

**PROPOSED PERMANENT REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

Petition 1999-08

EXPLANATION - Matter in italics is new; matter in brackets [] is material to be omitted.

Authority: § 1, NRS 445A.428

Section 1. Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Section 2. (Policy and Intent)

- (1) The responsibility of limiting hazardous discharges that contaminate the water, and ground resources of the state of Nevada has been entrusted to the Department of Conservation and Natural Resources through Nevada Revised Statutes (NRS) 445A.300 and 445A.730, inclusive.
- (2) The availability of laboratories capable of performing reliable analyses is an essential factor in conducting a successful environmental monitoring program.
- (3) The Division of Environmental Protection has been given the responsibility, pursuant to NRS 445A.425 and 445A.428 for ensuring the acceptable quality, reliability and validity of test results from environmental samples through establishing criteria for laboratories to be certified to perform such analysis.
- (4) Analysis of water samples from non-drinking water sources in the state may require the utilization of commercial or the state public health laboratories. Data provided by laboratories other than those certified by the United States Environmental Protection Agency (EPA) can be accepted only after such laboratories have been evaluated and certified by the Division of Environmental Protection or its designee. Certification of the state public health laboratories to do Clean Water Act (CWA) analyses is subject to on-site survey by the Division of Environmental Protection or its designee and continuing acceptable performance on semi-annual performance evaluations.
- (5) Laboratories seeking certification to perform analyses of environmental samples shall satisfy the minimum criteria expressed in these Nevada Administrative Code (NAC) regulations.
- (6) The purpose of these regulations are to provide for the evaluation and certification of laboratories seeking to analyze environmental samples to satisfy the requirements of NRS 445A.425 and 445A.428.

- (7) Having established such criteria for evaluation and certification, the Division of Environmental Protection has been delegated as the Certifying Authority for the State of Nevada and has the responsibility for implementing and administering such laboratory certification, pursuant to NRS 445A.425 and 445A.428.
- (8) If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction or in any proceeding, the remainder of this chapter shall not be affected thereby.
- (9) The approved and recommended sample collection procedures, analytical methodologies, and certification requirements are contained in the following documents, which are adopted herein by reference into these regulations:
 - a) “National Environmental Laboratory Accreditation Conference (NELAC) – Constitution, Bylaws, and Standards,” EPA 600/R-97/139, July 1998, or most recent approved and accepted revision, incorporated by reference into section 3, subparagraph 16 and section 6, subparagraph 5 of this regulation. This reference may be obtained free from United States Environmental Protection Agency, Office of Research and Development, Washington D.C. 20460 or from the Internet at <http://www.epa.gov/ttn/nelac>.

Section 1.9.1 and Figure 1 – 3 of this (NELAC) document are incorporated by reference into Section 3, subparagraph 10 of this regulation.

Sections 1.9.3 and 4.1.1 of this (NELAC) document are incorporated by reference into Section 3, subparagraph 13 and Section 6, subparagraph 1 of this regulation.

Section 1.9.4 of this (NELAC) document is incorporated by reference into Section 6, subparagraph 2 of this regulation.

Sections 1.9.5 through 1.9.10 of this (NELAC) document are incorporated by reference into Section 6, subparagraph 3 of this regulation .

Chapter 2 of this (NELAC) document is incorporated by reference into Section 9, subparagraph 1 of this regulation.

Sections 2.4, 2.5, and 2.7 of this (NELAC) document are incorporated by reference into Section 9, subparagraph 9 of this regulation .

Section 3.3 of this (NELAC) document is incorporated by reference into Section 11, subparagraph 5 of this regulation.

Sections 3.4 through 3.7 of this (NELAC) document are incorporated by reference into Section 11, subparagraph 4 of this regulation.

Sections 4.1.4(d) and 4.4 of this (NELAC) document are incorporated by reference into Sections 15, subparagraph 1(u) and Section 17 of this regulation.

Sections 4.1.7 and 4.1.9 of this (NELAC) document are incorporated by reference into Section 7, subparagraph 1 of this regulation.

Sections 4.1.8 and 4.3.2 of this (NELAC) document are incorporated by reference into Section 7, subparagraph 3 of this regulation.

Section 4.3.3 of this (NELAC) document is incorporated by reference into Section 12, subparagraph 5 of this regulation.

Chapter 5 of this (NELAC) document is incorporated by reference into Section 6, subparagraph 1; Section 11, subparagraph 7 and Section 14, subparagraph 1 of this regulation.

Section 5.5 of this (NELAC) document is incorporated by reference into Section 10, subparagraph 2 of this regulation.

Section 5.13 of this (NELAC) document is incorporated by reference into Section 14, subparagraph 2 of this regulation.

Section 5.14 of this (NELAC) document is incorporated by reference into Section 14, subparagraph 3 of this regulation.

Chapter 5, Appendix A of this (NELAC) document is incorporated by reference into Section 3 of this regulation.

Chapter 5, Appendix D of this (NELAC) document is incorporated by reference into Section 6, subparagraph 3 and Section 14, subparagraph 1 of this regulation.

Chapter 5, Appendix E of this (NELAC) document is incorporated by reference into Section 4, subparagraph 4 (b) of this regulation.

- b) 40 CFR Parts 122.21(g)(7) and 122.21(h)(4), revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 6, subparagraph 4(a) and Section 10, subparagraph 2 of this regulation. A copy of these regulations may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, for the price of \$41.
- c) 40 CFR Parts 136.3 and 136.4, revised as of 7-1-97, or most recent approved and

accepted revision, incorporated by reference into Section 4, subparagraph 4(a); Section 4, subparagraph 4(b); Section 6, subparagraph 5 and Section 10, subparagraph 2 of this regulation.

- d) Appendices A through D to 40 CFR Part 136, revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation. Appendix B is incorporated by reference into Section 6, subparagraph 4(b) and Section 10, subparagraph 2 of this regulation.
- e) Federal Register, Volume 62, page 48393 (62 FR 48393), 9-15-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- f) 40 CFR Parts 403.7(b)(2), 403.12(b)(5), and 403.12(g)(4), all revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(b); Section 6, subparagraph 4(a); Section 6, subparagraph 4(b); Section 6, subparagraph 5 and Section 10, subparagraph 2 of this regulation.
- g) Appendix E to 40 CFR Part 403, revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 6, subparagraph 4(a) and Section 10, subparagraph 2 of this regulation.
- h) Appendices A and B to 40 CFR Part 425, revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- i) 40 CFR Part 434.64, revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- j) Appendices 1 and 2 to 40 CFR Part 435, Subpart A, revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- k) 40 CFR Part 455.50, revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 6, subparagraph 4(b) and Section 10, subparagraph 2 of this regulation.
- l) Table 7 to 40 CFR Part 455, revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(a) and

Section 6, subparagraph 5 of this regulation.

- m) 40 CFR Part 465.03(c), revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- n) 40 CFR Part 501.15(b)(10)(iv), revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 6, subparagraph 4(c) and Section 10, subparagraph 2 of this regulation.
- o) 40 CFR Part 503.8, revised as of 7-1-97, or most recent approved and accepted revision, incorporated by reference into Section 4, subparagraph 4(a); Section 6, subparagraph 4(c); Section 6, subparagraph 5 and Section 10, subparagraph 2 of this regulation.
- p) “Standard Methods for the Examination of Water and Wastewater,” 18th Edition, or most recent approved and accepted revision, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1991, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- q) “Methods for the Chemical Analysis of Water and Wastes,” EPA-600/4-79-020, revised March 1983, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- r) “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” November 1986; Update I, July 1992; Update II, September 1994; Update IIA, August 1993; Update IIB, January 1995; and Update III, December 1996; SW-846, 3rd Edition, Volumes 1A-1C and 2, incorporated by reference into Section 6, subparagraph 5 of this regulation.
- s) “Annual Book of ASTM Standards,” Section 5 – Petroleum Products, Lubricants, and Fossil Fuels, and Section 11 – Water and Environmental Technology, American Society for Testing and Materials, 1994, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- t) “Methods for the Determination of Metals in Environmental Samples,” EPA/600/4-91/010, June 1991, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.
- u) “Methods for the Determination of Metals in Environmental Samples – Supplement I,”

EPA/600/R-94/111, May 1994, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

- v) “Methods for the Determination of Inorganic Substances in Environmental Samples,” EPA-600/R-93-100, August 1993, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

- w) EPA Method 1613, “Tetra- through Octa- Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS,” Revision B, EPA 821-B-94-005, October 1994, incorporated by reference into Section 6, subparagraph 5 of this regulation.

