

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §25.9 and §25.62 *without changes* to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2389) and the text will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted rules is to refer to more recent laboratory accreditation standards adopted by the National Environmental Laboratory Accreditation Conference (NELAC) and to expand the sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

#### SECTION BY SECTION DISCUSSION

Adopted §25.9, Standards for Environmental Testing Laboratory Accreditation, replaces the phrase “Chapters 3, 4, and 5, adopted July 2002, and Chapters 1, 2, and 6, adopted June 2003” with “approved June 2003” to refer to the most recent laboratory accreditation standards adopted by NELAC.

Adopted §25.62(d), Proficiency Test Sample Analyses, replaces the phrase “Proficiency test samples shall be purchased from a provider approved by the National Institute for Standards and Technology, if available” with “Proficiency test samples, if available, shall be purchased from a National Environmental Laboratory Accreditation Program-designated provider or a provider approved by the National Institute of Standards and Technology.” The change expands the number of potential sources

of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking updates the agency's standards for accreditation and expands the number of potential sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission. Thus, these rules do not meet the definition of a "major environmental rule." These rules are not a major environmental rule and do not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, the adopted rules do not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The adopted rules do not exceed a standard set by federal law nor exceed the requirement of a delegation agreement because there is no federal authority regarding laboratory accreditation.

These revisions do not adopt a rule solely under the general powers of the commission and do not exceed an express requirement of state law. The requirements that are implemented through these rules are expressly defined under Texas Water Code (TWC), Chapter 5, Subchapter R, which requires the commission to enact rules governing the accreditation of environmental laboratories.

#### TAKINGS IMPACT ASSESSMENT

The commission's final assessment indicates that Texas Government Code, Chapter 2007, does not apply to these adopted amendments because the adopted amendments are not a taking as defined in Chapter 2007, nor are they a constitutional taking of private real property. The purpose of the adopted amendments is to update NELAC standards referenced in these rules.

Promulgation and enforcement of these adopted rules will not affect private real property, which is the subject of the rules, because the adopted amendments will neither restrict nor limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The adopted rules only apply to environmental testing laboratories that submit data to the commission for use in its decisions. Property values will not be decreased because the adopted amendments will not limit the use of real property. Thus, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the adoption is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking was neither identified in 31 TAC

§505.11, nor affected any action or authorization identified in §505.11. Therefore, the adoption is not subject to the CMP.

#### PUBLIC COMMENT

The commission received no comments concerning this rulemaking.

## **SUBCHAPTER B: ENVIRONMENTAL TESTING LABORATORY ACCREDITATION**

### **§25.9**

#### **STATUTORY AUTHORITY**

The amendment is adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and §5.802 and §5.805, which requires the agency to adopt rules for the administration of the laboratory accreditation program.

The adopted amendment implements TWC, §§5.013, 5.103, 5.105, 5.802, and 5.805.

#### **§25.9. Standards for Environmental Testing Laboratory Accreditation.**

Accreditation must be based on an environmental testing laboratory's conformance to National Environmental Laboratory Accreditation Conference standards approved June 2003 and the requirements of this chapter.

## **SUBCHAPTER C: ENVIRONMENTAL TESTING LABORATORY CERTIFICATION**

### **§25.62**

#### **STATUTORY AUTHORITY**

The amendment is adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and §5.802 and §5.805, which requires the agency to adopt rules for the administration of the laboratory accreditation program.

The adopted amendment implements TWC, §§5.013, 5.103, 5.105, 5.802, and 5.805.

#### **§25.62. Proficiency Test Sample Analyses.**

(a) The operator of an environmental testing laboratory applying for initial certification shall ensure that laboratory personnel successfully analyze one proficiency test sample for each requested field of certification. The proficiency test samples shall be analyzed no more than 12 months prior to submitting the application.

(b) The operator of a certified environmental testing laboratory shall ensure that laboratory personnel analyze at least two proficiency test samples each year approximately six months apart. The

operator of a certified environmental testing laboratory shall ensure that laboratory personnel successfully analyze one proficiency test sample for each field of certification each year. An environmental testing laboratory that does not meet the requirements of this subsection may participate in a supplemental proficiency test study.

(c) The executive director shall determine the environmental testing laboratory's certification status for all affected fields of certification within 60 days of determining that laboratory personnel failed to analyze proficiency test samples successfully according to this subsection.

(d) Proficiency test samples, if available, shall be purchased from a National Environmental Laboratory Accreditation Program-designated provider or a provider approved by the National Institute of Standards and Technology.