

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§25.1, 25.2, 25.4, 25.9, 25.10, 25.14, 25.20, 25.22, 25.24, 25.30, 25.32, and 25.34; and the repeal of §25.36.

The amendments to §§25.1, 25.4, 25.10, 25.14, 25.20, 25.22, 25.24, and 25.34 and the repeal of §25.36 are adopted *without changes* as published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3430) and, therefore, will not be republished. The commission adopts §§25.2, 25.9, 25.30, and 25.32 *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking changes the applicable standards for accrediting environmental testing laboratories, establishes the date on which the change in accreditation standards becomes effective, revises fees and fee categories, establishes the date on which the revised fees and fee categories become effective, clarifies that laboratories operated by the commission are exempt from fees, clarifies when certain miscellaneous fees are applied, removes language in the rules that is no longer needed, and revises language in the rules to make them clearer, more consistent, and bring them up-to-date.

Texas Water Code (TWC), §5.802 requires the agency's laboratory accreditation program to be consistent with accreditation standards approved by the National Environmental Laboratory Accreditation Program (NELAP). The NELAP is a voluntary organization of state, territorial, and federal environmental organizations whose primary purpose is to grant mutually acceptable accreditations to environmental testing laboratories. The NELAP currently consists of 14 agencies located in 13 states.

On October 4, 2009, the NELAP adopted new accreditation standards. These standards were developed by the National Environmental Laboratory Accreditation Conference (NELAC) Institute, a standards development organization accredited by the American National Standards Institute. The new standards are: The NELAC Institute, Requirements for the National Environmental Laboratory Accreditation Program, consisting of Volume 1, *Management and Technical Requirements for Laboratories Performing Environmental Analysis*, EL-V1-2009; Volume 2, *General Requirements for Accreditation Bodies Accrediting Environmental Laboratories*, EL-V2-2009; Volume 3, *General Requirements for Environmental Proficiency Test Providers*, EL-V3-2009; and Volume 4, *General Requirements for an Accreditor of Environmental Proficiency Test Providers*, EL-V4-2009.

The NELAP also adopted a schedule for implementing the new standards. The new standards become effective on July 1, 2011. The rulemaking maintains the current standards for accreditation until July 1, 2011. Thereafter, the standards for accreditation are the standards adopted by the NELAP. The rulemaking ensures continued compliance with TWC, §5.802.

This change also ensures continued compliance with drinking water primacy requirements. Title 40 Code of Federal Regulations §142.10 requires a state, as a condition of primacy delegation, to establish and maintain a program for the certification of laboratories conducting analytical measurements of drinking water contaminants. The United States Environmental Protection Agency's (EPA) Office of Water has determined NELAP accreditations, and, therefore, accreditations issued through the commission's laboratory accreditation program, meet this requirement (Memoranda to Regional Drinking Water Representatives and Regional Laboratory Certification Officers from Cynthia C. Dougherty, Director, United States Environmental Protection Agency Office of Ground Water and Drinking Water, October

20, 1997 and October 1, 2002).

TWC, §5.803(b) and §25.30(a) require the agency to establish a schedule of reasonable accreditation fees designed to cover the costs of the accreditation program. The current schedule of fees does not cover program costs. The commission adopts with changes increases to most fees, additions to fee categories that are needed, deletion of fees and fee categories that are not needed, and clarifications of the types of analyses covered by certain fee categories.

The commission also adopts with changes additions to the types of costs associated with inspecting an out-of-state laboratory applying for primary accreditation that may be assessed as an additional fee. Currently, the commission assesses an additional fee equal to the reasonable travel costs associated with inspecting a laboratory located outside of Texas. Travel costs may only be a small portion of the costs associated while inspecting the laboratory. The rulemaking allows the commission to recoup all costs incurred inspecting laboratories located outside of Texas.

In adopting fee changes, the commission changed the effective date from the date proposed, January 1, 2011, to September 1, 2011. Until September 1, 2011, the current schedule of fees will apply. The commission estimates the new schedule of fees will generate approximately \$847,000 per year. This level of revenue combined with current levels of federal funds is sufficient to cover program costs.

Laboratories operated by the commission do not currently pay accreditation fees. The rulemaking clarifies that these laboratories are exempt from paying accreditation fees.

The rulemaking changes references to "accreditation authority" to "accreditation body." The phrase, "accreditation body" is used in international standards relating to laboratory accreditation, i.e., International Organization for Standardization (ISO)/International Electromechanical Commission (IEC), *Conformity assessment – General requirements for accreditation bodies accrediting conformity assessment bodies*, ISO/IEC 17011:2004(E), and the accreditation standards recently adopted by the NELAP. The change makes the rules consistent with these standards.

The rulemaking adds a definition for "Corrective action reports." Laboratory personnel prepare corrective action reports and submit them to the executive director to address deficiencies identified during environmental testing laboratory assessments.

The rulemaking redefines the NELAP. The current definition contains a reference to the NELAC. NELAC was a voluntary organization of state, territorial, and federal environmental officials and interest groups whose primary purpose was to establish mutually acceptable national standards for accrediting environmental testing laboratories. However, the NELAC no longer exists. Therefore, the current definition can be confusing. The revised definition describes the NELAP more accurately as a voluntary organization of accreditation bodies whose primary purpose is to grant mutually acceptable accreditations to environmental testing laboratories.

House Bill 2912 (2001), §18.03(d), provided that the change in law made by the addition of TWC, §5.134, relating to the acceptance of environmental testing laboratory results by the commission, applied only to environmental testing laboratory results submitted to the commission on or after the third anniversary of the date on which the commission published notice in the *Texas Register* that the

commission's environmental laboratory testing program has met the standards of the NELAC. The notice was published on July 1, 2005 (30 TexReg 3904). The third anniversary was July 1, 2008. The rulemaking amends §25.4 to provide that accreditation requirements, exemptions, and other requirements contained in the rule apply to environmental testing laboratory results prepared and submitted to the commission on or after July 1, 2008. The rulemaking strikes language that is no longer needed concerning the date on which laboratories could begin applying for accreditation. The rulemaking also makes clear that the commission is not currently issuing environmental testing laboratory certifications according to Subchapter C.

The rulemaking removes the reference to the commission's Compliance Support Division as this division no longer exists.

The rulemaking makes clear that proficiency test samples must be reported to the executive director as well as successfully analyzed according to the standards for accreditation.

The rulemaking removes the language requiring the executive director to determine the status of an environmental testing laboratory that does not successfully analyze proficiency test samples according to the standards for accreditation. This rule does not directly affect environmental testing laboratories and is addressed by the commission's internal operating procedures. Therefore, the current language is unnecessary.

The rulemaking combines current rules concerning the denial of applications for accreditation and revocation of accreditations and standardize language that describes conditions that may lead either to

denial of an application or revocation of an accreditation. The rulemaking repeals current rules concerning revocation of accreditations.