- x) “Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Waters,” Volume I, EPA-821-R-93-010-A, August 1993, Revision I, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

- y) “Consensus Method for Determining Groundwaters Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA),” EPA 910/9-92-029, October 1992, incorporated by reference into Section 6, subparagraph 5 of this regulation.

- z) “ICR Sampling Manual,” EPA 814-B-96-001, April 1996, incorporated by reference into Section 6, subparagraph 5 of this regulation.

- aa) “DBP/ICR Analytical Methods Manual,” EPA 814-B-96-002, April 1996, incorporated by reference into Section 6, subparagraph 5 of this regulation.

- bb) “ICR Microbial Laboratory Manual,” EPA 600/R-95/178, April 1996, incorporated by reference into Section 6, subparagraph 5 of this regulation.

- cc) “EPA Method 1600: Membrane Filter Test Method for Enterococci in Water,” EPA 821-R-97-004, May 1997, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

- dd) “Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,” EPA/600/4-90/027F, August 1993, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

- ee) “Short-term Methods for Estimating the Chronic Toxicity of Effluents and

Receiving Waters to Freshwater Organisms,” EPA/600/4-91/002, July 1994, 3rd Edition, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

ff) “Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms,” EPA/600/4-91/003, July 1994, 2nd Edition, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

gg) “Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures, Quality Assurance,” 4th Edition, EPA 815-B-97-001, March 1997, incorporated by reference into Section 3, subparagraph 11; Section 3, subparagraph 13 and Section 6, subparagraph 5 of this regulation.

hh) 63 FR 18504, 4-15-98, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

ii) “US EPA Contract Laboratory Program – Statement of Work for Organics Analysis,” Document OLM01.0 plus Revisions OLM01.1, December 1990; OLM01.2, January 1991; OLM01.3, February 1991; OLM01.4, March 1991; OLM01.5, April 1991; and OLM01.6, June 1991; incorporated by reference into Section 6, subparagraph 5 of this regulation.

jj) “US EPA Contract Laboratory Program – Statement of Work for Inorganics Analysis,” Document ILM02.0, incorporated by reference into Section 6, subparagraph 5 of this regulation.

kk) “Guidance on the Evaluation of Safe Drinking Water Act Compliance Monitoring Results from Performance – Based Methods,” EPA Draft, January 14, 1994, incorporated by reference into Section 6, subparagraph 5 of this regulation.

ll) “Guidelines Establishing Test Procedures for the Analysis of Pollutants: Flexibility in Existing Test Procedures and Streamlined Approach for Approving New Test Methods,” 62 FR 14975, 3-28-97, incorporated by reference into Section 4, subparagraph 4(b) and Section 6, subparagraph 5 of this regulation.

mm) “Performance Based Measurement System,” 62 FR 52098, 10-6-97, incorporated by reference into Section 4, subparagraph 4(b) and Section 6, subparagraph 5 of this regulation.

- nn) ISO Guide 25, "General Requirements for the Competence of Calibration and Testing Laboratories," 1990, incorporated by reference into Section 6, subparagraph 1 of this regulation.
- oo) "National Environmental Laboratory Accreditation Program Analyte Sheet," Form AS0001, incorporated by reference into Section 13, subparagraph 2 of this regulation.
- pp) "Application for Certification of Environmental Testing Laboratories," Form AP0001, incorporated by reference into Section 7, subparagraph 1 and Section 8, subparagraph 2(b) of this regulation.
- qq) "NELAP Testing Laboratory Certificate," Form NPC0001, incorporated by reference into Section 13, subparagraph 1 of this regulation.
- rr) "Renewal Attestation of Compliance," Form R0001, incorporated by reference into Section 12, subparagraph 1 of this regulation.
- ss) "Environmental Testing Laboratory Renewal Invoice," Form RI0001, incorporated by reference into Section 12, subparagraph 1 of this regulation.
- tt) "Statement of Deficiencies and Plan of Correction," Form SOD/POC0001, incorporated by reference into Section 11, subparagraph 8 and Section 15, subparagraph 1(n) of this regulation.
- uu) "Handbook for Analytical Quality Control in Water and Wastewater Laboratories," EPA/600/4-79/019, March 1979, incorporated by reference into Section 11, subparagraph 4 of this regulation.
- vv) "EPA Method 1664: N-Hexane Extractable Material (HEM) and Silica Gel Treated N-Hexane Extractable Material (SGT-HEM) by Extraction and Gravimetry (Oil and Grease and Total Petroleum Hydrocarbons)," EPA-821-B-94-004b, April 1995, incorporated by reference into Section 4, subparagraph 4(a) and Section 6, subparagraph 5 of this regulation.

In the event specific considerations written in this document conflict with any of the referenced documents, this document and reference a) will take precedence. If any reference, other than 40 CFR, adopted by reference in these regulations is revised, the Nevada State Environmental Commission may review the revision to determine its suitability for this state. If the Commission

determines that the revision is not suitable for this state, it will hold a public hearing to review its determination and give notice of that hearing within 6 months after the date of the publication of the revision. If, after the hearing, the Commission does not revise its determination, the Commission will give notice that the revision is not suitable for the state within 30 days after the hearing. If the Commission does not give such notice, the revision becomes part of the publication adopted by reference in these regulations. Revisions of 40 CFR are accepted by mandate of the Clean Water Act.

Section 3. (Definitions)

In addition to the definitions set forth in NRS 445A.425 and 445A.428 and in Chapter 5, Appendix A of the National Environmental Laboratory Accreditation Conference (NELAC) Standards, adopted by reference herein, as used in this NAC, the following terms shall mean:

- (1) “EPA” – means the United States Environmental Protection Agency.
- (2) (a) “Environmental Sample” – means a sample from any natural source, or a source that reasonably may be expected to contribute pollution to or receive pollution from groundwaters, surface waters, soils and sediments, ecosystem biota, the atmosphere, or drinking water supplies of the state.
(b) This environmental sample includes, for example: ambient air, air emissions from point sources, drinking water, receiving waters, waters used to define natural background conditions, soils, sediments, industrial, domestic, or municipal discharge effluents, samples from chemical storage or handling facilities, waste disposal facilities or areas, and industrial or agricultural chemical handling or application areas (such as hazardous waste), surface water runoff, and samples from facilities for handling or applying of chemicals for weed or insect control.
- (3) “Principal State Laboratory” – means the primary laboratory that has been certified by the EPA for performance of chemical, microbiological, and radiochemical analyses of drinking water.
- (4) “Local Laboratory” – means any federal, state, county, city, utility or commercial laboratory under these regulations for performance of chemical, microbiological or radiochemical analyses of environmental samples.
- (5) “Commercial Laboratory” – means a local laboratory which is not operated by a federal, state, county, city or public utility that performs environmental sample analyses on a fee or contract basis.
- (6) “Certification” – means regulatory recognition given to local laboratory that performs analyses pursuant to various environmental monitoring regulations, meets minimum analytical performance standards, and meets other requirements as set forth in these regulations.
- (7) “Decertification” – means revocation or suspension of certification for one or more of the reasons indicated in Section 15 of this regulation.
- (8) “Recertification” – means reinstatement of certification following correction of the deficiencies for which the laboratory was decertified.

- (9) “Renewal” – means reissuing of certification to a local laboratory.
- (10) “Category of Certification” – means the collection and organization within successive tiers of testing as defined in Section 1.9.1 and Figure 1-3 of the NELAC Standards, which are adopted by reference herein. The laboratory must select at least one method and analyte from Tiers IV and V in Section 4 of this regulation, in order to attain certification that is nationally recognized. The categories are organized such that the Division of Environmental Protection or its designee may collect fees sufficient to meet the costs of administering the certification program and may administer the certification criteria as consistently, efficiently, and inexpensively as possible.
- (11) “Analyst” – means a chemist, microbiologist, physicist, or technician qualified by academic training and experience as stated in the “Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures, Quality Assurance,” 4th Edition, EPA, 815-B-97-001, March 1997, or most recently approved and accepted edition, adopted by reference herein, who actually performs tests or participates in testing with other qualified personnel.
- (12) “Analyte” – means the particular compound, element, radical, isotope, characteristic, contaminant, mixture, organism, species, or condition for which the environmental sample is being tested.
- (13) “Director, Supervisor, or Consultant” – means the responsible party of record qualified according to Section 4.1.1 of the NELAC Standards, adopted herein by reference, or a chemist, microbiologist, physicist or professional scientist qualified by academic training and experience as stated in the “Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures, Quality Assurance,” 4th Edition, EPA, 815-B-97-001, March 1997, or most recently approved and accepted edition, also adopted herein by reference, to administer the technical and scientific operations of the laboratory, including the supervising of testing procedures and reporting of results.
- (14) “Approved Testing Methods” – means the laboratory or field procedures in Tier IV that have been approved for testing environmental samples and that shall be required for certification under these regulations.
- (15) “Field Testing” – means the sampling, analysis, or other testing operation occurring in the same premises as where the environmental sample is obtained.
- (16) “NELAC Standards” – means the consensus standards developed for testing laboratory performance and accrediting authority decisions, adopted at the National Environmental Laboratory Accreditation Conference and contained within the document EPA 600/R-97/139, July 1998, or most recent approved and accepted revision, which is adopted by reference herein.
- (17) “Quality Control Sample” – means an uncontaminated environmental sample type spiked with known amounts of analytes and analyzed to assess laboratory performance of a particular test method.

