

The Texas Commission on Environmental Quality (commission) proposes 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. The commission also proposes to repeal §25.36.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking would change the applicable standards for accrediting environmental testing laboratories, establish the date on which the change in accreditation standards would become effective, revise fees and fee categories, establish the date on which the revised fees and fee categories would become effective, clarify that laboratories operated by the commission are exempt from fees, clarify when certain miscellaneous fees are applied, remove language in the rules that is no longer needed, revise language in the rules to make the rules clearer and 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 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 would maintain the current standards for accreditation until July 1, 2011. Thereafter, the standards for accreditation would be the standards adopted by the NELAP. The rulemaking would ensure continued compliance with TWC, §5.802.

This change would also ensure 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 rulemaking would increase most fees, add fee categories that are needed, remove fees and fee categories that are not needed, and clarify the types of analyses covered by certain fee categories.

The rulemaking would also increase 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 may assess 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 would allow the commission to recoup all costs incurred inspecting laboratories located outside of Texas.

Fee changes would be effective on January 1, 2011. Until January 1, 2011, the current schedule of fees would apply. The commission estimates the new schedule of fees would generate approximately \$847,000 per year. This level of revenue combined with current levels of federal funds would be sufficient to cover program costs.

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

The rulemaking would change 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*, International Standard ISO/IEC 17011:2004(E), and the accreditation standards recently adopted by the NELAP. The change would make the rules consistent with these standards.

The rulemaking would add 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 would redefine the NELAP. The current definition contains a reference to the National Environmental Laboratory Accreditation Conference (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 would amend §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 would strike language that is no longer needed concerning the date on which laboratories could begin applying for accreditation. The

rulemaking would also make clear that the commission is not currently issuing environmental testing laboratory certifications according to Subchapter C.

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

The rulemaking would make 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 would remove 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 would combine 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 would repeal current rules concerning revocation of accreditations.

The rulemaking would make 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 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 would continue the current requirement of two opportunities to submit an acceptable corrective action report. The rulemaking would also provide that the executive director may, upon request, allow up to 60 days to submit an initial corrective action report. A second corrective action report would have to be submitted within 30 days.

SECTION BY SECTION DISCUSSION

SUBCHAPTER A: GENERAL PROVISIONS

§25.1, Purpose

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

§25.2, Definitions

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

The rulemaking would add the definition of "Corrective action report" as proposed §25.2(5) and renumber existing subsequent paragraphs as paragraphs (5) - (12).

The proposed rulemaking would amend 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 proposed rulemaking would remove the language in current §25.2(13) as the NELAC no longer exists.

The proposed rulemaking would amend 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 would define 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 proposed rulemaking would amend 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 proposed rulemaking would amend §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 proposed rulemaking would amend §25.4(a) by removing the language in subsection (a) and relettering subsections (b) - (e). The proposed rulemaking would also revise internal references in current §25.4(d) to reflect the relettering of current §25.4(b) - (e). The proposed rulemaking would also amend 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 proposed rulemaking would amend 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 proposed rulemaking would also remove 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 proposed rulemaking would delete 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 proposed rulemaking would redesignate current §25.9 as §25.9(a) and add language stating the

current standards for accreditation are in effect until July 1, 2011. The proposed rulemaking would add §25.9(b), which would adopt new standards for accreditation effective July 1, 2011. The new standards would be those adopted by the NELAP.

§25.10, Fields of Accreditation

The proposed rulemaking would amend §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 would still be available from Agency Communications and on the commission's Web site.

§25.14, Term of Accreditation

The proposed rulemaking would amend §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 would also amend §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 proposed rulemaking would amend §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 proposed rulemaking would amend §25.20(b) to make clear that the proficiency test samples must be successfully analyzed and reported to the executive director. The proposed rulemaking would also amend §25.20(b) to replace a references to the "NELAC standards" with references to the "standards for accreditation." The rulemaking would remove §25.20(c) and reletter current subsection (d) as subsection (c).

