

THREE-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE ENVIRONMENTAL QUALITY BOARD

LABORATORY ACCREDITATION PROGRAM

In 2002, the General Assembly enacted the Environmental Laboratory Accreditation Act ("ELAA") (27 Pa.C.S. §§ 4101—4113), which required the Department of Environmental Protection ("Department") to establish and implement the Commonwealth's Environmental Laboratory Accreditation Program ("LAP"). Section 4104(6) of the ELAA requires laboratory accreditation fees to be "in an amount sufficient to pay the department's cost of implementing and administering the accreditation program." 27 Pa.C.S. § 4104(6).

The ELAA's implementing regulations, found at 25 Pa. Code Chapter 252, require the Department to evaluate "any disparity between the program income generated by the fees and program costs," at least every three years. 25 Pa. Code § 252.204(b). The Department last proposed an increase for the LAP's fees at 25 Pa. Code § 252.204(a) in 2016, which was finalized and effective in 2017. The Department has prepared an updated Three-Year Regulatory Fee and Program Cost Analysis Report ("Report") for the period of 2017-2023 to present to the Environmental Quality Board.

The purpose of this Report is to review the adequacy of fees based on projected operation costs for the LAP through fiscal year ("FY") 2026-2027. The Report provides a summary of the LAP's functions, fee collections and program costs, and concludes with a trend analysis and projection of costs and fee revenue for the next three years.

BACKGROUND

The LAP implements the ELAA through the review of accreditation applications from environmental laboratories. 27 Pa.C.S. § 4103. The ELAA requires environmental laboratories to be accredited and to comply with the ELAA "in order to generate data or perform analyses to be used to comply with an environmental statute." 27 Pa.C.S. § 4103(b).

Laboratories must apply for, then annually renew, their accreditation certificates and can request amendments to their certificate. Potential amendments include a change in laboratory ownership, a change in administrative information, or the addition of different fields (or categories) of accreditation. By assessing each accredited laboratory's operations in accordance with the ELAA and the Department's regulations at 25 Pa. Code Chapter 252, the LAP protects the environment and ensures the health, safety, and welfare of the citizens of the Commonwealth of Pennsylvania.

The environmental laboratory accreditation fees were originally promulgated in 2006 (36 Pa.B. 465 (January 28, 2006)), and then updated in 2010 (40 Pa.B. 1898 (April 10, 2010)) and 2017 (47 Pa.B. 4085 (July 29, 2017)). The fees support the implementation of the ELAA through application and compliance activities. The Department most recently updated the fee schedule

in 25 Pa. Code § 252.204 in 2017 to address the insufficient funds to cover the Department's costs to implement the program.

PROGRAM REVENUE AND COST

The following provides a description of the sources of revenue and costs for the LAP. Table 1 in Appendix A includes actual and projected figures for revenue and costs for FY 2016-2017 through FY 2026-2027.

Revenue

The LAP provides environmental laboratory accreditation under accreditation standards for the State certification program, as well as the National Environmental Laboratory Accreditation Program ("NELAP"). A laboratory company that has multiple locations within and outside of the state may seek NELAP accreditation in addition to Pennsylvania state accreditation because the NELAP program provides consistent national standards that can be implemented in any state.

The LAP provides State and NELAP accreditation for small laboratories associated with public water, municipal, and public utility wastewater facilities, as well as a range of commercial or private laboratories.

The LAP categorizes the size of an accredited commercial/private laboratory by the number of chemical or biological substances (analytes) that can be tested by each laboratory. Each laboratory applies for accreditation for analytes according to the analytical methods they can perform. The analytes are then listed on the laboratory's accreditation scope. The table below contains a summary of the type and size of laboratories accredited annually by the LAP.

