

7:18-1.4 Certification program requirements

(a) A laboratory that analyzes samples for the purpose of establishing compliance with any regulatory program shall obtain and maintain certification as a certified environmental laboratory in accordance with this chapter. An analysis performed by a laboratory that is not a certified environmental laboratory does not establish compliance with any regulatory program.

(b) When analyzing regulatory samples, a certified environmental laboratory shall perform only those methods for which it has received certification or has received approval to use as alternate test procedures (ATPs) pursuant to N.J.A.C. 7:18-2.20. The certified environmental laboratory shall analyze only those parameters that are included in a valid annual certified parameter list (ACPL) issued pursuant to N.J.A.C. 7:18-2.6(b).

(c) The Department-Sanctioned Analytical Methods (DSAMs) are the methods approved for use by certified environmental laboratories. The designation of a method as a DSAM is described in N.J.A.C. 7:18-2.21.

(d) Under N.J.A.C. 7:18-2.6(b), a certified environmental laboratory will receive a certificate and an Annual Certified Parameter List (ACPL) from the Department. The certified environmental laboratory shall conspicuously display these documents in a location on its premises visible to the public.

7:18-1.5 Incorporation by reference

(a) The following regulations promulgated by the USEPA, together with all amendments and supplements, are incorporated by reference into this chapter:

1. The "National Primary and Secondary Drinking Water Regulations," 40 CFR 141 and 40 CFR 143;
2. The "Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 CFR 136; and
3. The methods listed in Subchapter I, Solid Waste, 40 CFR 260, 261.

(b) All existing CERCLA CLP methods, and all future new or modified CERCLA CLP methods, are incorporated by reference into this chapter. CERCLA CLP methods are available from: EPA Contract Laboratory Program, Sample Management Office, P.O. Box 815, Alexandria, VA 22313. All new or modified methods are incorporated when Invitation for Bid (Bid) documents containing these methods are published in the Commerce Business Daily. The Commerce Business Daily is available from U.S. Department of Commerce, Washington, DC 20230, (202) 783-3238.

(c) The Department's analytical methods for sludge analysis at N.J.A.C. 7:14C, together with all amendments and supplements, are incorporated by reference into this chapter.

Amended by R.2001 d.224, effective July 2, 2001.
See: 33 N.J.R. 1063(a), 33 N.J.R. 2284(c).
In (c), amended N.J.A.C. reference.

7:18-1.6 Program information; notices; submittals

(a) Unless otherwise specified, any questions concerning the requirements of this chapter should be directed to the Department's Office of Quality Assurance at (609) 292-3950. Written inquiries can be directed to the following address:

New Jersey Department of Environmental Protection
Office of Quality Assurance
PO Box 424
Trenton, NJ 08625-0424

(b) Unless otherwise specified, any submittals of PE sample results, submittals of documents, notices of other communications required to be made to the Department under this chapter shall be made to the address specified in (a) above. Applications for certification and for renewals and modifications of certifications shall be submitted to the address specified in (a) above.

Administrative change.
See: 28 N.J.R. 4098(a).
Amended by R.2001 d.224, effective July 2, 2001.
See: 33 N.J.R. 1063(a), 33 N.J.R. 2284(c).

7:18-1.7 Definitions

The following words and terms, when used in this chapter, shall have the following meanings. If a definition in this section differs from the corresponding definition in any regulation or other document incorporated by reference under N.J.A.C. 7:18-1.5, the definition in the document incorporated by reference shall control.

"Acceptably analyze" means to analyze a sample in a manner that satisfies the requirements of N.J.A.C. 7:18-2.13(j).

"Acclimation" means, for acute toxicity testing, an organism's physiological adjustment to environmental changes including, but not limited to, changes in temperature and salinity.

"Accreditation" means the process by which an agency or organization evaluates and recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory. In the context of the National Environmental Laboratory Accreditation Program (NELAP), this process is a voluntary one.

"Accredited" means having the approval conferred upon schools, institutions, or programs where appropriate by a nationally recognized regional accrediting agency or association as determined by either the United States Secretary of Education, State Commissioner of Education, or State Chancellor of Higher Education.

“Accrediting authority” means the territorial, state or Federal agency having responsibility and accountability for environmental laboratory accreditation and which grants accreditation.

