §62.1-44.2 *et seq.*). It is not intended to be a contract or to create any rights, duties or obligations which may be enforced by one party or the other. These guidelines address how the Department of Environmental Quality (DEQ) and the Division of Consolidated Laboratory Services (DCLS) will coordinate statutory and regulatory requirements with regard to environmental laboratories and specifically address interagency communication and each agency's duties with regard to the inspection, review and certification of these laboratories as defined by statute and regulation.

The primary objective of this MOU is to provide for the greatest degree of cooperation between the agencies consistent with their respective mandates and responsibilities. This will be accomplished through the effective execution of the regulatory and statutory authorities granted to each agency. This MOU ensures that the responsibilities of both agencies are met without conflict or duplication.

This MOU is intended to be a summary of the expectations of the parties; it is not intended to be an enforceable contract, or to confer any rights to any third parties (see Legal Effect below).

II. Background

Under § 2.2-1105, the General Assembly charged DCLS with the development, administration and enforcement of regulations governing certification of environmental laboratories providing data under Virginia's air, water and waste laws. The certification program establishes laboratory standards of quality to ensure that environmental laboratories provide accurate and consistent tests, analyses, measurements and monitoring. Laboratories must

¹ Certification rather than accreditation is the term used by the Virginia statute and throughout this MOU. Commercial laboratories are accredited under the 2003 National Environmental Laboratory Accreditation Conference (NELAC) Standards. Noncommercial laboratories are certified under the standards specified in 1 VAC 30-45.

demonstrate that they can perform specific test methods for which they are certified and have in place operational systems that will ensure a consistent quality of performance. Section 2.2-1105 stipulates that once the program is established, data used for purposes of the air, waste and water laws must come from certified environmental laboratories.

1 VAC 30-45 and 1 VAC 30-46, the regulations implementing § 2.2-1105, became effective on January 1, 2009. 1 VAC 30-45 is the regulation covering the certification of noncommercial environmental laboratories. 1 VAC 30-46 is the regulation covering the certification of commercial environmental laboratories. Commercial environmental laboratories by definition include laboratories that provide services for a profit and any other environmental laboratories that provide laboratory services to others. The definition of noncommercial environmental laboratory sets out the differences between commercial and noncommercial laboratories in more detail. To be certified, commercial environmental laboratories are required to meet the 2003 National Environmental Laboratory Accreditation Conference (NELAC) standards. Noncommercial environmental laboratories are required to meet a limited version of these standards. Environmental laboratories will be certified by fields of certification. Fields of certification are defined by matrix, technology/method, and analyte. The matrices offered are air emissions, nonpotable water, solids, and biological tissue. January 1, 2012, is the date on which all data submitted to DEQ under the air, waste, and water quality laws (§10.1-1300 *et seq.*, §10.1-1400 *et seq.*, and §62.1-44.2 *et seq.* of the *Code of Virginia*) must come from certified environmental laboratories.

The State Water Control Law (water law) authorizes the State Water Control Board (water board) to investigate water quality problems, establish water quality standards, regulations and policies, and issue permits and inspect permitted facilities (§ 62.1-44.15 (2)(3a)(5, 5a, 5b)(6)). The water law also authorizes the water board to monitor and report on water quality in the Commonwealth as required under the federal Clean Water Act. The law requires that data reliability and comparability be ensured so that water quality trends can be determined. The water law is codified as Chapter 62.1, §§ 62.1-10 through 62.1-270 of the 1950 Code of Virginia, as amended. On March 31, 1975, Virginia was authorized to administer a state permit program pursuant to the provisions of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Federal Water Pollution Control Act. Pursuant to 40 CFR 122.41C and 40 CFR 123.26(b)(2), DEQ administers an inspection program that verifies the adequacy of the monitoring and the accuracy of the information submitted by permittees.

The Virginia Waste Management Act (waste law) authorizes the Waste Management Board (waste board) to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. The waste law is codified as Chapter 14, §§ 10.1-1400 through 10.1-1457 of the 1950 Code of Virginia, as amended. EPA has authorized DEQ to administer various aspects of the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act. The waste law enables the waste board to “carry out the purposes and provisions” of state law and “compatible provisions of federal acts.” As part of this responsibility, the waste board has the authority to require identification of hazardous and other wastes (§ 10.1-1402, subsections 6, 7, and 11).

The State Air Pollution Control Law (air law) authorizes the State Air Pollution Control Board (air board) to promulgate regulations as necessary to carry out its powers and duties. The powers and duties of the air board include investigation and inspection of air pollution’s causes,

effects and hazards so that healthy air quality levels may be attained and maintained. The air law specifies that permits may be issued, amended, revoked and enforced pursuant to regulations adopted by the air board. The air law authorizes the DEQ director to administer the regulations and policies established by the air board. The air law is codified as Chapter 13, §§ 10.1-1300 through 10.1-1326 of the 1950 Code of Virginia, as amended. EPA has authorized DEQ-approved state implementation plans which allow DEQ to administer various programs under the federal Clean Air Act, including monitoring air quality in the Commonwealth and requiring stack testing as appropriate for regulated facilities subject to permit programs. Federal monitoring and stack testing requirements (i.e. 40 CFR Parts 50, 51, 58, 60, and 72) are adopted into the regulations of the air board to implement the air quality plans. For delegated programs, federal monitoring and stack testing requirements (i.e. 40 CFR Parts 50, 58, 60, 61, 63 and 72) are incorporated by reference into the regulations of the air board.