NELAP ACCREDITED ENTITIES	
Commercial/Private Laboratories	38
Small scope < 25 analytes	12
Medium scope 26-500 analytes	9
Large scope > 500 analytes	15
STATE ACCREDITED ENTITIES	
Commercial/Private Laboratories	100
Small scope < 25 analytes	62
Medium scope 26-500 analytes	31
Large scope > 500 analytes	7
Public Water Systems	69
Wastewater Systems	132

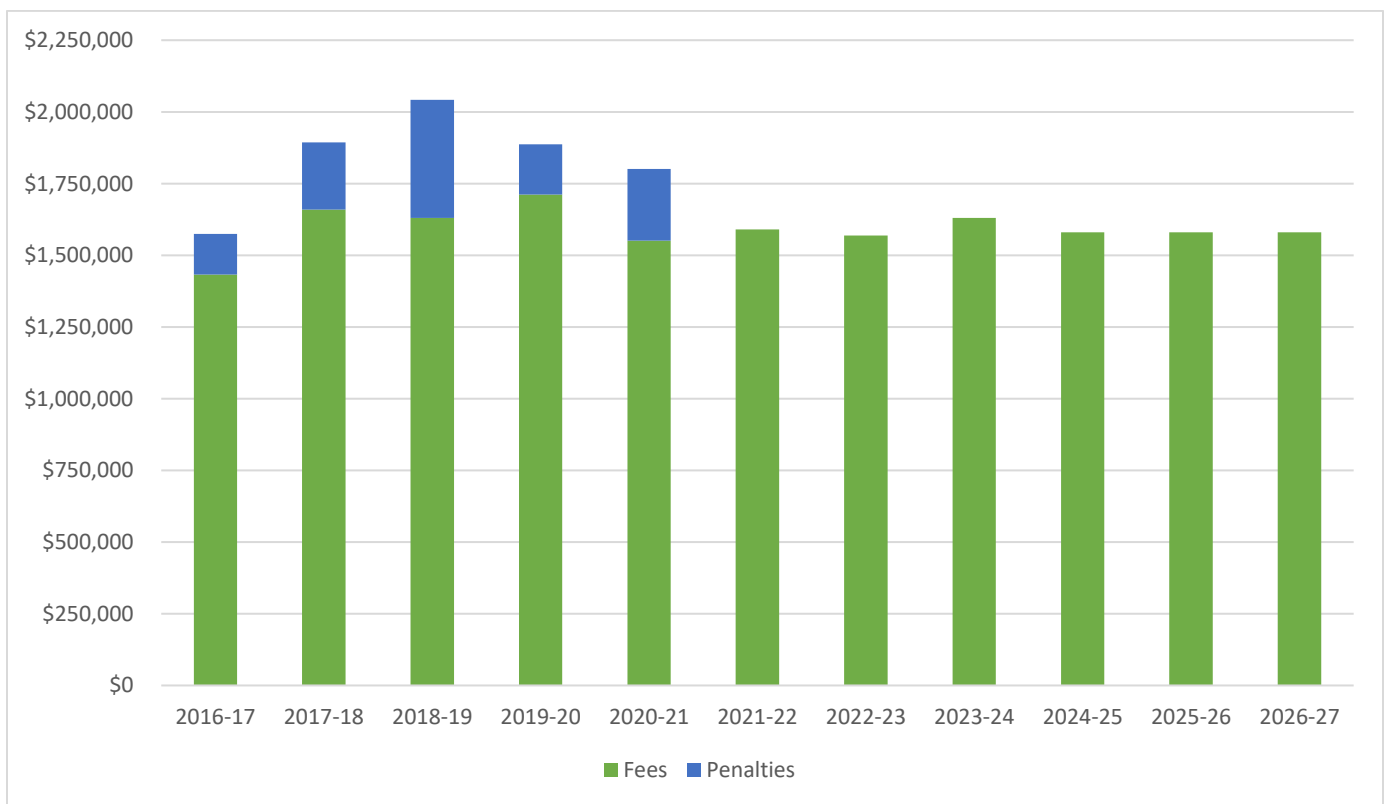
The accredited laboratories remit payment according to the LAP fee schedule to facilitate implementation of the ELAA, which in turn supports an important industry in Pennsylvania. These laboratories are necessary to perform all of the regulated environmental testing required by state laws. Accreditation by the LAP ensures that the data generated from the testing at

these laboratories is accurate, of high quality, and legally defensible to support environmental policy decisions and enforcement actions. The fees maintain required LAP activities which include processing initial and renewal applications for State and NELAP accreditation, assessing the categories or fields of accreditation held by each laboratory, documenting changes in laboratory ownership or administration, and performing supplemental onsite assessments. The current fee schedule for the LAP is included in Appendix B.