The rulemaking makes clear that a laboratory has at most two opportunities to submit an acceptable corrective action report. The current standards for accreditation contain this requirement. The standards for accreditation that will become effective on July 1, 2011, state that two opportunities is the norm, but do not limit the number of opportunities a laboratory has to submit an acceptable corrective action report. The rulemaking continues the current requirement of two opportunities to submit an acceptable corrective action report. The rulemaking also provides that the executive director may, upon request, allow up to 60 days to submit an initial corrective action report. A second corrective action report must be submitted within 30 days.

SECTION BY SECTION DISCUSSION

SUBCHAPTER A: GENERAL PROVISIONS

§25.1, Purpose

The rulemaking amends §25.1 by deleting language stating when the commission's laboratory accreditation program become effective.

§25.2, Definitions

The rulemaking amends §25.2(2) to refer to an "accreditation body" rather than to an "accreditation authority."

The rulemaking adds a definition of "Corrective action report" as §25.2(5) and renumber existing

subsequent paragraphs as paragraphs (5) - (12).

The rulemaking amends current §25.2(6) by substituting the term "body" for "authority" and by substituting the phrase "standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation) or certification as specified in §25.50 of this title (relating to Standards for Environmental Testing Laboratory Certification)" for "National Environmental Laboratory Accreditation Conference (NELAC) accreditation or United States Environmental Protection Agency certification standards." The standards for accreditation and certification are specified in §25.9, concerning Standards for Environmental Testing Laboratory Accreditation and §25.50, concerning Standards for Environmental Testing Laboratory Certification, respectively. The more general reference in §25.2(6) is unnecessary and, since the NELAP has adopted new standards for accreditation, would be out of date as of July 1, 2011.

The rulemaking removes the language in current §25.2(13) as the NELAC no longer exists.

The rulemaking amends current §25.2(14) by redefining the NELAP. The current definition defines the NELAP as "The environmental testing laboratory accreditation program including NELAC." The NELAC no longer exists. The rulemaking defines the NELAP as "The voluntary organization of state, territorial, and federal environmental organizations whose primary purpose is to grant mutually acceptable accreditations to environmental testing laboratories."

The rulemaking amends current §25.2(17) by replacing a reference to, "NELAC standards" with "the standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental

Testing Laboratory Accreditation)."

The rulemaking amends §25.2(21) by adding National Environmental Laboratory Accreditation Program and replacing the phrase "accrediting authority" with the phrase "accreditation body."

§25.4, Applicability

The rulemaking amends §25.4(a) by removing the language in subsection (a) and relettering subsections (b) - (e). The rulemaking also revises internal references in current §25.4(d) to reflect the relettering of current §25.4(b) - (e). The rulemaking also amends current §25.4(d) by replacing language stating, "the third anniversary of the date on which the commission publishes notice in the Texas Register that the commission's environmental laboratory testing program established under this chapter has met NELAC standards with "July 1, 2008."

The rulemaking amends current §25.4(e) by removing the phrase "Until subsection (d) of this section is effective." Current §25.4(d) became effective on July 1, 2008. The introductory text in current §25.4(e) is no longer needed. The rulemaking also removes language in current §25.4(e)(2) referring to certification of drinking water laboratories according to Subchapter C and renumber existing paragraph (3) as paragraph (2). The commission is not currently certifying laboratories according to Subchapter C.

The rulemaking deletes current §25.4(f). The commission is not currently certifying laboratories according to Subchapter C. Changes to current §25.4(e) make the language in current §25.4(f) unnecessary.

SUBCHAPTER B: ENVIRONMENTAL TESTING LABORATORY ACCREDITATION

§25.9, Standards for Environmental Testing Laboratory Accreditation

The rulemaking renumbers current §25.9 as §25.9(a) and adds language stating the current standards for accreditation are in effect until July 1, 2011. The rulemaking adds §25.9(b), which adopts new standards for accreditation effective July 1, 2011. The new standards are those adopted by the NELAP.

§25.10, Fields of Accreditation

The rulemaking amends §25.10 to remove the reference to the Compliance Support Division, as this division no longer exists. A list of the commission's fields of accreditation is still be available from Agency Communications and on the commission's Web site.

§25.14, Term of Accreditation

The rulemaking amends §25.14(a) by replacing a reference to the "National Environmental Laboratory Accreditation Conference (NELAC) standards" with the phrase "applicable standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental testing Laboratory Accreditation)."

The standards for accreditation are specified in §25.9, concerning Standards for Environmental Testing Laboratory Accreditation, and, as of July 1, 2011, the reference to NELAC standards would be incorrect. For the same reasons, the rulemaking also amends §25.14(b) by deleting the term NELAC and referring to "the standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental testing Laboratory Accreditation)."

§25.20, Proficiency Test Sample Analyses

The rulemaking amends §25.20(a) by replacing reference to the "National Environmental Laboratory

Accreditation Conference (NELAC) standards" with the phrase "standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Laboratory Accreditation)." The rulemaking amends §25.20(b) to make clear that the proficiency test samples must be successfully analyzed and reported to the executive director. The rulemaking also amends §25.20(b) to replace a references to the "NELAC standards" with references to the "standards for accreditation." The rulemaking removes §25.20(c) and reletters current subsection (d) as subsection (c).

§25.22, Secondary Accreditation of Out-of-State Environmental Testing Laboratories

The rulemaking amends §25.22(a) to replace a reference to "accrediting authority" with "accreditation body."

§25.24, Duties and Responsibilities of Accredited Environmental Testing Laboratories

The rulemaking amends §25.24(2) to replace references to the "National Environmental Laboratory Accreditation Conference (NELAC) standards" with the phrase "standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental testing Laboratory Accreditation)." The rulemaking amends §25.24(3) by replacing a reference to "NELAC standards for accreditation" with "standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation)."

§25.30, Accreditation Fees

Section 25.30(c) is adopted with changes to the proposed text; the rulemaking amends §25.30(c) by raising the administrative fee for laboratories applying for secondary accreditation from \$250 to \$350 effective September 1, 2011. The commission realizes some organizations may need more time to

consider and plan for the increase in fees than was proposed. Therefore, the commission changed the rules to make the fee increases effective on September 1, 2011.

Section 25.30(d) - (h) is adopted with changes to the proposed text; the rulemaking amends §25.30(d) - (h) to make the current fees applicable until September 1, 2011. The commission realizes some organizations may need more time to consider and plan for the increase in fees than was proposed. Therefore, the commission changed the rules to make the fee increases effective on September 1, 2011. The rulemaking also amends §25.30(e)(8), (f)(8), (g)(8), and (h)(7) to clarify that the fees apply to analyses of organic compounds by gas chromatography using detection other than mass spectrometry. The rulemaking also amends §25.30(e)(8) and (g)(8) to clarify that the fees apply to analyses of organic compounds by gas chromatography using detection other than mass spectrometry involving agency method 1005 and/or any field of accreditation other than agency method 1005.