III. Conditions

A. DEQ agrees to:

1. conduct laboratory inspections during the transition period to assure that DEQ requirements with regard to laboratory audits are met;
2. assist DCLS to maintain a list of environmental laboratories that provide data to DEQ's programs under DEQ's air, water, and waste laws;
3. provide DCLS copies of or access to DEQ files when needed to carry out the purposes of this MOU;
4. continue DEQ inspections to audit sampling, and field testing and measurement activities as required under the air, water and waste laws;
5. continue the Water Division Operator Training and Assistance Program that includes providing environmental laboratory training classes and assistance to wastewater treatment plants.

B. DCLS agrees to:

1. audit environmental laboratories, as required under state and federal laws and regulations and to assist DEQ to assure compliance with these laws and regulations as part of its program to certify environmental laboratories;
2. perform the following specific tasks when auditing environmental laboratories (this list may not be inclusive of all tasks):
 - a. ensure that program requirements, including applicable permit-specific requirements, are being followed with regard to required test methods, detection limits and quantification levels (QL) (specifically QL requirements for the Watershed Nutrient GP and individual VPDES Permits);

- b. ensure that test method review will satisfy needs of DEQ as well as certification requirements, including laboratory performance on proficiency test samples and DMR-QA samples (water);
 - c. ensure validation of data from sample log-in through the certificate of analysis for analytes reported to DEQ.
- C. The two parties agree to communicate on a regular basis and provide data and reports as needed in a timely and complete fashion.
 - 1. Formation of interagency work group
 - a. DCLS and DEQ shall form a work group within two weeks after signing the MOU to coordinate and carry out the agencies' responsibilities under the MOU.
 - b. DCLS and DEQ management shall determine what staff members participate in the workgroup. At least one senior manager from each agency who has the authority to make decisions about the scope of the issues and programs covered in this MOU should be a member of the workgroup.
 - c. The work group shall meet regularly and at least through the transition or first three years of the certification program. The work group at a minimum shall meet on a quarterly basis during the transition. A summary of each meeting including decisions made at the meeting shall be prepared and distributed to the participants and appropriate management at the two agencies.
 - 2. Data sharing
 - a. DCLS will provide DEQ access to a database that identifies all laboratories certified by DCLS and the scope of their certification. The database will be kept current by DCLS. This database will be made available to the public upon request.
 - b. DCLS will provide database information sufficient and necessary to assist DEQ with program compliance. Each agency will provide the other data sufficient to allow implementation of this MOU.
 - 3. Enforcement
 - a. DCLS will notify DEQ when a laboratory is decertified.
 - b. DCLS will provide support to DEQ on enforcement activities that involve the certification of environmental laboratories. This includes, but is not limited to, falsification of data.

- D. Resolution of duplication issues inherent between the certification program and the water permit (VPDES and VPA) program
1. Prior to January 1, 2012, DEQ will retain primary responsibility for the VPDES/VPA laboratory inspection program.
 2. As of January 1, 2012:
 - a. DEQ will perform inspections of: field testing, sampling protocol, and DMR review under the VPDES and VPA programs. DEQ will audit the following field tests: temperature, pH, dissolved oxygen and total residual chlorine.
 - b. DCLS, under the certification program, will audit laboratories covered by the VPDES and VPA programs for analyses of tests other than field tests. Once the sample enters the laboratory, DCLS will audit sampling handling procedures as part of the certification program.
 - c. DCLS, under the certification program, will audit field tests when a laboratory performs this testing inside the environmental laboratory along with the other non-field testing that the laboratory performs.
 - d. DEQ will coordinate with DCLS to ensure that laboratory training and assistance provided to VPDES and VPA permittees meet DCLS certification requirements.
 3. During the transition period until January 1, 2012:
 - a. DCLS auditors may accompany DEQ inspectors on VPDES laboratory audits. DEQ and DCLS will coordinate the scheduling of these inspections. This activity should start as soon as possible after September 1, 2009, and extend until January 1, 2012, as is necessary. This activity should result in the following:
 - (1) A seamless transition from the DEQ to the DCLS auditing of laboratories under the VPDES program.
 - (2) Assurance that DCLS staff will understand the elements of the DEQ laboratory audit process and be ready to take on this activity on January 1, 2012.
 - b. DCLS staff may assist DEQ staff in performing the specific tasks set out in B 1 and B 2 above to the extent that DCLS staff is available.

IV. MOU modification and termination

The initial MOU between DEQ and DGS/DCLS was signed in August 2000. This MOU will become effective when executed by all parties and will remain in effect until amended or

terminated in writing by all parties. Once this MOU is effective the initial MOU will no longer be in effect.

V. Legal effect

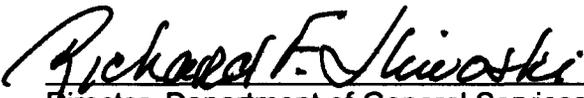
This purpose of this MOU is to foster coordination between DEQ and DCLS. This MOU is not a binding contract and its provisions shall neither be enforceable against any signatory party nor bestow any benefit upon any other persons or entities and shall give rise to no legal rights to such other persons or entities.

The parties pledge their best efforts as stated in this MOU.



Director, Department of Environmental Quality

9/9/2009
Date



Director, Department of General Services

8/26/09
Date



Director, Division of Consolidated Laboratory Services

8.26.09
Date