The LAP also receives revenue from fines and civil penalties when assessed to laboratories for violations of the ELAA (27 Pa.C.S. § 4110). The Department has not included fines and civil penalties in its projected revenue analysis, because relying on penalties to fund fundamental elements of a regulatory program is not appropriate and is contrary to sound public policy.

Figure 1 reflects the LAP’s previous revenue from fees, fines and civil penalties, from FY 2016-2017 through FY 2022-2023, as well as projected revenue from fees for FY 2023-24 through FY 2026-2027.

Figure 1. Laboratory Accreditation Program Revenue for 2016 – 2026*



*FYs 2023-24 through 2026-27 are estimated.

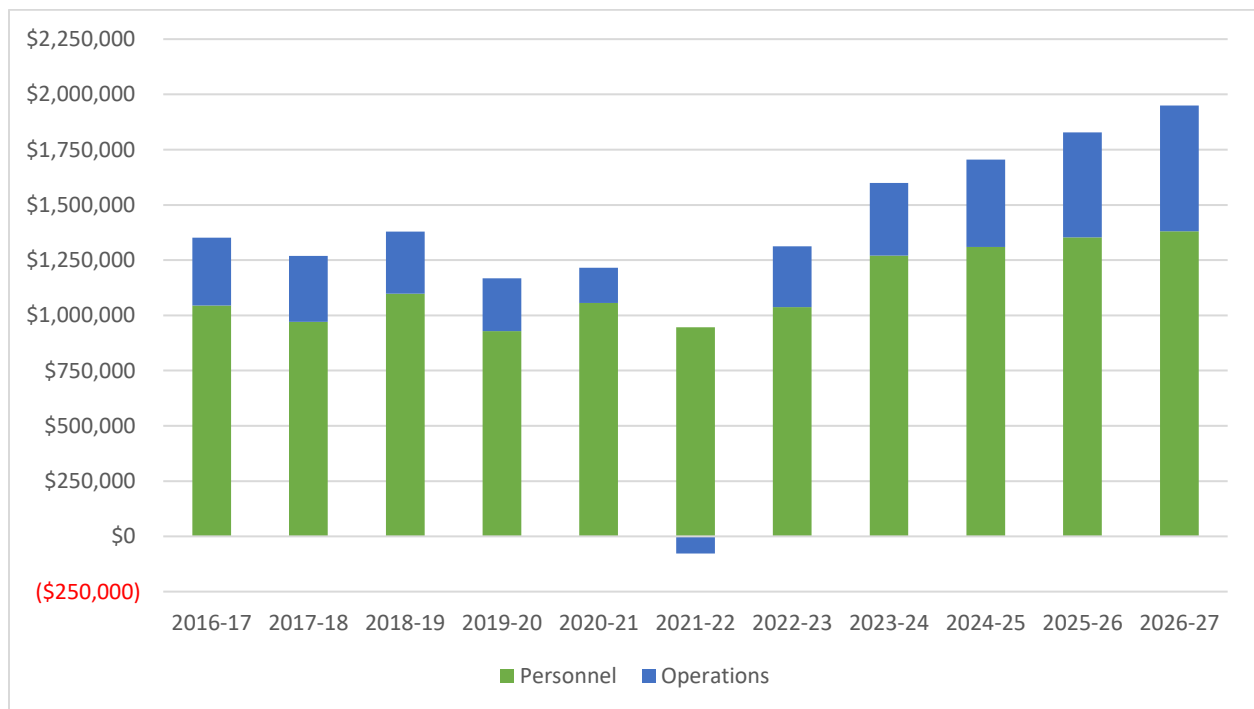
Program Costs

The current costs to support the LAP consist of 10 personnel working in the State Environmental Laboratory in Harrisburg, as well as operational costs, including travel to

laboratories for assessments, required assessor trainings, rent and maintenance of leased building office space, office expenditures, and IT consulting and services. The decrease in operational costs for FY 2021-2022 reflects reduced travel costs for laboratory assessments and assessor training (conducted remotely due to COVID-19 pandemic), a LAP staff vacancy, and a significant rebate on building services due to Departmental overpayment. The building rental payments include utilities, which assumes the Department’s utility costs will be a certain amount each month. However, the lease includes a provision to refund to the Department a portion of the rent payment if the agency’s utility bills were under the set amount. Because the COVID-19 pandemic restrictions limited the agency’s use of the building and utility bills were significantly less during that period, the building owner refunded the difference.