Section 25.30(i) is adopted with changes to the proposed text; §25.30(i) includes the annual category fees for analyses relating to drinking water that become effective on September 1, 2011. The commission realizes some organizations may need more time to consider and plan for the increase in fees than was proposed. Therefore, the commission changed the rules to make the fee increases effective on September 1, 2011. The current and new category fees are, respectively: microbiology - \$75 and \$255; radiochemistry - \$225 and \$510; metals - \$225 and \$385; general chemistry - \$225 and \$510; disinfection by-products - \$150 and \$255; volatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$255; semivolatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$385; organic compounds by gas chromatography using detection other than mass spectrometry - \$300 and \$510; organic compounds by high performance liquid chromatography - \$300 and \$510;

polychlorinated dibenzo-p-dioxins and dibenzofurans - \$150 and \$385; and asbestos - \$150 and \$385.

Section 25.30(j) is adopted with changes to the proposed text; §25.30(j) includes the annual category fees for analyses relating to non-potable water that become effective on September 1, 2011. The commission realizes some organizations may need more time to consider and plan for the increase in fees than was proposed. Therefore, the commission changed the rules to make the fee increases effective on September 1, 2011. The current and new category fees are, respectively: microbiology - \$75 and \$255; aquatic toxicity - \$150 and \$510; radiochemistry - \$150 - \$510; metals - \$225 and \$385; general chemistry - \$225 and \$510; volatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$255; semivolatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$385; organic compounds by gas chromatography: (A) total petroleum hydrocarbons by agency method 1005 only - \$150 and \$255; and (B) agency method 1005 and/or any other fields of accreditation - \$300 and \$510; organic compounds by high performance liquid chromatography - \$300 and \$510; and polychlorinated dibenzo-p-dioxins and dibenzofurans - \$150 and \$385. Section 25.30(j) removes a category fee for asbestos analyses in non-potable water because the category is not needed. Section 25.30(j) includes a category fee for waste characteristics and set the fee for this category at \$255.

Section 25.30(k) is adopted with changes to the proposed text; §25.30(k) includes the annual category fees for analyses relating to biologic tissue that will become effective on September 1, 2011. The commission realizes some organizations may need more time to consider and plan for the increase in fees than was proposed. Therefore, the commission changed the rules to make the fee increases effective on September 1, 2011. The current and new category fees are, respectively: radiochemistry - \$150 and \$510; metals - \$225 and \$510; general chemistry - \$225 and \$510; volatile organic compounds by gas

chromatograph mass spectrometry - \$150 and \$385; semivolatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$385; organic compounds by gas chromatography - \$300 and \$510; organic compounds by high performance liquid chromatography - \$300 and \$510; and polychlorinated dibenzo-p-dioxins and dibenzofurans - \$150 and \$385.

Section 25.30(l) is adopted with changes to the proposed text; §25.30(l) includes the annual category fees for analyses relating to solid and chemical materials that will become effective on September 1, 2011. The commission realizes some organizations may need more time to consider and plan for the increase in fees than was proposed. Therefore, the commission changed the rules to make the fee increases effective on September 1, 2011. The current and new category fees are, respectively: microbiology - \$75 and \$255; radiochemistry - \$150 and \$510; metals - \$225 and \$385; waste characteristics - \$150 and \$255 ; general chemistry - \$225 and \$510; volatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$255; semivolatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$385; organic compounds by gas chromatography: (A) total petroleum hydrocarbons by agency method 1005 only - \$150 and \$255; and (B) agency method 1005 and/or any other fields of accreditation - \$300 and \$510; organic compounds by high performance liquid chromatography - \$300 and \$510; and polychlorinated dibenzo-p-dioxins and dibenzofurans - \$150 and \$385. The rulemaking deletes an existing annual category fee for asbestos analyses in solid and chemical materials because the category is not needed. The rulemaking also adds a new category fee for aquatic toxicity and set the fee for this category at \$510.

Section 25.30(m) is adopted with changes to the proposed text; §25.30(m) includes the annual category fees for analyses relating to air and emissions that will become effective on September 1, 2011. The

commission realizes some organizations may need more time to consider and plan for the increase in fees than was proposed. Therefore, the commission changed the rules to make the fee increases effective on September 1, 2011. The current and new category fees are, respectively: radiochemistry - \$150 and \$510; particulate matter - \$75 and \$255; metals - \$225 and \$385; general chemistry - \$150 and \$510; volatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$255; semivolatile organic compounds by gas chromatograph mass spectrometry - \$150 and \$385; organic compounds by gas chromatography - \$300 and \$510; organic compounds by high performance liquid chromatography - \$300 and \$510; and polychlorinated dibenzo-p-dioxins and dibenzofurans - \$150 and \$385. The rulemaking also deletes an existing annual category and fee for analyses of asbestos and airborne fibers because the category is not needed.

As a result of adding §25.30(i) - (m), the rulemaking reletters current §25.30(j) and (k).

Section 25.30(i) is adopted with changes to the proposed text; the rulemaking amends current §25.30(i) to include labor and other costs incurred inspecting out-of-state laboratories applying to the commission for primary accreditation effective September 1, 2011. The commission realizes some organizations may need more time to consider and plan for the increase in fees than was proposed. Therefore, the commission changed the rules to make the fee increases effective on September 1, 2011.

The rulemaking amends current §25.30(j) to clarify that miscellaneous fees are assessed as applicable in addition to any other fees. The rulemaking also amends §25.30(j)(1) to clarify that the miscellaneous fee for modifying a laboratory's scope of accreditation and add one or more fields of accreditation applies to modifications made during the term of the laboratory's accreditation.

§25.32, Denial of Accreditation Application

The rulemaking amends §25.32 by changing the section title to include revocation of accreditation.

The rulemaking amends §25.32(a) by clarifying that the executive director may deny an initial or renewal application for accreditation in whole or in part. The rulemaking also amends §25.32(a) by clarifying that the executive director may deny an initial or renewal application for accreditation if a laboratory's operator as well as its personnel fail to meet any of the stated requirements.

The rulemaking makes minor editorial changes to current §25.32(a)(1) - (8) by adding "fails to" to the beginning of each paragraph.

The rulemaking amends §25.32(a)(8) by including the phrase "corrective action" in reference to the report submitted by a laboratory's operator or personnel. The rulemaking also amends §25.32(a)(8) by adding §25.32(a)(8)(A) stating the executive director will provide a laboratory with two opportunities to provide an acceptable corrective action report and the initial report is due within 30 days of receiving an assessment report, unless the executive director grants a request to allow up to 60 days to submit the report. The rulemaking also amends §25.32(a)(8) by adding §25.32(a)(8)(B) stating that the executive director will notify a laboratory within no more than 60 days of any unresolved deficiencies if the laboratory submits a corrective action report that does not sufficiently address the deficiencies identified in an environmental testing laboratory assessment report. The rulemaking also amends §25.32(a)(8) by adding §25.32(a)(8)(C), which states that after being notified the first corrective action report did not sufficiently address one or more deficiencies identified in an assessment report; a second corrective report

that sufficiently addresses the deficiencies must be submitted within 30 days.