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

The proposed rulemaking would amend §25.22(a) to replace a reference to, "accrediting authority" with "accreditation body."

§25.24, Duties and Responsibilities of Accredited Environmental Testing Laboratories

The proposed rulemaking would amend §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 would amend §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

The proposed rulemaking would amend §25.30(c) by raising the administrative fee for laboratories applying for secondary accreditation from \$250 to \$350 effective January 1, 2011.

The proposed rulemaking would amend §25.30(d) - (h) to make the current fees applicable until January

1, 2011. The proposed rulemaking would also amend §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 proposed rulemaking would also amend §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.

The proposed rulemaking would amend §25.30 by adding §25.30(i). Proposed §25.30(i) would include the annual category fees for analyses relating to drinking water that would become effective on January 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.

The proposed rulemaking would amend §25.30 by adding §25.30(j). Proposed §25.30(j) would include the annual category fees for analyses relating to non-potable water. 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. Proposed §25.30(j) would remove a category fee for asbestos analyses in non-potable water because the category is not needed. Proposed §25.30(j) would include a category fee for waste characteristics and set the fee for this category at \$255.

The proposed rulemaking would amend §25.30 by adding §25.30(k). Proposed §25.30(k) would include the annual category fees for analyses relating to biologic tissue. 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.

The proposed rulemaking would amend §25.30 by adding §25.30(l). Proposed §25.30(l) would include the annual category fees for analyses relating to solid and chemical materials. 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 proposed rulemaking would delete an existing annual category fee for asbestos analyses in solid and chemical materials because the category is not needed. The proposed rulemaking would also add a new category fee for aquatic toxicity and set the fee for this category at \$510.

The proposed rulemaking would amend §25.30 by adding §25.30(m). Proposed §25.30(m) would include the annual category fees for analyses relating to air and emissions. 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 proposed rulemaking would also delete an existing annual category and fee for analyses of asbestos and airborne fibers because the category is not needed.

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

The proposed rulemaking would amend current §25.30(i) to include labor and other costs incurred inspecting out-of-state laboratories applying to the commission for primary accreditation effective January 1, 2011.

The proposed rulemaking would amend current §25.30(j) to clarify that miscellaneous fees are assessed as applicable in addition to any other fees. The rulemaking would also amend §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 proposed rulemaking would amend §25.32 by changing the section title to include revocation of accreditation.

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

The proposed rulemaking would amend §25.32(a)(8) by including the phrase "corrective action" in reference to the report submitted by a laboratory's operator or personnel. The proposed rulemaking would also amend §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 proposed rulemaking would also amend §25.32(a)(8) by

adding §25.32(a)(8)(B) stating 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 proposed rulemaking would also amend §25.32(a)(8) by adding §25.32(a)(8)(C), which would state 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 proposed rulemaking would amend §25.32 by adding §25.32(a)(10), misrepresentation of any fact pertinent to receiving or maintaining accreditation, proposed §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 proposed §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 proposed rulemaking would amend §25.32(b) by renaming the subsection from "Cause" to "Revocation of Accreditation." The rulemaking would replace 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 proposed §25.32(a).

The proposed rulemaking would amend §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 proposed rulemaking would amend §25.32 by adding §25.32(d), which would require 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 proposed rulemaking would redesignate current §25.32(c) as §25.32(e)(1), replace 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 clarify that denial may be in whole or in part. The proposed rulemaking would also amend §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 proposed rulemaking would amend §25.34(a) to state that reasons to suspend accreditation are not limited to the reasons listed in subsection (a).