“ACPL” means Annual Certified Parameter List and is a list that is sent annually to a certified environmental laboratory showing the regulatory programs, analytical techniques, method references and corresponding methods, specific parameters or group thereof for which the laboratory is certified to analyze regulatory samples.

“Acute MCL violation” means any violation of the maximum contaminant level (MCL) for any parameter specified by the State as posing an acute risk to human health including the presence of fecal coliform or *E. coli*, and nitrate (>10mg/L), nitrite (>one mg/L) or nitrate/nitrite (>10mg/L).

“Acute toxicity” means, for acute toxicity testing, a lethal or adverse sublethal effect to an organism exposed to a toxic substance for no more than 96 hours.

“Acute toxicity testing” means the standardized procedures for determining the quantitative lethal or sublethal effects of a toxic substance on an organism.

“Affiliate” means, with respect to any individual or entity, another individual or entity who has a controlling interest in such individual or entity; in whom such individual or entity has a controlling interest; or who is under common control with such individual or entity.

“Alternate Test Procedure (ATP)” means a procedure that:

1. Contains modifications not permitted in a method listed as a DSAM; or
2. Is a method not listed as a DSAM for the monitoring of one or more parameters of interest for the Safe Drinking Water Act, New Jersey Pollutant Discharge Elimination System, New Jersey Spill Compensation Act, New Jersey Solid Waste Management Act, Industrial Site Recovery Act, and New Jersey Underground Storage Tanks Program.

“Analytical reagent (AR) grade,” “ACS reagent grade” and “reagent grade” mean reagents that conform to the current specifications of the Committee on Analytical Reagents of the American Chemical Society.

“Analyze-immediately parameter” means a parameter for which analysis must be performed within 15 minutes after the sample is collected. Examples of analyze-immediately parameters include chlorine dioxide, dissolved oxygen with probe, pH, ozone, residual chlorine, sulfite and temperature.

“ANSP—Goulden” means, for Acute Toxicity Testing, the publication entitled “Daphnia Bioassay Workshop,” Dr. Clyde Goulden and Ms. Linda Henry; The Academy of Natural Sciences of Philadelphia, Division of Limnology and Ecology. This reference is a source for daphnid culturing and testing techniques used in N.J.A.C. 7:18-7, Acute Toxicity Testing.

“Applicant” means a laboratory applying to the Department to become a certified environmental laboratory.

“Arochlor” or “Aroclor” means the trade name for a series of commercial polychlorinated biphenyl and terphenyl mixtures, often termed PCBs or polychlorinated biphenyls.

“ASTM D1193-91” means, for chemical testing, “Standard Specifications for Reagent Water,” D1193-91 (and later revisions), American Society for Testing and Materials.

“ASTM D 4229-84” means, for acute toxicity testing, “Standard Practice for Conducting Static Acute Toxicity Tests on Waste-waters with Daphnia,” D 4229-84, American Society for Testing and Materials. This reference method is a source for daphnid culturing and testing techniques used in N.J.A.C. 7:18-7, Acute Toxicity Testing.

“ASTM E 724-80” means, for acute toxicity testing, “Standard Practice for Conducting Static Acute Toxicity Tests with Larvae of Four Species of Bivalve Molluscs,” E 724-80; American Society for Testing and Materials. This reference method is a source for standardized culturing and testing techniques in subchapter 7, Acute Toxicity Testing.

“ASTM E 729-80” means, for acute toxicity testing, “Standard Practice for Conducting Acute Toxicity Tests With Fishes, Macroinvertebrates, and Amphibians,” E 729-80, American Society for Testing and Materials. This reference method is a source for standardized culturing and testing techniques in subchapter 7, Acute Toxicity Testing.

“ASTM-31” means Annual Book of the American Society for Testing and Materials, Part 31.

“Asymptotic LC₅₀” means, for acute toxicity testing, the toxicant concentration at which the LC₅₀, the lethal concentration at which 50 percent death of the test organisms occurs during an acute toxicity test, becomes a constant for a prolonged exposure time.

“Authorized measurement protocols” for radon/radon progeny-in-air means the DSAMs for Category RA1, radon/radon progeny-in-air, which are the approved methods for use by a certified laboratory when performing radon/radon progeny-in-air analysis. These DSAMs include the “Indoor Radon and Radon Decay Product Measurement Device Protocols,” USEPA 402-R-92-004 and the “Interim Protocols for Screening and Follow-up Radon and Radon/Decay Product Measurements,” USEPA 520/I-86-014.

