

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 13, 2024

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

Thru: Richard C. Chism, Director *RCC*
Office of Air

From: Brandy Brooks, Deputy Director *JEE for Brandy Brooks* 12/12/2024
Air Monitoring Division

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 25, Environmental Testing Laboratory Accreditation and Certification
Laboratory Accreditation Fee Increase
Rule Project No. 2025-016-025-AI

Background and reason(s) for the rulemaking:

The Laboratory Accreditation Program (Program) offers primary and secondary accreditation to public and private environmental laboratories throughout Texas, as well as other states. The current fee structure, codified in 30 Texas Administrative Code (TAC) Chapter 25, has been in place since 2011. Due to inflation and a decrease in the number of environmental laboratories seeking voluntary accreditation, the Program will encounter a budgetary shortfall by the end of fiscal year 2026.

Scope of the rulemaking:

The rulemaking would increase fees to cover the cost of Program administration.

As per 30 TAC §25.1: "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)."

It is recommended the fee structure be updated to cover Program costs and to include incremental rate increases every five (5) years to ensure the Program does not encounter another budgetary shortfall and accredited laboratories can plan for fee increases.

Statutory authority:

Texas Water Code Chapter 5 Subchapter R provides the commission the authority to create the accreditation program.

Effect on the:

A.) Regulated community:

Laboratories would be required to pay increased fees when they apply for accreditation or reaccreditation after September 1, 2025.

B.) Public:

The fee increase is not expected to affect the public.

C.) Agency programs:

The fee increase is not expected to affect agency programs, other than providing sufficient funding for the continuation of the Laboratory Accreditation Program.

Stakeholder meetings:

Stakeholder meetings related to this rulemaking are not anticipated; however, a rule public hearing would be held during the comment period in Austin. Fee increases would also be communicated to laboratories accredited by the Program via presentation at TCEQ's Environmental Trade Fair and Conference in June 2025, as well as via email to the currently accredited laboratories once the fee schedule has been approved.

Public Involvement Plan

Yes

Alternative Language Requirements

Yes, Spanish

Potential controversial concerns and legislative interest:

Legislative interest or issues with the public are not anticipated. Accredited laboratories may have concerns regarding the increased fees.

Would this rulemaking affect any current policies or require development of new policies?

This rulemaking would not require the development of new policies and would only affect the fee schedule for the Laboratory Accreditation Program which are codified in the Texas Administrative Code.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the rulemaking does not go forward, the predicted shortfall for fiscal year 2026 would impact the ability of the Program to perform the following functions: conduct assessments of accredited laboratories as required by the National Environmental Laboratory Accreditation Program, pay third party contractors to perform required assessments, and pay for required training for the Program's assessors. Failure to perform these key functions would impact the acceptance of environmental laboratory data to the commission as all data accepted must be generated by an accredited laboratory.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: April 18, 2025

Anticipated *Texas Register* publication date: May 2, 2025

Anticipated public hearing date: June 3, 2025

Anticipated public comment period: May 2, 2025-June 3, 2025

Anticipated adoption date: August 28, 2025

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