The proposed rulemaking would amend §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 proposed rulemaking would repeal §25.36 as this language is no longer necessary.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, fiscal implications, although not anticipated to be significant, are expected for the agency and other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules amend provisions of Chapter 25 concerning laboratory accreditation. State law requires the agency's Laboratory Accreditation Program to be consistent with the standards approved by the NELAP, which adopted new standards for accreditation in October, 2009. The EPA has determined NELAP accreditation meets a primacy requirement for states to establish and maintain a program for certification of laboratories conducting analytical measurements of drinking water contaminants. The proposed rules, which ensure consistency with NELAP standards, will ensure that the state continues to maintain this primacy delegation. In addition, the proposed rules revise fees charged by the agency for laboratory accreditation and make other administrative changes. The agency is required by state law to establish reasonable fees that recover the cost of the accreditation program. Current laboratory

accreditation fees do not fully recover program costs. The proposed rules increase most laboratory accreditation fees, add needed fee categories, remove fees and categories that are not needed, and clarify the types of analyses covered by certain fee categories.

Impact to Agency Revenue

The agency will increase fees to cover the costs for laboratory accreditation, but the increase in revenue is designed to only recover program costs as required by state law. Fee increases will become effective January 1, 2011. The administrative fee for secondary laboratory accreditation increases \$100 (from \$250 to \$350) per year. Annual category fees for drinking water, non-potable water, biologic tissue analysis, solid and chemical materials analysis, air and emissions analysis will also increase, and the amount of the increase will vary depending on the types of accreditation (microbiology, radiochemistry, metals, disinfection by-products, aquatic toxicity, etc.) requested. Staff estimates that statewide revenue in Account 5065 – Environmental Testing Laboratory Accreditation will increase \$388,165 per year for the first five years the rules are in effect.

Estimated Cost Impact to Other Governmental Entities

The table below reflects accreditations in force as of December, 2009 and shows the estimated increase in fee cost for each type of regulated entity.

Figure: 30 TAC Chapter 25 preamble-1

Total Fees by Laboratory Sector

Sector	Number of Laboratories	Current Annual Fees	Projected Annual Fees	Amount Annual Increase	Percent Increase
State Agencies	9	\$8,075	14,345	\$6,270	77.6%

Local Government	69	68,475	114,535	46,060	67.3%
Businesses	193	371,800	698,675	326,875	87.9%
Non Profit/Federal/Other States	6	10,625	19,585	8,960	84.3%
Total	277	\$458,975	\$847,140	\$388,165	84.6%

There are approximately nine laboratories operated by other state agencies that will be subject to accreditation. The total statewide annual cost increase for these state laboratories to maintain accreditation is estimated to be \$6,270 each year.

Local governments such as municipalities and river authorities that analyze contaminants for drinking water, do laboratory work for third parties, and are voluntarily accredited will also see an increase in accreditation costs. The projected annual increase over current costs for the 69 local governments expected to be accredited by the agency is estimated to be \$46,060 statewide each year. The fee increases for each local government is not expected to have a significant fiscal impact on their operations. However, the financial condition of each governmental entity may dictate whether the increase in accreditation costs for local government laboratories will affect the public.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state and federal regulations and continued protection of the public's health and safety.

The proposed rules are not expected to have significant fiscal implications for large businesses or individuals. As shown by the table above, the agency estimates that there may be as many as 193

businesses that will see an increase in laboratory accreditation costs. Laboratories operated by federal agencies, other states, and non profit organizations will also experience cost increases. The increase in costs for each individual laboratory will be determined by the type and number of accreditations applied for. Based on accreditations in force in December 2009, laboratory accreditation cost increases for all federal agencies, other states, and non profit organizations could be as much as \$8,960 each year.

Most business-owned laboratories are thought to be small businesses, and fiscal impacts of the proposed rules are discussed more fully in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT of this fiscal note.

Depending on the decisions of businesses and other entities that own laboratories doing environmental analysis, customers could see an increase in the costs they pay for laboratory analysis services. The proposed rules only attempt to recover the operating costs of the agency in providing accreditation services as mandated by state law. Any cost increases experienced by customers of laboratories will depend on the financial decisions of those individual laboratories which operate in a competitive business environment.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The total statewide amount of estimated fee increases for approximately 193 privately owned laboratories that are considered to be small businesses is estimated to be \$326,875 each year. This averages to \$1,693 in increased costs for each laboratory. The total increase in costs for laboratory accreditation will depend upon the types of accreditation that each laboratory maintains. The significance of the increase in