Section 4. (Scope of Accrediation)

Under the NELAC Standards, the tiers of laboratory testing and field sampling are described below. The first tiers contain more general requirements for accreditation, and each successive tier contains additional requirements to demonstrate capability in more specific fields of sampling or testing.

- (1) Tier I: Legal Identity and Mission
 - (a) Laboratory Testing
 - (b) Field Sampling
- (2) Tier II: Testing Capability – the general scientific discipline of testing within each business Mission identified in Tier I.
 - (a) Chemistry
 - (b) Biology
 - (c) Whole Effluent Toxicity
 - (d) Radiochemistry
 - (e) Field Testing
 - (f) Microscopy and Microbiology
- (3) Tier III: Regulatory Program – the sampling and testing protocols and Quality Assurance procedures for each Testing Capability identified in Tier II, which are required for compliance with the specified environmental monitoring regulations. The following Regulatory Program is addressed:
 - (a) Clean Water Act (CWA) – 40 CFR Parts 100 through 140 and Parts 400 through 599.
- (4) Tier IV: Test Methods – the approved laboratory testing procedures within the Regulatory Programs identified in Tier III, as follows:
 - (a) CWA – The approved test methods are found or referenced in:
 1. 40 CFR Part 136.3 and Appendices A, C, and D to 40 CFR Part 136, revised as of 7-1-97 and amended in Volume 62 of the Federal Register, beginning at page 48393 (62FR 48393), September 15, 1997, or most recent approved and accepted revision,
 2. Appendices A and B to 40 CFR Part 425, revised as of 7-1-97, or most recent approved and accepted revision,
 3. 40 CFR 434.64, revised as of 7-1-97, or most recent approved and accepted revision,
 4. Appendices 1 and 2 to 40 CFR 435, Subpart A, revised as of 7-1-97, or most recent approved and accepted revision,
 5. Table 7 to 40 CFR Part 455, revised on 7-1-97, or most recent approved and accepted revision,
 6. 40 CFR Part 465.03(c), revised as of 7-1-97, or most recent approved and accepted revision,
 7. 40 CFR Part 503.8, revised as of 7-1-97, or most recent approved and accepted revision,

8. "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, Revised March 1983,
9. "Standard Methods for the Examination of Water and Wastewater," 18th Edition, or most recent approved and accepted revision, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1991,
10. "Methods for the Determination of Metals in Environmental Samples," EPA/600/4-91/010, June 1991,
11. "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA/600/R-94/111, May 1994,
12. "Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Waters," Volume I, EPA-821-R-93-010-A, August 1993, Revision 1,
13. "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms," EPA/600/4-90/027F, August 1993,
14. "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms," EPA/600/4-91/002, July 1994, 3rd Edition,
15. "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms," EPA/600/4-91/003, July 1994, 2nd Edition,
16. "Annual Book of ASTM Standards," Section 5 – Petroleum Products, Lubricants, and Fossil Fuels, and Section 11 – Water and Environmental Technology, American Society for Testing and Materials, 1994, or most recent approved and accepted revision,
17. 63 FR 18504, April 15, 1998,
18. "Methods for the Determination of Inorganic Substances in Environmental Samples," EPA-600/R-93-100, August 1993,
19. "EPA Method 1600: Membrane Filter Test Method for Enterococci in Water," EPA-821-R-97-004, May 1997, and
20. "EPA Method 1664: N-Hexane Extractable Material (HEM) and Silica Gel Treated N-Hexane Extractable Material (SGT-TEM) by Extraction and Gravimetry (Oil and Grease and Total Petroleum Hydrocarbons)," EPA-821-B-94-004b, April 1995.

All of these documents are incorporated by reference into these regulations.

- (b) Performance-based alternate test methods for CWA may be acceptable if the laboratory receives EPA approval for the alternate method according to 40 CFR Parts 403.7(b) (2) (v), 403.12(b) (5) (vi), or 403.12(g) (4), all revised as of 7-1-97 or most recently approved and accepted edition, and adopted by reference herein. Additionally, an alternate test method may be acceptable if the laboratory fulfills application requirements in 40 CFR Part 136.4, revised as of 7-1-97 or most recently approved and accepted edition, and adopted by reference herein, and if the proposed method is documented and evaluated to meet the same performance criteria as the referenced methods, according to

the procedures and criteria in:

1. Chapter 5, Appendix E of the NELAC Standards, revised as of July 1, 1998, or most recent approved and accepted revision,
2. "Guidelines Establishing Test Procedures for the Analysis of Pollutants: Flexibility in Existing Test Procedures and Streamlined Approach for Approving New Test Methods," 62 FR 14975, March 28, 1997, or
3. "Performance Based Measurement System," 62 FR 52098, October 6, 1997,

Which are all adopted herein by reference.

- (5) Tier V: Analytes – the specific contaminants within each Test Method identified in Tier IV, which are determined in order to assess process efficacy, environmental or health impacts, regulatory compliance, or the general condition of defined systems. The analyte must be listed in the approved test method, for a testing laboratory to be certified for the analyte with that method.

Section 5. (Categories and Certification)

The categories of certification covered by this regulation include those parameters outlined in Section 4 of this regulation. The analytes are grouped in the following categories for billing and performance evaluation purposes:

- (1) Trace Metals
- (2) Minerals
- (3) Nutrients
- (4) Demands
- (5) Polychlorinated biphenyls (water)
- (6) Polychlorinated bephenyls (oil)
- (7) Pesticides
- (8) Volatile Halocarbons
- (9) Volatile Aromatics
- (10) Total Cyanide
- (11) Nonfilterable Residue
- (12) Oil and Grease
- (13) Total Phenolics
- (14) Total Residual Chlorine
- (15) Microbiological
- (16) Radiochemical
- (17) Other individual contaminant as defined by the EPA.

Section 6. (Laboratory Certification Criteria)

- (1) To be certified for Laboratory Testing (Tier I), a laboratory shall meet the general requirements specified in the following NELAC Standards:

- Section 1.9.3 – General Laboratory Requirements
- Section 4.1.1 – Personnel Qualification
- Section 5.0 – Introduction
- Section 5.1 – Scope (of Quality System)
- Section 5.4 – Organization and Management
- Section 5.5 – Quality System
- Section 5.6 – Personnel
- Section 5.7 – Physical Facilities
- Section 5.8 – Equipment and Reference Materials
- Section 5.9 – Measurement Traceability and Calibration
- Section 5.10 – Test Methods and Standard Operating Procedures
- Section 5.11 – Sample Handling, Acceptance Policy, and Receipt
- Section 5.12 – Records
- Section 5.13 – Report Format and Contents
- Section 5.14 – Subcontracting Samples
- Section 5.15 – Outside Support Services and Supplies
- Section 5.16 – Complaints

The above NELAC standards are adopted by reference herein and patterned after ISO Guide 25, which is also adopted by reference herein.

- (2) To be certified for Field Sampling (Tier I), a laboratory must meet the requirements specified in Section 1.9.4 of the NELAC Standards, which is adopted herein by reference.
- (3) To be certified for the Chemistry, Whole Effluent Toxicity, Microbiology and Microscopy, Biology, Radiochemistry, or Field Measurement Testing Capabilities (Tier II), a laboratory shall meet the requirements specified in the following NELAC standards, adopted herein by reference:
 - (a) Section 1.9.5 and Chapter 5, Appendix D.1 for Chemistry testing.
 - (b) Section 1.9.6 and Chapter 5, Appendix D.2 for Whole Effluent Toxicity testing.
 - (c) Section 1.9.7 and Chapter 5, Appendix D.3 for Microbiology testing.
 - (d) Section 1.9.8 and Chapter 5, Appendix D.4 for Radiochemistry testing.
 - (e) Section 1.9.9 for Microscopy Testing.
 - (f) Section 1.9.10 for Field Measurement Testing.