The rulemaking amends §25.32 by adding §25.32(a)(10), misrepresentation of any fact pertinent to receiving or maintaining accreditation, §25.32(a)(11), indebtedness to the state for a fee, penalty, or tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute, and §25.32(a)(12), any other reason which causes the executive director to determine that quality of the data being produced by the laboratory's personnel is unreliable or inaccurate, based on the facts of the case, as reasons why the executive director may deny an initial or renewal application in whole or in part.

The rulemaking amends §25.32(b) by renaming the subsection from "Cause" to "Revocation of Accreditation." The rulemaking replaces the current text with language stating that, after notice and opportunity for hearing, the commission may revoke an environmental testing laboratory's accreditation, in whole or in part, if the laboratory's operator or personnel fail to correct deficiencies that led to a suspension of accreditation within six months of the notice of suspension, is convicted in any jurisdiction of charges relating to the falsification of any report relating to a laboratory analysis, or for the reasons specified in §25.32(a).

The rulemaking amends §25.32 by adding §25.32(c), which provides that the commission can deny a laboratory's application or revoke a laboratory's accreditation if the executive director determines that the data quality is unreliable or inaccurate.

The rulemaking amends §25.32 by adding §25.32(d), which requires the commission to revoke an environmental testing laboratory's accreditation if, after being suspended due to failure of proficiency test

samples, a laboratory's analysis of the next proficiency sample results in three consecutive failures.

The rulemaking renumbers current §25.32(c) as §25.32(e)(1), replaces reference to "National Environmental Laboratory Accreditation Conference standards" with the phrase "standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation)," and clarifies that denial may be in whole or in part. The rulemaking also amends §25.32 by adding §25.32(e)(2) requiring an environmental testing laboratory whose accreditation is revoked in whole or in part to wait a minimum of one year before reapplying for accreditation and to meet all requirements for a new accreditation, including an environmental testing laboratory assessment.

§25.34, Suspension of Accreditation

The rulemaking amends §25.34(a) to state that reasons to suspend accreditation are not limited to the reasons listed in subsection (a).

The rulemaking amends §25.34(b)(3) to replace reference to the "National Environmental Laboratory Accreditation Conference standards" with the phrase "the standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation)."

§25.36, Revocation of Accreditation

The rulemaking repeals §25.36 as this language is no longer necessary.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking 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 applicable standards for accrediting environmental testing laboratories, establishes the date on which the updated accreditation standards become effective, revises fees and fee categories, establishes the date on which the revised fees and fee categories become effective, clarifies that laboratories operated by the commission are exempt from fees, clarifies when certain miscellaneous fees are applied, removes language in the rules that is no longer needed, and revises language in the rules to make them clearer, more consistent, and bring them up-to-date. 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, these 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 rules do not exceed a standard set by federal law or 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 TWC, Chapter 5, Subchapter R, which requires the commission to enact rules governing the accreditation of environmental laboratories.

TAKINGS IMPACT ASSESSMENT

The commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to this rulemaking because the rules are not a taking as defined in Chapter 2007, nor are they a constitutional taking of private real property. The purpose of the repeal and amendments is to update the rules to current NELAP standards and revise fees paid by environmental testing laboratories for laboratory assessments.

Promulgation and enforcement of these rules will not affect private real property, which is the subject of the rules, because the amendments will not restrict or limit the owner's right to the property or cause a reduction of 25% or more in the market value of the property. The 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 amendments will not limit the use of real property. Thus, these rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission received no comments concerning the coastal management program.

PUBLIC COMMENT

The commission held a public hearing on May 24, 2010. The comment period closed on June 1, 2010.

The commission received comments from the Angelina and Neches River Authority (ANRA) and the Brazos River Authority (BRA).

ANRA supported the rules but also offered comments for the record. The comments included suggested changes to the rules as proposed.

The BRA supported the change in accreditation standards. The BRA does not support the fee increases as proposed.

RESPONSE TO COMMENTS

Comment

ANRA supported adoption of the new standards for accreditation but noted that the new standards incorporate copyrighted material from ISO/IEC 17025 and 17011. According to ANRA, the publicly available (no cost) copy of the new standards contains references to the copyrighted material but not the copyrighted text itself. A copy of the new standards, containing the copyrighted material, is available for purchase. Purchasing the new standards adds another cost associated with operating as an accredited laboratory in addition to the proposed fee increases.

The commission is aware, and appreciates ANRA noting that there is a cost associated with acquiring a copy of the new standards for accreditation containing the copyrighted material. In its calculation of fiscal impacts, the commission assumed accredited laboratories have already acquired copies of the new accreditation standards or would do so before the change in accreditation standards becomes effective. For laboratories that have not or do not, the commission

acknowledges those laboratories will incur a cost if they choose to acquire copies of the new standards containing the copyrighted material.

The commission notes that the NELAC Institute has taken steps to minimize the cost of obtaining a copy of the new standards. The public purchase price for a single-user copy of the new standards containing the copyrighted material is less than one-half of the normal retail cost for the copyrighted material alone. For Institute members, the cost is less than one-quarter of the cost. Organizational members of the NELAC Institute receive a copy of the new standards containing the copyrighted material at no cost.

The commission made no changes to the rules in response to this comment.

Comment

The BRA supported the adoption of the new standards for accreditation.

The commission appreciates BRA's support for the adoption of the new standards for accreditation. The commission made no changes to the rules as a result of this comment.

Comment

ANRA supported an increase in the program's fee structure. Rather than increasing fees on a variable approach as proposed, ANRA suggested a percentage-based increase that is consistent across all categories.

The commission appreciates ANRA's support for an increase in the laboratory accreditation program's fee structure.

Current and proposed fees take a number of factors into account, including program costs, the relative complexity of each category of analysis, and the relative level of resources needed to inspect laboratories performing each category of analysis. The current fees reflect estimates of these factors made in 2001 and 2002. The fees proposed by the commission reflect experience gained over the past five years of program operations. In certain cases, the commission determined the estimates of relative complexity and resource requirements made in 2001 and 2002 should be changed. These changes account for the different percentage increases reflected in the proposed fees.

The commission acknowledges increasing fees for all analytical categories by the same percentage would be a simpler approach. It would not, however, take into account differences in the relative complexity and resource requirements associated with each category of analysis and experience gained over the last five years of program operation. The commission believes the latter approach is a more equitable way of determining fees.

The commission made no changes to the rules as a result of this comment.

Comment

ANRA stated that the proposed fee increases for microbiological and general chemical testing were probably structured the way they were proposed because almost all laboratories would be accredited for these tests and these fees will form the bulk of the program's revenues.

The commission respectfully disagrees with the comment. Current and proposed fees take a number of factors into account, including program costs, the relative complexity of each category of analysis, and the relative level of resources needed to assess each category of analysis.

The commission made no changes to the rules as a result of this comment.