“Authorized proficiency program” or “APP” means the USEPA Radon/Radon Progeny Measurement Proficiency Program, Eastern Environmental Radiation Facility, Montgomery, Alabama 36109, or other program authorized by the Department in writing as being equally stringent. The APP provides the Department with a laboratory’s radon/ra-

don progeny results of PE samples. The Department uses the laboratory’s results and the expected acceptable limits to partially assess its analytical performance. Pursuant to N.J.A.C. 7:18-2.13, successful analysis of radon/radon progeny PE samples is necessary for obtaining and maintaining radon/radon progeny-in-air certification.

1. The assessment of civil administrative penalties;
and
2. The issuance of civil administrative orders.

7:18-10.2 Administrative orders

(a) Except as provided in (c) below, the Department may issue an administrative order against any certified environ-

mental laboratory or other person who has violated any provision of this chapter, or any provision of an order issued pursuant to this chapter, for one or more of the following purposes:

1. To direct the laboratory or other person to comply with a provision of this chapter or of an order issued pursuant to this chapter;

2. To suspend or revoke a certified environmental laboratory's certification, in whole or in part, pursuant to N.J.A.C. 7:18-2.15; and

3. To assess civil administrative penalties in accordance with N.J.A.C. 7:18-10.3;

(b) The authority to issue an order pursuant to (a) above is in addition to any other remedies available to the Department pursuant to law.

(c) The authority to issue an order pursuant to (a) above does not apply to any violation arising in connection with the Radon/Radon Progeny-in-Air Program.

7:18-10.3 Civil administrative penalties

(a) Except as provided in (c) below, the Department may assess a civil administrative penalty against any certified environmental laboratory or other person who has violated any provision of this chapter, or any provision of an order issued pursuant to this chapter. The Department shall determine the amount of the penalty by:

1. Establishing the class of the violation that is the subject of the penalty, in accordance with N.J.A.C. 7:18-10.4; and

2. Selecting the penalty designated for the class of violation, in accordance with N.J.A.C. 7:18-10.5.

(b) The authority to assess a civil administrative penalty pursuant to (a) above is in addition to any other remedies available to the Department pursuant to law.

(c) The authority to issue a civil administrative penalty pursuant to (a) above does not apply to any violation arising in connection with the Radon/Radon Progeny-in-Air Program.

7:18-10.4 Classes of violations

(a) "Minor violation" means any violation of the requirements of this chapter or of any order issued pursuant to this chapter pertaining to laboratory administration procedures or to any laboratory operating procedures, other than specific analytical procedures. Minor violations include, but are not limited to, noncompliance with requirements pertaining to laboratory management procedures, failure to submit required fees, and failure to respond to notices of deficiencies that have not directly affected data quality. Violations of specific provisions of this chapter that are defined as minor violations include, but are not necessarily limited to:

1. N.J.A.C. 7:18-1.4(d), failure to display certification;

2. N.J.A.C. 7:18-2.11, noncompliance with requirements relating to managerial and supervisory duties;

3. N.J.A.C. 7:18-2.12(a)2 and 3, noncompliance with those criteria for compliance sample acceptance and anal-

ysis relating to personnel qualifications and laboratory management;

4. N.J.A.C. 7:18-2.14(c), failure to notify the Department of a change in the location of the laboratory;

5. N.J.A.C. 7:18-2.14(g), failure to notify the Department of the completion of corrective action;

6. N.J.A.C. 7:18-2.19(a), failure to report personnel changes;

7. N.J.A.C. 7:18-2.22(b)1, failure to obtain required written statements and disclaimers; and

8. N.J.A.C. 7:18-3.2, noncompliance with laboratory facility and safety requirements.

(b) "Moderate violation" means any violation of the requirements of this chapter or of any order issued pursuant to this chapter that directly affects the quality of laboratory data. These violations include, but are not limited to, noncompliance with those requirements pertaining to analytical procedures, quality control, data validity and integrity, chain-of-custody, laboratory performance, data reporting and sample collection, recordkeeping, and handling and preservation. A failure to make available or to maintain complete records is equivalent to a violation that directly affects data quality, because the Department is unable to verify facts relevant to data quality without adequate records. Violations of specific provisions of this chapter that are defined as moderate violations include, but are not necessarily limited to:

1. N.J.A.C. 7:18-2.10, noncompliance with laboratory personnel qualification requirements;

2. N.J.A.C. 7:18-2.14(f), failure to submit a corrective action plan in response to an audit within the time period provided;