Figure 2 shows the LAP’s costs from FY 2016-2017 through FY 2022-2023, as well as projected costs for FY 2023-24 through FY 2026-2027.

Figure 2. Laboratory Accreditation Program Costs for 2016 – 2026*



*FYs 2023-24 through 2026-27 are estimated.

TREND ANALYSIS AND PROJECTION

The current fee structure was established to cover the anticipated costs of the accreditation program through FY 2016-2017. The fee structure has not been updated during the last six years due the COVID-19 pandemic and subsequent turnover of staff at the Department. Based on current revenue, the LAP’s costs are projected to exceed fee revenue starting in FY 2024-2025, as reflected in Figure 3 on the following page.

Revenue Decrease

The LAP has experienced a decrease in the number of laboratories requesting and renewing accreditation due to closures from the pandemic. In 2016, the LAP had accredited 125 NELAP entities and 311 State entities. In 2024, the LAP has accredited 38 NELAP entities and 301 State entities. While many smaller commercial laboratories are closing because they can no longer remain competitive, the workload for assessing the remaining larger commercial laboratories has significantly increased.

The NELAP accredited commercial labs have seen an average increase of 30% in the number of their accredited testing parameters. Each LAP assessor's compliment of assigned laboratories requires oversight of larger laboratories that may hold accreditation for more than 3,000 different compounds analyzed by hundreds of methods. These laboratories require the assessor to review proficiency testing results for all accredited compounds and methods (performed two times annually), facilitate changes in accreditation parameters based on laboratory operations or failing proficiency test results, and process of numerous laboratory personnel changes. Many of the additional analytes being added to the NELAP laboratories' accreditation involve methods that are significantly more complex (for example, methods for PFAS and algal bloom cyanotoxin analysis). These types of testing require training of skilled analysts to meet stringent and extensive method quality control requirements. The LAP assessors must review all analyst training and execution of these methods for all associated testing compounds and ensure they meet all required quality control, operational, and documentation standards.

Cost Increase

Most of the LAP costs are related to personnel. The new master agreement between the Commonwealth and Council 13 AFSCME will increase LAP staff salaries by 22.1% by FY 2027-2028. Projected personnel costs include an additional laboratory accreditation officer to assist with increased PFAS accreditation parameters, which has increased the LAP staff to 11 total employees. The projected operational costs include increased travel expenses for on-site assessments and training that were previously conducted remotely during the COVID-19 pandemic, increased rates for IT consulting and services, and increased building and office expenses for the leased building occupancy for the program.

The LAP has implemented certain efficiencies, such as an electronic application system to allow laboratories to submit applications and payment via the internet. However, the amount of work required to assess accredited laboratories continues to increase.