- (4) To be certified under the CWA Regulatory Program (Tier III):
- (a) A field sampling organization must comply with the sampling protocols specified in 40 CFR Parts 122.21(g) (7) and 122.21(h) (4), both revised as of 7-1-97 and adopted by reference herein. A field sampling organization supporting pretreatment regulations for industrial users must comply with sampling protocols in 40 CFR Parts 403.7 (b) (2), 403.12(b) (5), 403.12(g) (4), and Appendix E to Part 403, all revised as of 7-1-97, or most recent approved and accepted revision, and adopted herein by reference.
 - (b) Laboratories must comply with sample container, holding times, preservation, and method detection limit requirements in 40 CFR Part 136.3(e) and Appendix B to 40 CFR Part 136, revised as of 7-1-97, or most recent approved and accepted revision, and adopted herein by reference. A laboratory supporting pretreatment regulations must comply with analytical requirements in 40 CFR Parts 403.7(b) (2), 403.12(b) (5), and 403.12(g) (4), all revised as of 7-1-97, or most recent approved and accepted revision, and adopted by reference herein. A laboratory testing for pesticide active ingredients must comply with the methodology requirements in 40 CFR Part 455.50, revised as of 7-1-97, or most recent approved and accepted revision, and adopted by reference herein.
 - (c) Laboratories and field sampling organizations that test sewage sludges must collect representative samples and comply with methodology requirements in 40 CFR Parts 501.15(b) (10) (iv) and 503.8, both revised as of 7-1-97, or most recent approved and accepted revision, and adopted by reference herein.
- (5) To be certified for specific approved Test Methods (Tier IV); the laboratory shall comply with the requirements in each approved test methods and the corresponding NELAC standards. The NELAC standards shall take precedence in those cases where conflicting requirements exist. The laboratory shall also comply with the manufacturer's instructions for maintaining and tuning each test equipment, optimizing test performance, and demonstrating measurement system performance. However, the corresponding test methods and NELAC standards take precedence and shall be followed where conflicts exist. All approved Test Methods and NELAC Standards, plus provisions for allowing the use of Alternate Test Procedures or Performance-Based Measurement Systems, are contained within the documents cited in Section 4 of this regulation and adopted herein by reference.
- (6) A laboratory using an Alternate Test Procedure or Performance-Based Measurement System in Tier IV shall submit to the Division of Environmental Protection or its designee a written copy of the alternate test method prior to the on-site inspection of that laboratory. An alternate test method can be approved only if it is equivalent to or better than the approved Test Method in meeting defined objectives for accuracy, precision, comparability, and completeness, in relation to determining compliance with any regulatory concentration levels or system conditions, or if no approved Test Method is available for the requested sample

analysis. Use of alternate methods may require written approval from the EPA or publication in the Federal Register.

- (7) To be certified for specific Analytes (Tier V) within each approved Test Method, the laboratory shall comply with the test method requirements and corresponding NELAC standards for initial and on-going test equipment calibrations and analyst demonstrations of precision, accuracy, and sensitivity for each analyte. The NELAC standards shall take precedence in those cases where conflicting requirements exist.
- (8) The lack of requirements for analytical testing to be performed only by laboratories certified pursuant of these regulations does not diminish or negate requirements in other regulations regarding personnel, methodology, proficiency testing, quality assurance, or other requirements for data acceptability as promulgated therein.
- (9) Each laboratory may at its own discretion elect to participate or not participate in the NELAP certification program. The two types of environmental laboratory certification are as follows:
 - (a) Nevada State Certification
 - 1) This certification requires all aspects of the certification program outlined in this regulation. It requires on-site survey by Nevada Certification Officers unless the laboratory is located within another state with which Nevada shares a reciprocity agreement.
 - 2) Laboratories obtaining Nevada State Certification may provide analytical data of environmental samples originating in Nevada for certified regulated analytes .
 - 3) Fees related to the certification of these laboratories are presented in the fee schedule in NAC 445A.066.
 - (b) NELAP Certification
 - 1) This certification requires all aspects of the certification program outlined in this regulation and further requires the participation of NELAC approved certification officer(s) at site surveys.
 - 2) Laboratories obtaining NELAP certification will have automatic reciprocity with other States that participate in NELAP certification.
 - 3) Laboratories participating in NELAP certification will require site survey(s) by Nevada State Certification and NELAP certification officers, but they will not be required to have site surveys from other NELAP participating states. If Nevada certification officers are NELAP accredited, a single site survey will satisfy the Nevada and NELAP certification requirement.
 - 4) Nevada fees related to the certification of these laboratories are presented in the fee schedule in NAC 445A.066. Other states in which the laboratory may wish to do

business may also charge participation fees. Nevada will charge a participation fee for out-of-state laboratories according to the schedule presented in NAC 445A.066.

Section 7. (Certification Requirements)

- (1) An application for certification shall be made in writing to the Division of Environmental Protection or its designee, accompanied by the application fee, and shall contain at least the information listed in Sections 4.1.7 and 4.1.9 of the NELAC Standards, adopted by reference herein. Laboratories desiring NELAP certification will use the NELAC form. Laboratories desiring Nevada State certification will use the Nevada State application form. Form AP0001, "Application for Accreditation of Environmental Testing Laboratories under NELAP," is herein adopted by reference.
- (2) Separate application and certification shall be required for all laboratories maintained on separate premises even though operated under the same management; however, separate certification is not required for separate buildings on the same or adjoining grounds, or within the same city if it can be demonstrated to the certification officer that each section of the facility works upon the same sample sets and reports from a common office.
- (3) The laboratory shall report in writing to the Division of Environmental Protection or its designee within 30 days all changes in laboratory name, ownership, location, personnel, methodology or any other factor consistent with the information in Sections 4.1.8 and 4.3.2 of the NELAC Standards, adopted herein by reference, that significantly affects the performance of analyses for which the laboratory was originally certified.
- (4) Notwithstanding any other errors or omissions, an application is not completed until the laboratory has fulfilled all of the following requirements:
 - (a) The application reviewed by the Division of Environmental Protection or its designee was found to request approved test methods as required in Section 4 of this regulation.
 - (b) Proficiency samples are successfully analyzed, if available, from NELAC-compliant proficiency test sample provider, as required in Section 9 of this regulation.
 - (c) A written Quality Manual has been prepared as required in Section 10 of this regulation.
 - (d) An on-site laboratory inspection has been conducted for the test methods and analytes for which the laboratory is seeking certification, as required in Section 11 of this regulation.
 - (e) Certification fees are paid as required in NAC 445A.066.
 - (f) The laboratory's Director, Supervisor, or Consultant was found to be qualified according to Section 3, subparagraph 13 of this regulation.

- (g) The laboratory responds in writing to each deficiency noted in the on-site inspection report with an acceptable plan of correction and completion date, as required in Section 11 of this regulation.
- (5) Applications for certification not completed within one year from the date received by the Division of Environmental Protection or its designee shall expire, and certification shall be denied unless extenuating circumstances are communicated in writing and an extension is granted.

Section 8 (Certification of Out-of-State Laboratories)

- (1) The Division of Environmental Protection or its designee may certify an out-of-state laboratory to perform CWA analyses provided that the laboratory complies with all the requirements in this regulation.
- (2) An out-of-state laboratory may be eligible for reciprocal certification to perform CWA sample analyses provided:
 - (a) The laboratory is certified by a state recognized as a NELAP Accrediting Authority or with which the State of Nevada maintains a reciprocal agreement for those scientific disciplines and regulatory programs in which the laboratory is requesting certification pursuant to this regulation.
 - (b) The laboratory submits to the Division of Environmental Protection or its designee an application on Form AP0001, which is adopted herein by reference, copies of the laboratory's three most recent proficiency test results demonstrating compliance with Section 9 of this regulation, and the fees required by Section 18 of this regulation.
 - (c) The laboratory complies with the requirements of Section 6 of this regulation, and
 - (d) The laboratory submits to the Division of Environmental Protection or its designee a copy of its most recent (less than 2 years old) on-site inspection report from the Accrediting Authority or from the Accrediting Authority's delegated Assessor Body; the laboratory's response to the audit report, together with a current copy of the laboratory's certification; a listing of the categories, analytes, and test methods certified; and the Certifying Authority's regulations regarding laboratory certification.
- (3) If upon review of the documents listed in section (2) above the Division of Environmental Protection or its designee determines that the out-of-state certification program is equivalent to the requirements of this regulation, the Division or its designee will not require an on-site survey by its inspectors and certification may be granted; providing the home state is either participating in NELAP certification or will accept analytical data from Nevada laboratories upon the same basis.