laboratory accreditation costs to an individual small business will also depend on competitive market conditions and the financial decisions of each small business. If increased accreditation costs are passed on to customers, then customers could also experience a cost increase for laboratory analysis work.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that the most equitable method of determining fees that would recover the cost of the agency's Laboratory Accreditation Program was to assess fees based on the types of analysis performed and each laboratory's scope of operation. Therefore, the fees apply to all laboratories regardless of size. If fees are not based on scope of operation and type of analysis, then other state agencies and academic institutions, local governments, and a few large commercial laboratories would see a disproportionate increase in accreditation costs.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 would update the applicable standards for accrediting environmental testing laboratories, establish the date on which the updated accreditation standards would become effective, revise fees and fee categories, establish the date on which the revised fees and fee categories would become effective, clarify that laboratories operated by the commission are exempt from fees, clarify when certain miscellaneous fees are applied, remove language in the rules that is no longer needed, revise language in the rules to make the rules clearer and 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 proposed 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 proposed 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 would be 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 preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to these proposed amendments because the proposed amendments are not a taking as defined in Chapter 2007, nor are they a constitutional taking of private real property. The purpose of the proposed 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 proposed rules will not affect private real property which is the subject of the rules because the proposed amendments will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The proposed 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 proposed amendments will not limit the use of real property. Thus, these proposed 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 proposal is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking is neither identified in 31 TAC §505.11, nor will it affect any action or authorization identified in §505.11. Therefore, the proposal is not subject to the CMP.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 24, 2010, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing

is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the rulemaking 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-009-025-CE. The comment period closes June 1, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Stephen Stubbs, Field Operations Support Division, (512) 239-6343.

SUBCHAPTER A: GENERAL PROVISIONS

§§25.1, 25.2, 25.4

STATUTORY AUTHORITY

The amendments are proposed under the general authority granted in Texas Water Code, (TWC), §5.013 and 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). [The agency's accreditation program will become effective three years after the date notice is published in the Texas

Register that the commission's laboratory accreditation program has met National Environmental Laboratory Accreditation Conference standards. At that time all data and analyses referenced in §25.4(b) and (c) of this title (relating to Applicability) must be provided by accredited laboratories. In the interim all environmental testing laboratories that supply data for commission decisions relating to the Safe Drinking Water Act must be certified.]

§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** [**Accrediting authority**]-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 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) [(5)] **Environmental testing laboratory**--A scientific laboratory that performs analyses to determine the chemical, molecular, or pathogenic components of environmental media for regulatory compliance.

(7) [(6)] **Environmental testing laboratory assessment**--The process used by an accrediting or certifying body [authority] 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) [National Environmental Laboratory Accreditation Conference (NELAC) accreditation or United States Environmental Protection Agency certification standards] and the requirements of this chapter. An environmental testing laboratory assessment may include a physical inspection of a laboratory and its operations.

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

(9) [(8)] **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) [(9)] **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) [(10)] **Laboratory personnel**--Individuals who manage, perform, maintain, or verify the work or the quality of the work at the environmental testing laboratory.

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

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

[(13) **National Environmental Laboratory Accreditation Conference (NELAC)**--The voluntary organization of state, territorial, and federal environmental officials and interest groups whose primary purpose is to establish mutually acceptable national standards for accrediting environmental testing laboratories.]

(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. [The environmental testing laboratory accreditation program including NELAC.]

(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 [NELAC] 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.

(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 [NELAP accrediting authority].

§25.4. Applicability.

[(a) An environmental testing laboratory may apply for accreditation after the commission publishes notice in the Texas Register that the environmental testing laboratory accreditation program has met National Environmental Laboratory Accreditation Conference (NELAC) standards.]

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

(d) [(e)] An [Until subsection (d) of this section is effective, an] environmental testing laboratory that provides analytical data used for a commission decision relating to the Safe Drinking Water Act [(SDWA)] must be:

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

[(2) certified according to this subchapter and Subchapter C of this chapter (relating to Environmental Testing Laboratory Certification); or]

(2) [(3)] certified by the United States Environmental Protection Agency [EPA].