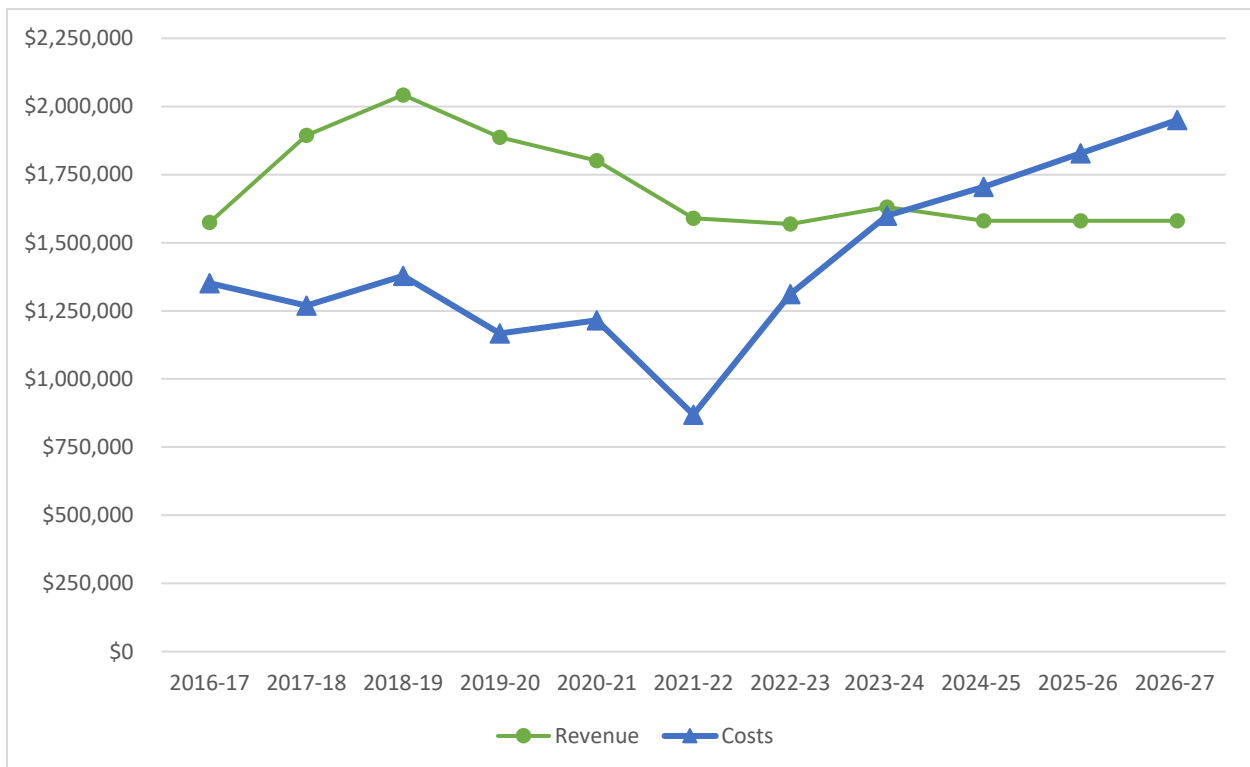
As new environmental contaminants emerge on a regular basis, additional analytical methods are developed to monitor their presence and concentration in environmental samples. For example, multiple EPA methods for the analysis of PFAS compounds and for detecting cyanotoxins in recreational waterbodies experiencing harmful algal blooms have been developed during the past few years. These methods are unique and complex adaptations of

organic and biochemical methods that the LAP assessors must study to expand their current knowledge to assess laboratories accredited for these new methods.

The standards to which the LAP accredits laboratories also continue to evolve. The Consensus Standards Development Program for The NELAC Institute, which sets the accreditation standards for NELAP, released its third consensus standard for the accreditation of environmental laboratories in October of 2019. The LAP employees had to study and understand the significant number of new quality control and operational parameters in order to implement the new accreditation standards on January 1, 2020. The U.S. Environmental Protection Agency released Methods Update Rules (MUR) in both 2021 and 2023 to change the list of approved methods to reflect advances in technology and refine quality assurance and quality control requirements. The LAP assessors had to study and understand how to implement accreditation activities relative to changes included in the MURs and to adapt assessment activities to ensure accredited laboratories are also compliant with each MUR.

Without an adjustment to the fee schedule, the gap between the collected fees and program costs will continue to grow.

Figure 3. Laboratory Accreditation Program Revenue vs. Costs Projection*



*FYs 2023-24 through 2026-27 are estimated.

RECOMMENDATION

This analysis indicates that in FY 2024-2025, program costs are expected to exceed projected LAP fee revenue. The Department recommends proposing a rulemaking to increase fees to ensure they cover the costs of the program and to address the projected \$300,000 annual shortfall by FY 2026-2027.

Appendix A

Table 1. Laboratory Accreditation Program Revenue & Costs Projection 2016 – 2026*