Comment

ANRA stated the overall percentage increase in fees will be higher for smaller, non-commercial laboratories (such as those associated with municipal wastewater treatment plants, water utilities, health districts, and some river authorities) that are only accredited either for microbiological or general chemistry tests, and they will, therefore, be disproportionately affected.

The commission respectfully disagrees with the comment. As of December 4, 2009, the commission had awarded accreditations to 69 laboratories operated by local governments, including river authorities. Excluding larger laboratories operated by these local governments (those whose proposed fees would be \$2,000 per year or more), the average fee increase would be \$309 per year, or approximately 46%. The median fee increase would be \$180 per year, or approximately 31%. The average and median fee increases for the 192 commercial laboratories accredited by the commission would be \$1,694, or approximately 88%, and \$1,350, or approximately 87%, respectively.

The commission made no changes to the rules as a result of this comment.

Comment

ANRA stated that TCEQ should improve efficiency and reduce program costs in addition to increasing fees. ANRA suggested that TCEQ could reduce the frequency of on-site inspections, reduce the number of assessors conducting each on-site inspection, and reduce the length of on-site inspections. According to ANRA, much of what laboratory inspectors currently do in the field could be done as a desk review and, by reviewing a larger portion of documents at TCEQ's offices, on-site inspections could be reduced by one or more days.

The commission believes its laboratory accreditation program is both efficient and cost-effective. Nonetheless, the commission has and will continue to seek ways to improve efficiency and reduce program costs.

The commission respectfully disagrees it could reduce the frequency of on-site inspections. The standards for accreditation and commission rules require, at a minimum, one on-site inspection before granting initial accreditation and biennial inspections thereafter.

The commission's current inspection process already includes considerable desk review in advance of an on-site inspection. The primary purpose of the on-site inspection is to assess actual laboratory operations and determine their conformance to the standards for accreditation and the laboratory's written policies and procedures.

The commission already attempts to minimize the number of assessors involved in on-site

inspections and the length of the inspections. For example, only one individual was assigned to conduct the last on-site inspection of ANRA's laboratory. The inspection began the afternoon of June 8, 2009, and concluded at approximately midday on June 11, 2009. During the inspection, the inspector reviewed operations and records relating to over two dozen analytical methods in three matrices. The commission believes the allocation of time and personnel for this inspection were appropriate. Nonetheless, the commission will continue its efforts to make the laboratory inspection program even more efficient.

The commission made no changes to the rules as a result of this comment.

Comment

ANRA stated fee increases should not have a significant fiscal impact on its operations but will result in higher charges to the authority's customers, including TCEQ's Clean Rivers Program. According to ANRA, funds allocated to Clean Rivers partners have not increased since 1991 and, without an increase in Clean Rivers funding, the most likely scenario would be reduced monitoring.

The commission acknowledges the fee increase will result in higher charges to the authority's customers if the authority opts to pass the fee increase to its customers. The commission notes, however, that, while the proposed increase in ANRA's annual accreditation fee is a large percentage increase, the dollar amount of the increase is \$930 per year, or approximately one-half of 1% of the authority's annual Clean Rivers program allocation. Assuming the fee increase will be spread among all of the authority's customers, the commission believes it should not have a significant impact on water quality monitoring.

The commission made no changes to the rules as a result of this comment.

Comment

ANRA commented that the commission's actions on the proposed rules could unintentionally reduce the amount of water quality data available for assessments, though ANRA believes the likely impact from the rulemaking will be minimal.

The commission concurs that the likely impact of the fee increases will be minimal. The commission made no changes to the rules as a result of this comment.

Comment

BRA commented that the organization understands the need for increased revenue to fund the accreditation program and stated it did not oppose a fee increase. However, it believes an overall 84.6% in a one-year time period is excessive and unreasonable.

The commission proposed fee increases in April of 2010 in order to give affected parties time to incorporate any increases into their budgeting and planning cycles. The commission also proposed delaying the implementation date of the increases until January 2011 for the same reason.

The commission is obligated to establish a schedule of fees that cover program costs. The commission realizes some organizations may need more time to consider and plan for the increase in fees, however. Therefore, the commission has elected to implement the fee increases on

September 1, 2011.

Comment

BRA commented that it operates two accredited laboratories. The primary customers for one of the laboratories are TCEQ's Clean Rivers, Non-Point Source, and Surface Water Quality Programs. BRA stated the proposed fees would increase the annual fees of the two laboratories by 79% and 82%. These increases will result in reduced water quality monitoring and increased expenses for the organization's municipal customers.

The commission acknowledges the fee increase may result in higher charges to all of the authority's customers. The commission notes, however, that, while the proposed increase in BRA's annual accreditation fees are a large percentage increase, the dollar amount of the increase (\$1,110 total) is less than one-half of 1% of the authority's annual Clean Rivers program allocation. Assuming the fee increase will be spread among all of the authority's customers, the commission believes it should not have a significant impact on water quality monitoring or the authority's other customers.

The commission made no changes to the rules as a result of this comment.

Comment

BRA suggested TCEQ increase fees incrementally over three to five years. BRA stated a phased approach would make the initial impact of fee increases less severe and give BRA and its customers time to anticipate and budget for the increases. A phased approach would also allow BRA to inform customers of the increases prior to presentation of annual budgets, which occurs in May of each year.

The commission proposed the new fees in April of 2010. However, the proposed effective date of the increases would be January 2011. The commission delayed the effective date to give laboratories time to incorporate any increases into their budgeting and planning cycles. Phasing in fee increases would reduce the initial fee increases, but revenues would not begin to cover program costs for three to five years.

The commission is obligated to establish a schedule of fees that cover program costs, however, the commission realizes some organizations may need more time to consider and plan for the increase in fees. Therefore, in response to comment, the commission changed the rules to make the fee increases effective on September 1, 2011.

SUBCHAPTER A: GENERAL PROVISIONS

§§25.1, 25.2, 25.4

STATUTORY AUTHORITY

The amendments are adopted under the general authority granted in Texas Water Code (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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and TWC, §§5.801, 5.802, 5.803, 5.805, 5.806, and 5.807, which require the agency to adopt rules and establish fees for the administration of the laboratory accreditation program.

These amendments implement the TWC, §§5.801, 5.802, 5.803, 5.805, 5.806, and 5.807.

§25.1. Purpose.

This chapter describes requirements for accreditation and certification of environmental testing laboratories. Accreditation is voluntary; however, the commission may accept environmental testing laboratory data and analyses for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analyses are prepared by an environmental testing laboratory accredited by the commission under this chapter, except as provided in §25.6 of this title (relating to Conditions Under Which the Commission May Accept Analytical Data).

§25.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Accreditation**--An authorization granted by the executive director to an environmental testing laboratory that meets requirements of this subchapter and Subchapter B of this chapter (relating to Environmental Testing Laboratory Accreditation).

(2) **Accreditation body**--An agency recognized by the National Environmental Laboratory Accreditation Program (NELAP) that grants accreditation on behalf of a state, territory, or federal agency.

(3) **Analyte**--A constituent for which an environmental sample is analyzed.