- (4) If upon review of the documents listed in section (2) above the Division of Environmental Protection or its designee is unable to determine that the out-of-state certification program is equivalent to the requirements of this regulation, then, in addition to the requirements in paragraphs (2)(b) and (2)(c) above, the Division of Environmental Protection or its designee shall conduct an on-site inspection of the laboratory. The laboratory will be responsible for the cost of the on-site inspection.
 - (a) The Division of Environmental Protection or its designee may grant certification if the results of the inspection verify compliance with this regulation and after the invoiced certification fees and on-site inspection expenses are paid.
 - (b) If the results of the on-site survey do not indicate the laboratory's compliance with the requirements of this , the laboratory's application for certification will be denied.

Section 9 (Proficiency Testing Requirements)

- (1) Applicant and certified laboratories shall participate in a proficiency testing program from a provider approved as being compliant with Chapter 2 of the NELAC Standards which is adopted by reference herein. Participation means that the laboratory will analyze and report to the approved provider the results of all proficiency test samples contained in the approved program for those categories and analytes with which the laboratory desires and maintains certification. Certified laboratories shall participate in proficiency testing at least twice per year for all categories and analytes certified, if available.
- (2) Laboratories shall bear the cost of any subscription to a proficiency testing program required by the Division of Environmental Protection or its designee for certification purposes.
- (3) All analytes within each regulatory program that are certified or pending certification must be satisfactorily analyzed, if available, on two of the most recent three proficiency testing rounds attempted. A laboratory may participate in successive testing rounds where the closing dates for reporting results are greater than 30 days but less than 6 months apart. The laboratory must authorize the approved provider, prior to the testing round closing date, to submit the proficiency testing results to the Division of Environmental Protection or its designee concurrently with the submittal of these results to the laboratory; otherwise, the Division of Environmental Protection or its designee may refuse to consider the proficiency test results from that round for fulfilling the requirements of this regulation.
- (4) Proficiency test sample results shall be considered satisfactory when they are within the acceptable limits established by the approved proficiency test sample provider, according to one of the scoring options listed in Chapter 2, Appendix C of the NELAC Standards, which is herein adopted by reference.
- (5) A laboratory that meets the requirements of subsection (3) above for a particular analyte is eligible for certification for all pending test methods for that analyte provided validation data are available for each method used. If validation data are not available for any of the test methods associated with the analyte(s), certification shall be denied or revoked for that

method.

- (6) If the two failed proficiency results do not occur on consecutive testing round attempts, then certification shall be reinstated for the same test methods revoked when the laboratory has analyzed one follow-up proficiency test sample, approved beforehand by the Division of Environmental Protection or its designee, for each affected analyte and produced results within the acceptance limits established by the approved provider.
- (7) If a laboratory loses certification for an analyte because it failed proficiency samples on two consecutive testing round attempts, the laboratory must satisfactorily analyze the analyte in the next two testing round attempts and submit another application and application fee to the Division of Environmental Protection or its designee. If these requirements are fulfilled, the Division or its designee will reinstate certification for the analyte with the same test methods that were previously revoked. Otherwise, an on-site laboratory inspection will be required prior to reinstating certification, as would be required for any other pending test method and analyte.
- (8) An applicant or certified laboratory shall establish and maintain the accuracy and reliability of its testing procedures for analytes not available in an approved proficiency testing program through a system of internal quality management.
- (9) A certified laboratory shall comply with the other requirements for enrollment, testing, proper conduct, and successful participation in the approved proficiency testing program, as specified in Sections 2.4, 2.5, and 2.7 of the NELAC Standards, which are all adopted by reference herein.

Section 10. (Quality Manual Requirements)

- (1) The laboratory shall prepare and follow a written quality assurance plan. This Quality Manual shall be submitted to the Division of Environmental Protection or its designee for review prior to the on-site inspection of the laboratory.
- (2) All Quality Manuals submitted to the Division of Environmental Protection or its designee for review shall comply with the specifications in Section 5.5 of the NELAC Standards and in the regulations referenced in Section 6, subparagraph 3 through Section 6, subparagraph 9 of this regulation for Regulatory Programs, which are incorporated by reference herein. The Quality Manual must cite the laboratory's objectives for sensitivity, precision, and accuracy for each pending and certified analyte and test method. Additionally, the Quality Manual must address the laboratory's policy concerning improper data manipulation or fraudulent activity.
- (3) A copy of the written Quality Manual, analytical methods, quality control data, proficiency test data, and other records documenting compliance with this regulation shall be available at the laboratory for review during the on-site inspection.

Section 11 (On-Site Laboratory Assessment)

- 1) The Division of Environmental Protection or its designee is authorized to inspect the premises and operations of any certified laboratory or any laboratory seeking certification or change in certification under this regulation during normal business hours. After completion of all prerequisites specified in Section 7, subparagraph 4(a) through Section 7, subparagraph 4(c) of this regulation, the Division of Environmental Protection or its designee shall conduct the on-site inspection of the laboratory to determine compliance with all the requirements in this regulation.
- (2) The Division of Environmental Protection or its designee shall inspect the premises and operations of laboratories certified or seeking certification to perform analyses pursuant to this regulation. Such inspections shall occur at least once every 2 calendar years and at such other times as the Division of Environmental Protection or its designee deems necessary to determine continued compliance with this regulation. Inspections may be unannounced and may include the on-site analysis of proficiency test samples as well as the photocopying, photographing, or videotaping of any portion of the laboratory, equipment, activity, samples in custody, records, test results or other information related to certification under this regulation.
- (3) Inspections will be announced except in those cases in which the Division of Environmental Protection or its designee determines an alternate approach necessary to establish compliance. Factors such as past record, proficiency test performance, personnel, overall laboratory performance, and complaints from the public or other regulatory agencies will be considered in making this determination.
- (4) On-site inspections shall be conducted in accordance with Sections 3.4 – 3.7 of the NELAC Standards, which are adopted herein by reference. Laboratories conducting wastewater testing shall be inspected according to the quality assurance criteria in “Handbook for Analytical Quality Control in Water and Wastewater Laboratories,” EPA/600/4-79/019, March 1979, and “Manual for the Certification of Laboratories Analyzing Drinking Water: Criteria and Procedures, Quality Assurance,” 4th Edition, EPA 815-B-97-001, March 1997 or most recently approved and accepted edition, adopted herein by reference. Inspections will include the review of quality control data. The laboratory shall analyze at least one Quality Control Sample annually for each certified analyte and methodology.
- (5) Inspections of a laboratory may occur more frequently than once every two calendar years when there are complaints about the laboratory quality, questions of fraud, numerous or serious deficiencies from the previous on-site inspection, any of the changes noted in Section 7, subparagraph 3 of this regulation, or any other criteria in Section 3.3 of the NELAC Standards, which is adopted by reference herein.
- (6) Inspections will include the on-site analysis of proficiency test samples when the Division of Environmental Protection or its designee is unable to determine compliance using more conventional methods.
- (7) The laboratory shall ensure that its documented Quality System, analytical methods, quality control data, proficiency test data, laboratory standard operating procedures, and other records needed to verify compliance with Chapter 5 of the NELAC Standards, adopted by reference herein, and this regulation is available for review during the on-site laboratory

inspection. The laboratory shall allow the Division's authorized personnel or their designee to examine records; observe the laboratory's procedures, facilities, and equipment; and interview staff as necessary to determine such compliance.

- (8) The laboratory shall submit to the Division of Environmental Protection or its designee a Plan of Correction for each deficiency noted during the on-site evaluation. Form SOD/POC0001, "Statement of Deficiencies and Plan of Correction," is herein incorporated by reference. This submittal is due within 30 days of the laboratory receiving the inspection report, Form SOD/POC0001 must be returned to the Division or its designee within this timeframe with the date and original signature of the laboratory responsible official, and each Plan of Correction must have an estimated completion date. If the Division or its designee determines that a Plan of Correction will not correct the deficiency cited, the laboratory will be notified in writing and will have 30 days to submit a revised Plan of Correction. If this revised Plan of Correction is unacceptable, or if the next on-site inspection of the laboratory shows that the deficiency has not been corrected, then the Division of Environmental Protection or its designee shall revoke or deny certification for the affected tiers of accreditation.