3. N.J.A.C. 7:18-2.22(b)2, failure to provide notification along with report of analysis results that the analysis results are not to be used for regulatory purposes;

4. N.J.A.C. 7:18-2.12(b), failure to follow requirements and criteria in approved method, or N.J.A.C. 7:18-2.22(a), 4.3(a), 5.3(a), 6.4(a), 8.3(a), use of unapproved methods;

5. N.J.A.C. 7:18-3.3, noncompliance with requirements for laboratory equipment, supplies, materials and instrumentation;

6. N.J.A.C. 7:18-4, noncompliance with microbiological testing procedures, including equipment requirements, chain of custody procedures, quality control procedures, standard operating procedures, record keeping and data reporting procedures;

7. N.J.A.C. 7:18-5, noncompliance with chemical testing procedures including equipment requirements, chain of custody procedures, quality control procedures,

standard operating procedures, recordkeeping and data reporting procedures;

8. N.J.A.C. 7:18-6, noncompliance with radiochemical testing procedures including equipment requirements, radon gas progeny test procedures, chain of custody procedures, quality control procedures, standard operating procedures, record keeping and data reporting procedures;

9. N.J.A.C. 7:18-7, noncompliance with acute toxicity testing procedures including equipment requirements, chain of custody procedures, quality control procedures, standard operating procedures, recordkeeping and data reporting procedures;

10. N.J.A.C. 7:18-8, noncompliance with requirements for performing analyze-immediately measurements;

11. N.J.A.C. 7:18-9, noncompliance with criteria for sample handling and preservation, collection procedures and chain of custody procedures;

12. N.J.A.C. 7:18-2.13(b), (c), (d) (e), (f) (g) (h) and (i)3, failure to maintain records of PE samples;

13. N.J.A.C. 7:18-4.6(a), (b) and (d), failure to maintain records as required;

14. N.J.A.C. 7:18-5.6(a) and (b), failure to maintain records as required;

15. N.J.A.C. 7:18-6.7(a), (b) and (d), failure to maintain records as required;

16. N.J.A.C. 7:18-7.7(b) and (h)1, failure to maintain records as required; and

17. N.J.A.C. 7:18-8.5(a) and (b), failure to maintain records as required.

(c) "Major violation" means a violation involving the analysis of samples for the purpose of establishing compliance with a regulatory program by a laboratory that is not a certified environmental laboratory; a violation involving the analysis of samples for the purpose of establishing compliance with a regulatory program, in a manner that is beyond the scope of a laboratory's certification and ACPL; or a violation involving the falsification of records. Violations of specific provisions of this chapter that are defined as major violations include, but are not necessarily limited to:

1. N.J.A.C. 7:18-1.4(b) and 2.2(b), performance of analyses or test methods beyond the purview of a certification;

2. N.J.A.C. 7:18-1.9(a), false certification of information by the laboratory;

3. N.J.A.C. 7:18-2.2(a), noncompliance with prohibition against noncertified laboratories analyzing samples to establish compliance with a regulatory program;

4. N.J.A.C. 7:18-2.2(c), misrepresentation of certification;

5. N.J.A.C. 7:18-2.6(c)3, failure to cease compliance sampling and analyses activities governed by this chapter or the statutes pursuant to which this chapter is promulgated upon the expiration or termination of temporary approval;

6. N.J.A.C. 7:18-2.12(a)1, offering to perform services beyond the scope of the laboratory's certification;

7. N.J.A.C. 7:18-2.14(a), denial of access by Department personnel for audit purposes; and

8. N.J.A.C. 7:18-2.22(a), 4.3(a), 5.3(a), 6.4(a), 8.3(a), performance of analyses beyond the scope of certification; and

9. N.J.A.C. 7:18-2.22(b)3, misrepresentations made to persons other than the Department involving the laboratory's status as a certified environmental laboratory.

7:18-10.5 Civil administrative penalty determination

(a) Each violation of any of the provisions of this chapter or of any order issued pursuant to this chapter shall constitute a separate and distinct offense.