(4) **Certification**--An authorization granted by the executive director to an environmental testing laboratory that analyzes drinking water and which meets requirements of this subchapter and Subchapter C of this chapter (relating to Environmental Testing Laboratory Certification).

(5) **Corrective action report**--A report prepared by an environmental testing laboratory and submitted to the executive director that describes the specific actions taken or planned to address negative findings (deficiencies) contained in an environmental testing laboratory assessment report,

actions taken or planned to prevent recurrence, the timetable for completing each action, and the means to be used to document completion of each action.

(6) **Environmental testing laboratory**--A scientific laboratory that performs analyses to determine the chemical, molecular, or pathogenic components of environmental media for regulatory compliance.

(7) **Environmental testing laboratory assessment**--The process used by an accrediting or certifying body to measure the performance, effectiveness, and conformity of an environmental testing laboratory to the standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation) or certification as specified in §25.50 of this title (relating to Standards for Environmental Testing Laboratory Certification) and the requirements of this chapter. An environmental testing laboratory assessment may include a physical inspection of a laboratory and its operations.

(8) **Fields of accreditation**--The matrix, technology, method, and analyte or analyte group for which an environmental testing laboratory may be accredited.

(9) **Fields of certification**--The methods and analytes for which an environmental testing laboratory may be certified. The methods and analytes are used in a commission decision relating to compliance with the Safe Drinking Water Act.

(10) **In-house environmental testing laboratory**--An environmental testing laboratory that provides analytical data to its operator for a commission decision relating to:

(A) permits or other authorizations issued to the laboratory's operator;

(B) compliance matters and enforcement actions taken concerning the laboratory's operator; or

(C) corrective actions taken by the laboratory's operator to satisfy statutes, rules, or commission orders.

(11) **Laboratory personnel**--Individuals who manage, perform, maintain, or verify the work or the quality of the work at the environmental testing laboratory.

(12) **Matrix**--Sample type, including drinking water; nonpotable water; solid and chemical materials; air and emissions; and biological tissue.

(13) **Mobile environmental testing laboratory**--An environmental testing laboratory capable of being moved from one site to another site.

(14) **National Environmental Laboratory Accreditation Program (NELAP)**--The voluntary organization of state, territorial, and federal accreditation bodies whose primary purpose is to grant mutually acceptable accreditations to environmental testing laboratories.

(15) **On-site environmental testing laboratory**--An in-house environmental testing laboratory located at a regulated entity.

(16) **Operator**--An individual authorized to act on behalf of the environmental testing laboratory.

(17) **Primary accreditation**--Accreditation of an environmental testing laboratory according to the standards for accreditation as specified in §25.9 of this title and the requirements of this chapter.

(18) **Proficiency test sample**--A sample, the composition of which is unknown by an environmental testing laboratory or the individual performing the analysis. The sample is used to evaluate whether the laboratory and analyst can produce results within the specified acceptance criteria.

(19) **Quality system**--A structured and documented management system describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring the quality of its work processes, products, and services. The quality system provides the framework for planning, implementing, and assessing work performed by the environmental testing laboratory for quality assurance and quality control.

(20) **Same site**--All structures, other appurtenances, and improvements located on one or more contiguous properties.

(21) **Secondary accreditation**--Accreditation granted by the executive director to an environmental testing laboratory that has been granted primary accreditation by another National Environmental Laboratory Accreditation Program accreditation body.

§25.4. Applicability.

(a) An environmental testing laboratory must be accredited according to this chapter, except as provided in §25.6 of this title (relating to Conditions Under Which the Commission May Accept Analytical Data), if the laboratory provides analytical data which is used for a commission decision relating to a:

(1) permit;

(2) authorization;

(3) compliance action;

(4) enforcement action;

(5) corrective action;

(6) characterization of an environmental process or condition; or

(7) assessment of an environmental process or condition.

(b) An in-house environmental testing laboratory is to be accredited if it provides analytical data to a third party and the data is used for a commission decision relating to a:

(1) permit;

(2) authorization;

(3) compliance action;

(4) enforcement action;

(5) corrective action;

(6) characterization of an environmental process or condition; or

(7) assessment of an environmental process or condition.

(c) Subsections (a) and (b) of this section apply only to environmental testing laboratory results prepared and submitted to the commission on or after July 1, 2008.

(d) An environmental testing laboratory that provides analytical data used for a commission decision relating to the Safe Drinking Water Act must be:

(1) accredited according to this subchapter and Subchapter B of this chapter (relating to Environmental Testing Laboratory Accreditation); or

(2) certified by the United States Environmental Protection Agency.

SUBCHAPTER B: ENVIRONMENTAL TESTING LABORATORY ACCREDITATION

§§25.9, 25.10, 25.14, 25.20, 25.22, 25.24, 25.30, 25.32, 25.34

STATUTORY AUTHORITY

The amendments are adopted under the general authority granted in Texas Water Code (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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and TWC, §§5.801, 5.802, 5.803, 5.805, 5.806, and 5.807, which require the agency to adopt rules and establish fees for the administration of the laboratory accreditation program.

These amendments implement the TWC, §§5.801, 5.802, 5.803, 5.805, 5.806, and 5.807.

§25.9. Standards for Environmental Testing Laboratory Accreditation.

(a) Until July 1, 2011, 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.

(b) After June 30, 2011, accreditation must be based on an environmental testing laboratory's conformance to the most current standards adopted by the National Environmental Laboratory Accreditation Program and the requirements of this chapter.

§25.10. Fields of Accreditation.

(a) The executive director shall identify and make available to the public a list of the fields of accreditation offered under this chapter. A list of the fields of accreditation shall be made available on the commission's website and upon request from Agency Communications.

(b) The executive director may modify the fields of accreditation offered under this chapter after providing 30 days notice on the commission's website.

§25.14. Term of Accreditation.

(a) The executive director shall award accreditation for a period of one year if an environmental testing laboratory's application and operations conform to the applicable standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation) and this chapter.

(b) The executive director may issue an interim accreditation for up to 12 months to an environmental testing laboratory that meets the standards for accreditation as specified in §25.9 of this title and requirements of this chapter except that an environmental testing laboratory assessment has not

been completed because the executive director has been unable to schedule an assessment within six months of receiving a complete application for accreditation.

§25.20. Proficiency Test Sample Analyses.

(a) The operator of an environmental testing laboratory applying for initial accreditation shall ensure that two proficiency test samples are successfully analyzed, if available, according to the standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation), for each requested field of accreditation and reported to the executive director.

(b) The operator of an accredited environmental testing laboratory shall ensure at least two proficiency test samples, if available, are successfully analyzed and reported to the executive director each year for each field of accreditation according to the standards for accreditation as specified in §25.9 of this title. An environmental testing laboratory that does not meet the requirements of this subsection may participate in a supplemental proficiency test study according to the standards for accreditation.

(c) Proficiency test samples, if available, shall be purchased from a National Environmental Laboratory Accreditation Program designated provider.

§25.22. Secondary Accreditation of Out-of-State Environmental Testing Laboratories.