Section 12. (Renewal of Annual Certification)

- (1) The Division of Environmental Protection or its designee will renew a laboratory's certification after return of a renewal invoice on Form R0001 and receipt of the renewal certification fee, provided the laboratory is maintaining compliance with these regulations, attests to such compliance on Form R0001, and has reported acceptable proficiency test values for the categories and analytes certified within the 12 months prior to July 1 of each calendar year. The Renewal Attestation of Compliance, Form R0001, and Environmental Testing Laboratory Renewal Invoice, Form INV0001, are both herein adopted by reference.
- (2) A laboratory's certification shall expire on June 30 of each calendar year, unless its certification has been renewed.
- (3) The Division of Environmental Protection or its designee will mail the renewal invoices and attestation forms at least 30 days prior to June 30. Failure to receive a renewal invoice does not exempt laboratories from paying the renewal certification fee.
- (4) A laboratory whose certification has expired may reapply for certification in accordance with Section 7, subparagraph 1 of this regulation.
- (5) The certified laboratory shall maintain all key accreditation elements, such as facilities, equipment, quality system documents, personnel qualifications, standards, sample handling procedures, and other elements in Section 4.3.3 of the NELAC Standards, herein adopted by reference, that originally served as the basis for the laboratory's initial certification.

Section 13. (Display of Certificate)

- (1) A current certificate shall be displayed at all times in a prominent place in each certified laboratory where the public may view it. The certificate, whether the laboratory is NELAP or Nevada certified, is the property of the Division of Environmental Protection and must be returned to the Division if the laboratory's entire certification is revoked, if the laboratory withdraws from the certification program, or, in the case of NELAP certification, if the Division's status as a NELAP Accrediting Authority changes. Form NPC0001, "NELAP Testing Laboratory Certificate," is adopted by reference herein.
- (2) The certified laboratory shall also receive an Analyte Sheet that shows all categories, analytes, and test methods for which the laboratory is certified. The Analyte Sheet will be updated each time the laboratory's scope of certification has changed. Form AS0001, "National Environmental Laboratory Accreditation Program Analyte Sheet," is adopted by reference herein.

Section 14. (Contractual Agreements, Records and Reports)

- (1) Laboratories performing analytical work under certification auspices shall guarantee analytical performance according to Chapter 5, Appendix D of the NELAC Standards, adopted by reference herein, for those analytes and test methods with which they have been certified. Each certified laboratory shall maintain the documentation required in Chapter 5 of the NELAC Standards, adopted by reference herein, for at least 5 years.
- (2) For reporting of results, the laboratory shall comply with the laboratory report format and content requirements in Section 5.13 of the NELAC Standards, adopted herein by reference.
- (3) A laboratory may subcontract analytical work for those analytes, categories, and test methods which the laboratory is not certified to perform, provided that it advises the client in writing of its intention to subcontract a portion of the testing and fulfills the requirements of Section 5.14 of the NELAC Standards, adopted by reference herein. The primary laboratory is responsible for determining that the contracted laboratory has been certified pursuant to these regulations for the appropriate categories, test methods, and analytes for which it is being contracted to perform. Records at the primary laboratory shall include the sample analysis reports issued from each subcontract laboratory. All data reports issued by the primary laboratory that contain results reported by one or more contract laboratories shall include the certification number of each contract laboratory. The primary laboratory shall unambiguously identify in its reports which test results were produced from its laboratory analyses and the results obtained from each contract laboratory.

Section 15. (Denial or Revocation of Certification)

- (1) The Division of Environmental Protection or its designee is authorized to deny, suspend, limit,

or revoke the certification of any laboratory on any of the following grounds:

- (a) Making false statements on an application, sample analysis report, or on any document associated with certification in violation of Section 7, Section 8 and Section 14 of this regulation.
- (b) Making consistent errors in field sampling or laboratory testing, or erroneous reporting, in violation of Section 6 and Section 14 of this regulation.
- (c) Falsifying the results of laboratory testing, or misrepresenting any information from field sampling that is critical for demonstrating regulatory compliance, in violation of Section 6 and Section 14 of this regulation.
- (d) Failing to employ approved sampling protocols or testing methods in the performance of laboratory activities for which certification is required, or failing to notify clients of method modifications, in violation of Section 4 and Section 6 of this regulation.
- (e) Failing to maintain facilities or equipment according to the laboratory's quality assurance plan, documented Quality System, approved test methods, or regulatory program mandates, in violation of Section 6 and Section 10 of this regulation.
- (f) Failing to report analytical test results in the required format, reporting results without using appropriate data qualifiers and without disclaiming certification auspices, or not maintaining required records of test results in violation of Section 6 and Section 14 of this regulation.
- (g) Failing to participate successfully in an approved proficiency testing program when available, in violation of Section 9 of this regulation.
- (h) Failing to comply with the required quality assurance program, in violation of Section 6 and Section 10 of this regulation.
- (i) Violating or assisting in the violation of any provision of Section 2 through Section 18 of this regulation.
- (j) Falsely claiming certification credentials for those test methods and analytes with which the laboratory is not certified, in violation of Section 14 of this regulation.
- (k) Failing to correct deficiencies within the time indicated in the approved plan of correction, in violation of Section 11, subparagraph 8 of this regulation.
- (l) Failing to pay initial certification or renewal certification fees or expenses incurred by the Division of Environmental Protection or its designee as a result of inspecting an out-of-state laboratory as stipulated in NAC 445A.066, subparagraphs 1, 2 and 5 and in violation of Section 8, subparagraph 4 of this regulation.
- (m) Failing to indicate clearly when analyses were subcontracted to a certified laboratory in violation of Section 14, subparagraph 2 of this regulation.
- (n) Failing to respond with a plan of correction to deficiencies noted by the Division of Environmental Protection or its designee on Form SOD/POC0001 within 30 days, in violation of Section 11, subparagraph 8 of this regulation. The Statement of Deficiencies and Plan of Correction, Form SOD/POC0001, is herein adopted by reference.
- (o) Failing to report to the Division of Environmental Protection or its designee any of the

- changes stipulated in Section 7, subparagraph 3 of this regulation.
- (p) Failing to analyze Quality Control Samples for each certified analyte and methodology annually in violation of Section 11, subparagraph 4 of this regulation.
 - (q) Permitting unqualified personnel to perform analyses in violation of Section 6, subparagraph 1 of this regulation.
 - (r) Communicating and receiving communication about proficiency test sample results from any other participating laboratory of facility, prior to the closing date of the relevant study, in violation of Section 9, subparagraph 9 of this regulation.
 - (s) Knowingly receiving any portion of another participant's proficiency test sample, or sending any portion of a proficiency test sample to another laboratory or facility, prior to the closing date of the relevant proficiency study, in violation of Section 9, subparagraph 9 of this regulation.
 - (t) Failing to admit authorized Division of Environmental Protection or its designee personnel into the laboratory facility for the on-site inspection during normal business hours, or failing to provide the information necessary to determine compliance with all the requirements of these regulations, in violation of Section 11 of this regulation.
 - (u) Committing other violations specified in Sections 4.1.4(d) and 4.4 of the NELAC Standards, which are adopted by reference herein, or misrepresenting any material fact pertinent to receiving or maintaining certification.
- (2) In determining the denial, revocation, suspension or limitation, the Division of Environmental Protection or its designee will consider such factors as the gravity of the offense, the danger to the public of the offense, the intent of the violation, the extent of the violation, and the proposed correction of the problem.

Section 16 (Administrative Hearing)

- (1) The Division of Environmental Protection or its designee shall take agency action in accordance with NRS 445A.425 and 445A.428 and shall afford a person whose substantial interests are affected an opportunity for an administrative hearing in accordance with NRS 445A.605 and 445A.610.
- (2) The Division of Environmental Protection or its designee is authorized to issue an emergency order immediately suspending the certification of a laboratory when it determines that any condition in the certified laboratory presents a clear and present danger to public health and safety.

Section 17 (Recertification)

- (1) Recertification shall require submission of a new application as required for initial certification in section 7, subparagraph 1 of this regulation, after the designated time period specified in

Section 4.4 of the NELAC Standards, which is adopted herein by reference

Section 18 NAC 445A.066 is hereby amended:

1. A laboratory must submit a one-time, nonrefundable fee of \$400 with each application for certification. *Such fees shall be assessed each subsequent application for additional analytes. The Division of Environmental Protection or its designee shall not retain this fee in circumstances where the application is not processed.*

2. A laboratory must submit an annual certification fee for each category of contaminant for which certification is requested. The categories of contaminants and annual fees are:

CATEGORY OF CONTAMINANT	ANNUAL FEE
Trace Metals.....	\$500
Minerals.....	500
Nutrients.....	250
Demands.....	250
Polychlorinated biphenols (Water).....	250
Polychlorinated biphenols (Oil).....	250
Pesticides.....	500
Volatile Halocarbons.....	250
Volatile Aromatics.....	250
Total Cyanide.....	125
Nonfilterable Residue.....	125
Oil and Grease.....	125
Total Phenolics.....	125
Total Residual Chlorine.....	125
Microbiological.....	\$350
Radiochemical.....	500
Other individual contaminant as defined by the United States Environmental Protection Agency.....	125

The annual certification fee to perform toxicity bioassays is [~~\$400~~] **\$125**.