(b) Subject to the provisions of (c) below, the matrix of civil administrative penalties for violations of any provision of this chapter is as follows:

Class of violation	1st violation	2nd violation	3rd and subsequent violations
Minor	\$ 250	\$ 500	\$ 1,000
Moderate	\$ 1,000	\$ 2,000	\$ 5,000
Major	\$ 5,000	\$10,000	\$25,000

(c) Notwithstanding (b) above, the civil administrative penalty shall be \$5,000 for any second or subsequent violation of any provision of this chapter arising in connection with the Safe Drinking Water Program, and which are defined as minor or moderate.

(d) The Department will treat a violation as a first violation for purposes of determining the civil administrative penalty amount if the violator has not committed the same violation in the three calendar year period immediately preceding the date of the violation at issue.

(e) The Department may reduce or increase any penalty assessed pursuant to the provisions of this subchapter, or take additional enforcement action available to it pursuant to law, on the basis of any one or more of the factors listed in (e)1 through 7 below. No such factor constitutes a defense to any violation. The factors are:

1. The compliance history of the violator;

2. The number, frequency and severity of the violations;

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent the occurrence of future violations;

4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not recur;
6. Any unusual or extraordinary costs directly or indirectly imposed on the public by the violation; and
7. Any other extenuating, mitigating or aggravating circumstances.

7:18-10.6 Procedures for civil administrative orders, assessment of civil administrative penalties and suspension or revocation of certification

(a) Any order, notice of civil administrative penalty assessment, notice of suspension of certification or notice of revocation of certification issued pursuant to this chapter shall:

1. Be served either personally or by certified mail, return receipt requested upon the person or persons who are the subject of the order or notice;
2. Identify the person or persons claimed by the department to have violated any provision of this chapter;
3. Describe the activity or activities which are in violation;
4. Identify the specific provision or provisions of this chapter which have been violated;
5. Describe the remedial or other action which must be implemented or caused to be implemented by the violator and the time periods within which such implementation shall commence and be completed;
6. Identify the office within the department to which any required reply or other correspondence must be directed;
7. Advise the person or persons named in the order of the right to request an adjudicatory hearing pursuant to the provisions of N.J.A.C. 7:18-2.17;
8. In the case of a civil administrative penalty assessment, specify the amount of the civil administrative penalty to be imposed;
9. In the case of a suspension or revocation of certification, a description of the areas in which the certification is to be suspended or revoked and the specific grounds for the suspension or revocation; and
10. In the case of a suspension of certification, the length of time for which a suspension will remain in effect.

(b) If a civil administrative penalty is assessed against more than one person for the same violation or violations, each shall be jointly and severally liable for the penalty assessed.

(c) Suspension or revocation of certification shall commence when the notice of suspension or revocation becomes a final order pursuant to (c)1, 2 or 3 below, or when the laboratory receives a final order in a contested case proceeding, whichever comes first. Payment of a civil administrative penalty is due when a notice of civil administrative penalty assessment becomes a final order pursuant to (c)1, 2 or 3 below, or when the laboratory receives a final order in a contested case proceeding, whichever comes first. A notice of suspension or revocation, or a notice of civil administrative penalty assessment, becomes a final order as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:18-2.17, a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies a hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of the notice of denial;
3. If a hearing request is submitted by the violator and subsequently withdrawn, the notice of suspension or revocation, or the notice of civil administrative penalty assessment, becomes a final order upon such withdrawal unless the violator and the department have executed an administrative consent order or comparable instrument providing otherwise.

7:18-10.7 Procedures to request an adjudicatory hearing to contest an administrative order, administrative penalty assessment, suspension of certification or revocation of certification

A laboratory or other person may request an adjudicatory hearing to contest an administrative order, notice of civil administrative penalty assessment, or suspension or revocation of certification, in accordance with N.J.A.C. 7:18-2.17.

7:18-10.8 Civil penalties for violations of N.J.S.A. 26:2D-70 et seq. (The provisions of the Radiation Protection Act governing Radon)

(a) Any person who violates any provision of N.J.S.A. 26:2D-70 (the provisions of the Radiation Protection Act governing Radon), or who violates any provision of this chapter in connection with the Radon/Radon Progeny-in-Air Program, shall be liable, upon order of a Court, to a civil penalty of not more than \$2,500.

(b) Any penalty ordered as provided in this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A-58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of Penalty Enforcement Law in connection with penalties pursuant to this section.

7:18-10.9 Other enforcement actions

Notwithstanding the availability of any other remedies, the Department may, at its discretion seek any other remedies it may have available pursuant to applicable law, including but not limited to, injunctive relief and civil penalties and criminal penalties.