Fiscal Year	Fees	Penalties	Total Revenue	Personnel	Operations	Total Costs	Difference
2016-17	\$ 1,433,241	\$ 141,250	\$ 1,574,491	\$ 1,044,493	\$ 307,401	\$ 1,351,894	\$ 222,597
2017-18	\$ 1,659,070	\$ 235,000	\$ 1,894,070	\$ 970,662	\$ 298,850	\$ 1,269,513	\$ 624,557
2018-19	\$ 1,630,531	\$ 411,950	\$ 2,042,481	\$ 1,098,898	\$ 279,933	\$ 1,378,831	\$ 663,650
2019-20	\$ 1,711,840	\$ 175,000	\$ 1,886,840	\$ 928,153	\$ 239,409	\$ 1,167,562	\$ 719,278
2020-21	\$ 1,550,854	\$ 250,000	\$ 1,800,854	\$ 1,056,213	\$ 159,013	\$ 1,215,226	\$ 585,628
2021-22	\$ 1,590,100	\$ 0	\$ 1,590,100	\$ 946,574	- \$ 77,235	\$ 869,339	\$ 720,761
2022-23	\$ 1,568,669	\$ 0	\$ 1,568,669	\$ 1,036,999	\$ 274,939	\$ 1,311,938	\$ 256,731
2023-24	\$ 1,630,531	-	\$ 1,630,531	\$ 1,269,900	\$ 329,927	\$ 1,599,827	\$ 30,704
2024-25	\$ 1,580,000	-	\$ 1,580,000	\$ 1,309,222	\$ 395,912	\$ 1,705,134	-\$ 125,134
2025-26	\$ 1,580,000	-	\$ 1,580,000	\$ 1,353,070	\$ 475,095	\$ 1,828,165	-\$ 248,165
2026-27	\$ 1,580,000	-	\$ 1,580,000	\$ 1,380,132	\$ 570,114	\$ 1,950,246	-\$ 370,246

*FYs 2023-24 through 2026-27 are estimated.

Appendix B

§ 252.204. Fees.

(a) The appropriate fee in accordance with the following schedule must accompany an application for accreditation, renewal of accreditation, change of ownership, change in administrative information, addition of fields of accreditation or supplemental onsite assessment.

* * * * *

The fees are as follows:

Category	Fee
Application fee—Initial Application for State Accreditation	\$1,500
Application fee—Renewal Application for State Accreditation	\$700
Application fee—Ownership Transfer or Change in Administrative Information	\$150
Application fee—Initial Application for NELAP Accreditation	\$3,500
Application fee—Renewal Application for NELAP Accreditation	\$2,750
Application fee—Addition of Field of Accreditation	\$350
Application fee—Supplemental Onsite Assessment	\$500
Basic Drinking Water Category—Includes one method for each of the following: Total Coliform Bacteria, Fecal Coliform Bacteria, <i>E. coli</i> Bacteria, Heterotrophic Bacteria, Nitrate, Nitrite, Fluoride, Cyanide	\$750
Basic Nonpotable Water Category—Includes one method for each of the following: Fecal Coliform Bacteria, BOD, CBOD, Nitrate, Ammonia, Total Nitrogen, Total Kjeldahl Nitrogen, Nitrite, Phosphorus, and one method for each type of residue including % Solids for land applied biosolids	\$850
Asbestos—first matrix	\$600
Basic Microbiology—includes fecal coliform, total coliform, <i>E. coli</i> and heterotrophic bacteria—first matrix	\$700
Complex Microbiology—first matrix	\$1,000
Trace Metal Category—first matrix	\$750
Inorganic Nonmetal Category—first matrix	\$850
Purgeable Volatile Organic Chemicals—first matrix	\$850
Extractable and Semivolatle Organic Chemicals—first matrix	\$1,750
Dioxin—first matrix	\$850
Radiochemical Category—first matrix	\$950

Whole Effluent Toxicity Testing—first matrix	\$950
Asbestos—second matrix	\$450
Basic Microbiology—includes fecal coliform, total coliform, <i>E. coli</i> and heterotrophic bacteria—second matrix	\$600
Complex Microbiology—second matrix	\$900
Trace Metal Category—second matrix	\$600
Inorganic Nonmetal Category—second matrix	\$700
Purgeable Volatile Organic Chemicals—second matrix	\$700
Extractable and Semivolatile Organic Chemicals—second matrix	\$1,600
Dioxin—second matrix	\$700
Radiochemical Category—second matrix	\$850
Asbestos—third matrix	\$400
Basic Microbiology—includes fecal coliform, total coliform, <i>E. coli</i> and heterotrophic bacteria—third matrix	\$500
Complex Microbiology—third matrix	\$800
Trace Metal Category—third matrix	\$550
Inorganic Nonmetal Category—third matrix	\$650
Purgeable Volatile Organic Chemicals—third matrix	\$600
Extractable and Semivolatile Organic Chemicals—third matrix	\$1,450
Dioxin—third matrix	\$650
Radiochemical Category—third matrix	\$750