3. The fee for certification for additional contaminants required by a laboratory during an annual period of certification is \$400. The fee will be prorated pursuant to subsection 4 if the provisions of that subsection otherwise apply. If the laboratory certification officer conducts an evaluation for certification at the site of the laboratory, the laboratory must pay, at the rate provided for state officers generally, the actual travel and per diem expenses of the officer. If the laboratory is located outside of this state, the expenses must be paid pursuant to the provisions of subsection 5.

4. The fees are effective for 12 months beginning on July 1 of each year. If an application for certification is submitted during that period, the fees will be prorated using the following formula:

Fee X .083 X the number of months remaining through June 30

For the purpose of prorating fees, an application shall be deemed to have been submitted at the beginning of a month regardless of the date of the application. Prorated fees will be rounded up to the next highest dollar.

5. If an evaluation for certification of a laboratory that is located outside this state is conducted, the laboratory must pay the actual travel and per diem expenses of the laboratory certification officer who conducts the evaluation. Payment of the expenses must be made in advance based on the estimated expenses of the officer. A payment made in excess of the actual expenses will be reimbursed to the laboratory.

6. A fee for certification to analyze a particular contaminant must be paid before a certificate may be issued.

7. Fee paid pursuant to this section are nonrefundable.

Section 19. NAC 445A.055, 445A.056, 445A.057, 445A.058, 445A.059, 445A.060, 445A.061, 445A.062, 445A.063, 445A.0635, 445A.064, 445A.065, 445A.0655, and 445A.067 are hereby repealed.

TEXT OF REPEALED SECTION

445A.055 Definitions. As used in NAC 445A.055 to 445A.067, inclusive, unless the context otherwise requires:

1. "Category of contaminant" means a category designated by the United States Environmental Protection Agency in the sample set for a chemical that is added to the water.
2. "Division" means the division of environmental protection of the state department of conservation and natural resources.
3. "Laboratory certification officer" means the laboratory certification officer of the division.
4. "Sample set" means the water pollution performance evaluation samples provided by the United States Environmental Protection Agency for the evaluation of the performance of a laboratory.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96)

445A.056 Certification required to perform certain analyses. Each analysis required by NRS 445A.300 to 445A.730, inclusive, must be performed by a certified laboratory pursuant to NAC 445A.055 to 445A.066, inclusive.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96)

445A.057 Acceptance of analyses conducted by laboratory located outside state. (NRS 445A.425, 445A.428) The division will accept data relating to the analysis of contaminants regulated pursuant to NRS 445A.300 to 445A.730, inclusive, that are submitted from a laboratory located outside of this state if:

1. The laboratory has otherwise complied with the requirements set forth in NAC 445A.055 to 445.067, inclusive;
2. The laboratory is certified by:
 - (a) The state in which it is located or, if the state in which the laboratory is located does not have a program for certifying laboratories for the analysis of water, by any other state which provides such certifications; or
 - (b) The United States Environmental Protection Agency;
3. The laboratory certification officer determines that the state providing the certification has adopted a certification program that is equivalent to the certification program adopted by this state and that state accepts the results of evaluations conducted pursuant to that program;
and
4. The laboratory files with the laboratory certification officer a copy of an acceptable report relating to the latest evaluation conducted at the site of the laboratory by:
 - (a) The state in which the laboratory is certified;
 - (b) An independent certification organization which has been approved by the laboratory certification officer; or
 - (c) The United States Environmental Protection Agency.

The evaluation to which the report relates must have been conducted within 12 months immediately preceding the date of the laboratory's application for certification.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96; 10-29-97)

445A.058 Qualifications for certification. The laboratory certification officer shall certify a laboratory to analyze a contaminant that is regulated pursuant to NRS 445A.300 to 445A.730, inclusive, if the laboratory:

1. Uses a method or methods of analysis pursuant to 40 C.F.R. Part 136;
2. Completes a satisfactory analysis of samples used to evaluate the performance of the laboratory pursuant to NAC 445A.060;
3. Receives a satisfactory evaluation by the laboratory certification officer pursuant to NAC 445A.062; and
4. Pays the required fees for the certification pursuant to NAC 445A.066.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96)

445A.059 Procedure for certification.

1. For a laboratory to be certified to analyze a contaminant regulated pursuant to NRS 445A.300 to 445A.730, inclusive, the operator of the laboratory must submit a written request to the laboratory certification officer for an application.

2. The laboratory certification officer shall provide an application form upon receipt of a written request. If an application is submitted, it must be completed on the application form provided by the laboratory certification officer.

3. The laboratory certification officer shall:

(a) Review each completed application that is received to determine whether an approved method of analysis is being used by the laboratory. The laboratory must use an approved method for the analysis of a contaminant pursuant to 40 C.F.R. Part 136 before certification may be granted.

(b) Review data used to evaluate the performance of a laboratory using the criteria set forth in NAC 445A.060 and 445A.061.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96)

445A.060 Evaluation of performance: Required analyses; provisional certification of uncertified laboratory.(NRS 445A.425, 445A.428)

1. Except as otherwise provided in subsection 3, to be certified and to maintain certification to analyze:

(a) A contaminant, a laboratory must satisfactorily analyze the samples of the contaminant in each sample set.

(b) Trace metals, minerals, nutrients, demands, total cyanide, nonfilterable residue, oil and grease, total phenolics or total residual chlorine, a laboratory must satisfactorily determine all levels of concentration of the contaminant pursuant to the acceptance limits established by the United States Environmental Protection Agency in each sample set.

(c) Polychlorinated biphenols in water or in oil, pesticides, volatile halocarbons or volatile aromatics, a laboratory must satisfactorily analyze a minimum of 80 percent of the compounds provided in the category pursuant to the acceptance limits established by the United States Environmental Protection Agency in each sample set.

(d) Radiochemical contaminants, a laboratory must satisfactorily analyze two intercomparison samples and one blind sample pursuant to the criteria for acceptance established by the United States Environmental Protection Agency.

(d) Microbiological contaminants, a laboratory must satisfactorily analyze 80 percent of at least one set of samples in each category.

2. Except as otherwise provided in subsection 3, to be certified and to maintain certification to perform toxicity bioassays, a laboratory must satisfactorily analyze the samples for performance evaluation pursuant to criteria established by the United States Environmental Protection Agency.

3. A laboratory that has not been certified may use a sample set for its evaluation that is provided by a supplier which is approved by the laboratory certification officer. The laboratory certification officer may issue provisional certification to a laboratory that receives a satisfactory

performance evaluation from such a supplier.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96; A-29-97)

445A.061 Evaluation of performance: Incorrect analyses. (NRS 445A.425, 445A.428)

1. If a laboratory that is certified to analyze for a contaminant, trace metals, minerals, nutrients, demands, total cyanide, nonfilterable residue, oil and grease, total phenolics, total residual chlorine or other category of contaminant fails to determine one or more levels of concentration of a contaminant pursuant to the acceptance limits established by the United States Environmental Protection Agency, the certification of the laboratory must be changed to provisional certification for that contaminant. If, in the next available sample set provided by the United States Environmental Protection Agency, the laboratory fails to determine satisfactorily one or more levels of concentration for that contaminant pursuant to the required criteria, the certification of the laboratory for that contaminant must be revoked.
2. If a laboratory that is certified to analyze for polychlorinated biphenols in water or in oil, pesticides, volatile halocarbons or volatile aromatics fails to analyze satisfactorily a minimum of 80 percent of the compounds provided pursuant to the acceptance limits established by the United States Environmental Protection Agency, the certification of the laboratory must be changed to provisional certification for that category of contaminants. If, in the next available sample set provided by the United States Environmental Protection Agency, the laboratory fails to analyze satisfactorily at least 80 percent of the compounds provided in the category pursuant to the required criteria, the certification of the laboratory for that category of contaminants must be revoked.
3. If a laboratory that is certified to analyze a radiochemical contaminant fails to analyze satisfactorily that contaminant pursuant to the criteria for acceptance established by the United States Environmental Protection Agency, the certification of the laboratory for that contaminant must be changed to provisional certification. If, in the next available sample set provided by the United States Environmental Protection Agency, the laboratory fails to analyze satisfactorily the sample set pursuant to the requirements of this subsection, the certification of the laboratory for that contaminant must be revoked.
4. If a laboratory that is certified to analyze a microbiological contaminant fails to analyze satisfactorily 80 percent of at least one sample set in each category, the certification of the laboratory must be changed to a provisional certification for that contaminant. If, in the next sample set provided by the United States Environmental Protection Agency, the laboratory fails to analyze satisfactorily a minimum of 80 percent of one set of samples in each category, the certification of the laboratory for that contaminant must be revoked.
5. If a laboratory that is certified to perform toxicity bioassays fails to analyze satisfactorily the samples for performance evaluation pursuant to the criteria for acceptance established by the United States Environmental Protection Agency, the certification of the laboratory must be changed to a provisional certification for that category. If, in the next sample set provided by the United States Environmental Protection Agency, the laboratory fails to analyze satisfactorily for toxicity, the certification of the laboratory for that category must be revoked.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96; 10-29-97)