[(f) After subsection (d) of this section is effective, an environmental testing laboratory that provides analytical data used for a commission decision relating to the SDWA will no longer be certified and must be accredited according to this subchapter and Subchapter B of this chapter, unless the laboratory is certified by the EPA.]

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 proposed under the general authority granted in Texas Water Code (TWC), §5.013 and 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, [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) Beginning on July 1, 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 [the Compliance Support Division and] Agency Communications.

(b) The executive director may modify the fields of accreditation offered under this chapter after providing 30 days [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) [National Environmental Laboratory Accreditation Conference (NELAC) standards] 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 [NELAC] 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) [National Environmental Laboratory Accreditation Conference (NELAC) standards], 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 [are analyzed], if available, are successfully analyzed and reported to the executive director each year for each field of accreditation according to the [NELAC] standards for accreditation as specified in §25.9 of this title. An environmental testing laboratory that does not meet the requirements of this [the] subsection may participate in a supplemental proficiency test study according to the [NELAC] standards for accreditation.

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

(c) [(d)] 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 [accrediting authority] 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 [National Environmental Laboratory Accreditation Conference (NELAC)] 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 [NELAC] 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 [The] operator of an environmental testing laboratory seeking secondary accreditation shall pay the following fees:

(1) until January 1, 2011, an annual administrative fee of \$250; [and]

(2) beginning on January 1, 2011, an annual administrative fee of \$350; and

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

(d) Until January 1, 2011 [For accreditation relating to drinking water], 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 January 1, 2011 [For accreditation relating to non-potable water], 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 [all compounds] -- \$300;

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

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

(11) asbestos -- \$150.

(f) Until January 1, 2011 [For accreditation relating to biologic tissue], 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 January 1, 2011 [For accreditation relating to solid and chemical materials], 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 [all compounds] -- \$300;

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

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

(11) asbestos -- \$150.

(h) Until January 1, 2011 [For accreditation relating to air], 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) Beginning January 1, 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) Beginning January 1, 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) Beginning January 1, 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) Beginning January 1, 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) Beginning January 1, 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) [(i)] Until January 1, 2011, the [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) Beginning January 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 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) [(j)] The following fees shall be assessed, as applicable, in addition to any other fees [the annual administrative and category fees and travel costs]:

(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) [(k)] All fees are nonrefundable.

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

(a) Denial of Accreditation Application [Insufficiency]. 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 [determine an application is insufficient] if a laboratory's operator or personnel [laboratory personnel fail to]:

(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; [within 30 days of receiving an assessment report; or]

(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.

[(b) Cause. After notice and opportunity for hearing, the commission may deny an environmental testing laboratory's initial or renewal application for accreditation if:]

[(1) laboratory personnel misrepresent any fact pertinent to receiving or maintaining accreditation; or]

[(2) the laboratory or its operator 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]

[(3) 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.]

(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) [(c)] Waiting period.

(1) If the operator of an environmental testing laboratory is not successful in correcting deficiencies as required by the [National Environmental Laboratory Accreditation Conference] 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 [National Environmental Laboratory Accreditation Conference] 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 proposed under the general authority granted in Texas Water Code (TWC), §5.013 and 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.]

[(a) 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, if the laboratory:]

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

[(2) fails to submit an acceptable corrective action report in response to an assessment;]

[(3) fails to implement a corrective action related to any deficiencies noted in the environmental laboratory testing assessment report;]

[(4) fails to provide required proficiency test sample results;]

[(5) submits proficiency test sample results generated by another laboratory as its own;]

[(6) misrepresents any fact pertinent to receiving or maintaining accreditation;]

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

[(8) is convicted of charges relating to the falsification of any report relating to a laboratory analysis;]

[(9) fails to remit fees within the time limit established by the executive director; or]

[(10) 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.]

[(b) 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.]

[(c) An environmental testing laboratory whose accreditation is revoked 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.]