(a) The executive director shall grant or renew the secondary accreditation of an environmental testing laboratory located in another state and accredited by another National Environmental Laboratory

Accreditation Program accreditation body within 30 days after receiving a complete application along with the appropriate fee according to §25.30 of this title (relating to Accreditation Fees) if the laboratory's existing accreditation includes the fields of accreditation for which the laboratory has applied to the executive director.

(b) The executive director shall notify an environmental testing laboratory in writing within 30 days of granting or denying accreditation.

§25.24. Duties and Responsibilities of Accredited Environmental Testing Laboratories.

By applying for or accepting accreditation, the operator of the laboratory certifies the information contained in the application is true and correct and agrees to:

(1) provide reasonable access to the executive director to facilities, personnel, documents, records, data, analyses, and operations which the executive director determines are necessary for accreditation;

(2) use and display the accreditation certificate according to the standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation); and

(3) operate the environmental testing laboratory and maintain its accreditation according to the standards for accreditation and this chapter.

§25.30. Accreditation Fees.

(a) The executive director shall establish accreditation fees that cover program costs, including costs associated with application review; initial, routine, and follow-up inspections; and preparation of reports.

(b) The operator of an environmental testing laboratory seeking primary accreditation shall pay the following fees:

(1) an annual administrative fee of \$500; and

(2) an annual accreditation fee based on the categories for which the laboratory is accredited.

(c) Excluding any laboratory operated by the commission, the operator of an environmental testing laboratory seeking secondary accreditation shall pay the following fees:

(1) until September 1, 2011, an annual administrative fee of \$250;

(2) after August 31, 2011, an annual administrative fee of \$350; and

(3) an annual accreditation fee based on the categories for which the laboratory is accredited.

(d) Until September 1, 2011, the categories and annual fees for accreditation relating to drinking water are:

(1) microbiology -- \$75;

(2) radiochemistry -- \$225;

(3) metals -- \$225;

(4) general chemistry -- \$225;

(5) disinfection by-products -- \$150;

(6) volatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(7) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(8) organic compounds by gas chromatography using detection other than mass spectrometry -- \$300;

(9) organic compounds by high performance liquid chromatography -- \$300;

(10) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$150; and

(11) asbestos -- \$150.

(e) Until September 1, 2011, the categories and annual fees for accreditation relating to non-potable water are:

(1) microbiology -- \$75;

(2) aquatic toxicity -- \$150;

(3) radiochemistry -- \$150;

(4) metals -- \$225;

(5) general chemistry -- \$225;

(6) volatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(7) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(8) organic compounds by gas chromatography using detection other than mass spectrometry:

(A) total petroleum hydrocarbons by agency methods 1005 only -- \$150; and

(B) agency method 1005 and/or any fields of accreditation other than agency method 1005 -- \$300;

(9) organic compounds by high performance liquid chromatography -- \$300;

(10) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$150; and

(11) asbestos -- \$150.

(f) Until September 1, 2011, the categories and annual fees for accreditation relating to biologic tissue are:

(1) radiochemistry -- \$150;

(2) metals -- \$225;

(3) general chemistry -- \$225;

(4) volatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(5) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(6) organic compounds by gas chromatography using detection other than mass spectrometry -- \$300;

(7) organic compounds by high performance liquid chromatography -- \$300; and

(8) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$150.

(g) Until September 1, 2011, the categories and annual fees for accreditation relating to solid and chemical materials are:

(1) microbiology -- \$75;

(2) radiochemistry -- \$150;

(3) metals -- \$225;

(4) waste characteristics -- \$150;

(5) general chemistry -- \$225;

(6) volatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(7) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(8) organic compounds by gas chromatography using detection other than mass spectrometry:

(A) total petroleum hydrocarbons by agency method 1005 only -- \$150; and

(B) agency method 1005 and/or any fields of accreditation other than agency method 1005 -- \$300;

(9) organic compounds by high performance liquid chromatography -- \$300;

(10) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$150; and

(11) asbestos -- \$150.

(h) Until September 1, 2011, the categories and annual fees for accreditation relating to air and emissions are:

(1) radiochemistry -- \$150;

(2) particulate matter -- \$75;

(3) metals -- \$225;

(4) general chemistry -- \$150;

(5) volatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(6) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$150;

(7) organic compounds by gas chromatography using detection other than mass spectrometry -- \$300;

(8) organic compounds by high performance liquid chromatography -- \$300;

(9) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$150; and

(10) asbestos and airborne fibers by microscopy -- \$150.

(i) After August 31, 2011, the categories and annual fees for accreditation relating to drinking water are:

- (1) microbiology -- \$255;
- (2) radiochemistry -- \$510;
- (3) metals -- \$385;
- (4) general chemistry -- \$510;
- (5) disinfection by-products -- \$255;
- (6) volatile organic compounds by gas chromatograph mass spectrometry -- \$255;
- (7) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$385;
- (8) organic compounds by gas chromatography using detection other than mass spectrometry -- \$510;
- (9) organic compounds by high performance liquid chromatography -- \$510;
- (10) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$385; and
- (11) asbestos -- \$385.

(j) After August 31, 2011, the categories and annual fees for accreditation relating to non-potable water are:

(1) microbiology -- \$255;

(2) aquatic toxicity -- \$510;

(3) radiochemistry -- \$510;

(4) metals -- \$385;

(5) general chemistry -- \$510;

(6) volatile organic compounds by gas chromatograph mass spectrometry -- \$255;

(7) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$385;

(8) organic compounds by gas chromatography using detection other than mass spectrometry:

(A) total petroleum hydrocarbons by agency methods 1005 only -- \$255; and

(B) agency method 1005 and/or any fields of accreditation other than agency method 1005 -- \$510;

(9) organic compounds by high performance liquid chromatography -- \$510;

(10) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$385; and

(11) waste characteristics -- \$255.

(k) After August 31, 2011, the categories and annual fees for accreditation relating to biologic tissue are:

(1) radiochemistry -- \$510;

(2) metals -- \$510;

(3) general chemistry -- \$510;

(4) volatile organic compounds by gas chromatograph mass spectrometry -- \$385;

(5) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$385;

(6) organic compounds by gas chromatography using detection other than mass spectrometry -- \$510;

(7) organic compounds by high performance liquid chromatography -- \$510; and

(8) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$385.

(1) After August 31, 2011, the categories and annual fees for accreditation relating to solid and chemical materials are:

(1) microbiology -- \$255;

(2) radiochemistry -- \$510;

(3) metals -- \$385;

(4) waste characteristics -- \$255;

(5) general chemistry -- \$510;

(6) volatile organic compounds by gas chromatograph mass spectrometry -- \$255;

(7) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$385;

(8) organic compounds by gas chromatography using detection other than mass spectrometry:

(A) total petroleum hydrocarbons by agency method 1005 only -- \$255; and

(B) agency method 1005 and/or any fields of accreditation other than agency method 1005 -- \$510;

(9) organic compounds by high performance liquid chromatography -- \$510;

(10) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$385; and

(11) aquatic toxicity -- \$510.

(m) After August 31, 2011, the categories and annual fees for accreditation relating to air and emissions are:

(1) radiochemistry -- \$510;

(2) particulate matter -- \$255;

(3) metals -- \$385;

(4) general chemistry -- \$510;

(5) volatile organic compounds by gas chromatograph mass spectrometry -- \$255;

(6) semivolatile organic compounds by gas chromatograph mass spectrometry -- \$385;

(7) organic compounds by gas chromatography using detection other than mass spectrometry -- \$510;

(8) organic compounds by high performance liquid chromatography -- \$510; and

(9) polychlorinated dibenzo-p-dioxins and dibenzofurans -- \$385.

(n) Until September 1, 2011, the operator of an environmental testing laboratory located in another state and applying for primary accreditation shall also pay a fee equal to the reasonable travel costs (including transportation, lodging, per diem, and any telephone charges) associated with conducting an assessment at the laboratory.

(o) After August 31, 2011, the operator of an environmental testing laboratory located in another state and applying for primary accreditation shall also pay a fee equal to the labor, reasonable travel costs (including, but not limited to, transportation, lodging, per diem, and any telephone charges), and other reasonable costs associated with conducting an assessment at the laboratory.

(p) The following fees shall be assessed, as applicable, in addition to any other fees:

(1) to modify an existing accreditation and add one or more fields of accreditation during the term of the accreditation -- \$250;

(2) to replace an accreditation certificate -- \$50; and

(3) to reinstate a suspended accreditation -- \$250.

(q) All fees are nonrefundable.

§25.32. Denial of Accreditation Application and Revocation of Accreditation.

(a) Denial of Accreditation Application. The executive director may deny an initial or renewal application for environmental testing laboratory accreditation, in whole or in part, for insufficiency or for cause. The executive director shall notify the laboratory of the intent to deny the application and advise the applicant of the opportunity to file a motion to overturn under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The executive director may deny an accreditation application if a laboratory's operator or personnel:

(1) fails to submit a completed application;

(2) fails to submit the required fees;

(3) fails to successfully analyze and report required proficiency test samples for applicable fields of accreditation;

(4) fails to implement a quality system;

(5) fails to document that laboratory personnel meet personnel qualifications of education, training, and experience;

(6) fails to allow the executive director entry during normal business hours for an environmental testing laboratory assessment;

(7) fails to pass required environmental testing laboratory assessments;

(8) fails to submit a corrective action report acceptable to the executive director identifying actions the environmental testing laboratory will take to correct the deficiencies identified in the environmental testing laboratory assessment report:

(A) the executive director will provide the environmental testing laboratory with two opportunities to resolve its deficiencies. The first corrective action report must be submitted to the executive director by the environmental testing laboratory within 30 days of receiving an assessment

report. Upon request, the executive director may allow up to 60 days from the date the environmental testing laboratory received an assessment report to submit the corrective action report;

(B) if the first corrective action report does not sufficiently address the deficiencies identified in the environmental testing laboratory assessment report, the executive director shall notify the environmental testing laboratory of the unresolved deficiencies within no more than 60 days; and

(C) if, after being notified by the executive director that the first corrective action report does not sufficiently address one or more of the deficiencies identified in the environmental testing laboratory assessment report, a second corrective action report that sufficiently addresses the deficiencies identified in the environmental testing laboratory assessment report must be submitted within 30 days of being notified by the executive director;

(9) fails to implement actions to correct the deficiencies identified in the environmental testing laboratory assessment report within the time approved by the executive director;

(10) misrepresents any fact pertinent to receiving or maintaining accreditation;

(11) is indebted to the state for a fee, penalty, or tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute; or

(12) any other reason which causes the executive director to determine that quality of the data being produced by the laboratory's personnel is unreliable or inaccurate, based on the facts of the case.

(b) Revocation of Accreditation. After notice and opportunity for hearing according to Chapter 80 of this title (relating to Contested Case Hearings), the commission may revoke an environmental testing laboratory's accreditation, in whole or in part, for any of the reasons listed in subsection (a) of this section or if the operator laboratory:

(1) fails to correct deficiencies that led to a suspension of accreditation within six months of the notice of suspension; or

(2) is convicted in any jurisdiction of charges relating to the falsification of any report relating to a laboratory analysis.

(c) A laboratory's application for accreditation may be denied or a laboratory's accreditation may be revoked, after notice and opportunity for hearing, for any other reason if the executive director determines that the quality of the data being produced by the laboratory's personnel is unreliable or inaccurate, based on the facts of the case.

(d) The commission shall revoke an environmental testing laboratory's accreditation for each applicable field of accreditation if, after being suspended due to failure of proficiency test samples, an

environmental testing laboratory's analysis of the next proficiency test sample results in three consecutively failed proficiency test samples.

(e) Waiting period.

(1) If the operator of an environmental testing laboratory is not successful in correcting deficiencies as required by the standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation) and this chapter and the laboratory's application is denied in whole or in part, the laboratory's operator must wait a minimum of six months before reapplying for accreditation.

(2) An environmental testing laboratory whose accreditation is revoked, in whole or in part, shall wait a minimum of one year before reapplying for accreditation, and the laboratory shall meet all requirements for a new accreditation, including an environmental testing laboratory assessment.

§25.34. Suspension of Accreditation.

(a) After notice and opportunity for hearing according to Chapter 80 of this title (relating to Contested Case Hearings), the commission may suspend an environmental testing laboratory's accreditation, in whole or in part, for up to six months. Reasons to suspend an environmental testing laboratory's accreditation includes, but is not limited to, failing to:

(1) maintain a quality system;

(2) comply with minimum performance and quality assurance standards;

(3) maintain records of the laboratory's personnel, operations, data, or analysis;

(4) successfully complete required proficiency tests;

(5) employ staff that meet required personnel qualifications for education, training, and experience; or

(6) notify the executive director of changes in accreditation criteria.

(b) Accreditation shall be reinstated if the executive director determines that the environmental testing laboratory personnel have:

(1) effectively corrected and taken steps to prevent a recurrence of the deficiencies that led to the suspension of accreditation;

(2) complied with all requirements imposed by the executive director or the commission;
and

(3) submitted an application for reinstatement that conforms to the standards for accreditation as specified in §25.9 of this title (relating to Standards for Environmental Testing Laboratory Accreditation) and the requirements of this chapter.

SUBCHAPTER B: ENVIRONMENTAL TESTING LABORATORY ACCREDITATION

§25.36

STATUTORY AUTHORITY

The repeal is adopted under the general authority granted in Texas Water Code (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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and TWC, §§5.801, 5.802, 5.803, 5.805, 5.806, and 5.807, which require the agency to adopt rules and establish fees for the administration of the laboratory accreditation program.

The repeal implement the TWC, §§5.801, 5.802, 5.803, 5.805, 5.806, and 5.807.

§25.36. Revocation of Accreditation.