445A.062 Evaluation of laboratory: Procedure. (NRS 445A.425, 445A.428)

1. Except as otherwise provided in subsection 2, the laboratory certification officer shall conduct an evaluation at the site of each laboratory in this state that applies for certification pursuant to NAC 445A.055 to 445A.067, inclusive. The evaluation must be conducted after the laboratory certification officer receives acceptable data from the United States Environmental Protection Agency or other supplier concerning the analysis of samples by the laboratory pursuant to NAC 445.060 and 445.061. Within 60 days of receiving the data, the laboratory certification officer shall conduct an evaluation at the site of the laboratory unless another mutually acceptable date is established in writing.

2. In lieu of conducting an evaluation of a laboratory pursuant to subsection 1, the laboratory certification officer may accept an evaluation of the laboratory conducted by:

- (a) Another state;
- (b) An independent certification organization approved by the officer; or
- (c) The United State Environmental Protection Agency.

3. The laboratory certification officer shall:

(a) Determine whether the laboratory is using approved methods of analysis in an acceptable manner, including appropriate procedures for controlling quality.

(b) Evaluate the facilities, equipment, personnel and protocols of the laboratory by using the criteria established by the United States Environmental Protection Agency in chapters IV (chemistry), V (microbiology) and VI (radiochemistry) of its "Manual for the Certification of Laboratories Analyzing Drinking Water," which is hereby adopted by reference in the form most recently published by the agency, unless the state environmental commission gives notice that the most recent publication is not suitable for this state pursuant to NAC 445A.067. A copy of these chapters may be obtained from the laboratory certification officer free of charge.

4. The laboratory certification officer shall make a determination concerning the certification of a laboratory and refuse certification or issue a letter of certification within 30 days after his evaluation.

5. If data relating to performance evaluation samples are not available pursuant to NAC 445A.060, provisional certification to analyze a contaminant specified in the certification may be granted to a laboratory based on the laboratory's analysis of a full-volume performance evaluation sample acquired by the laboratory certification office at the laboratory's expense.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96; 10-29-97)

445A.063 Length of validity of certification; evaluations conducted at site of laboratory; renewal and revocation of certification.

1. Except as otherwise provided in subsection 3, a certification to analyze for contaminants granted pursuant to NAC 445A.055 to 445A.067, inclusive, is valid for 1 year.

2. An evaluation of a certified laboratory must be conducted at the site of the laboratory in accordance with the provisions of NAC 445A.062 at least once every 2 years. The evaluation may be conducted without prior notice.

3. An evaluation at the site of the certified laboratory may be required if:

- (a) The performance of the laboratory is not satisfactory pursuant to NAC 445A.060 and 445A.061;
- (b) The laboratory submits an application for certification to analyze additional contaminants;

- (c) Complaints are brought against the laboratory; or
 - (d) The laboratory certification officer determines that the ability of the laboratory to analyze for a contaminant for which the laboratory is certified may be impaired.
4. If an evaluation at the site of the laboratory is conducted by a state or federal agency or by an independent certification organization, including, but not limited to, the American Association for Laboratory Accreditation or the National Sanitation Foundation, the laboratory shall, within 30 days after receipt of the evaluation, submit a copy of the evaluation to the laboratory certification officer together with a copy of the response of the laboratory to that evaluation, if any.
5. Except as otherwise provided in subsection 6, an application for renewal of certification must be:
- (a) Submitted on a form provided by the laboratory certification officer. The laboratory certification officer shall provide the form to the appropriate laboratories on or before May 15 of each year.
 - (b) Submitted on or before June 30 of each year.
 - (c) Accompanied by the fees required by NAC 445A.066.
6. In lieu of paying fees that are due, a laboratory operated by the Federal Government or a state or local government may submit with its application for renewal a purchase order approved by the laboratory certification officer.
7. The certification of a laboratory that fails to submit an application for renewal by June 30 of any year terminates on July 1 of that year. A certification which is terminated will be reinstated when an application is submitted in accordance with the provisions of NAC 445A.059 and the criteria of NAC 445A.055 to 445A.067, inclusive, are met.
8. The certification of a laboratory must be revoked if the laboratory:
- (a) Submits to the laboratory certification officer a written refusal to allow an evaluation at the site of the laboratory; or
 - (b) Refuses to allow the laboratory certification officer to conduct an evaluation of the laboratory.
- (Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96)

445A.0635 Denial of application or revocation of certification: Grounds.

1. In addition to the grounds set forth in NAC 445A.055 to 445A.067, inclusive, for the revocation of a certification, an application for certification of a laboratory must be denied or the certification of a laboratory must be revoked if the laboratory:
- (a) Submits a performance evaluation sample to another laboratory for analysis and reports the data received as its own;
 - (b) Falsifies data or engages in any other deceptive practice;
 - (c) Reports data on a sample of a contaminant for which certification is required and for which the laboratory is not certified; or
 - (d) Operates or holds itself out as a properly certified laboratory after the certification of the laboratory has been revoked or before receiving a certification to analyze a contaminant.
2. A laboratory whose application is denied or whose certification is revoked pursuant to subsection 1 may not reapply for certification within 6 months after the date of denial or revocation.
- (Added to NAC by Environmental Comm'n, eff. 10-3-96)

445A.064 Denial of application or revocation of certification: Notice; recertification.

1. If an application for certification of a laboratory is denied or the certification of a laboratory to analyze a contaminant is revoked, the laboratory certification officer shall send a written notice of the denial or revocation to the laboratory by certified mail.

2. Except as otherwise provided in NAC 445A.0635, the laboratory may be recertified to analyze for a contaminant or classification of contaminant if the laboratory meets the requirements set forth in NAC 445A.055 to 445A.067, inclusive.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96)

445A.065 Duty of operator to report certain changes; Effect of changes on certification; revocation of certification.

1. The operator of a certified laboratory shall report to the laboratory certification officer any changes in:

(a) The personnel of the laboratory, as defined by the United States Environmental Protection Agency in chapters IV, V, and VI of its "Manual for the Certification of Laboratories Analyzing Drinking Water,;" in the form most recently published by that agency, unless the state environmental commission gives notice that the most recent publication is not suitable for this state pursuant to NAC 445A.067;

(b) The location of the laboratory;

(c) The facilities of the laboratory; or

(d) Any equipment of the laboratory that has been replaced or has failed and is not being replaced. For the purposes of this paragraph, "equipment" has the meaning ascribed to it by the United States Environmental Protection Agency in chapters IV, V, and VI of its "Manual for the Certification of Laboratories Analyzing Drinking Water," in the form most recently published by that agency, unless the state environmental commission gives notice that the most recent publication is not suitable for this state pursuant to NAC 445A.067.

2. After a report is made, the laboratory certification officer shall make a determination concerning the certification of the laboratory. Depending on the ability of the laboratory to analyze for a contaminant, the laboratory certification officer may:

(a) Determine not to change the certification of the laboratory;

(b) Change the certification of the laboratory to provisional certification for the affected contaminants; or

(c) Revoke the certification of the laboratory for the affected contaminants.

3. If the certification of the laboratory is changed to provisional certification for a contaminant, the laboratory must be evaluated for that contaminant pursuant to NAC 445A.060 and 445A.061.

4. If the certification of the laboratory is revoked for a contaminant, the laboratory may reapply for certification for that contaminant pursuant to NAC 445A.055 to 445A.067, inclusive.

5. If changes in the personnel, location, facilities or equipment of a laboratory are not reported pursuant to the requirements of this section, the certification of that laboratory must be revoked.

(Added to NAC by Environmental Comm'n, eff. 9-13-91; A 10-3-96)

445A.0655 Maintenance and availability of records.

1. The following records of any sample submitted to a laboratory pursuant to NRS 445A.300 to 445A.730, inclusive, must be maintained by the laboratory:

(a) A log of samples that includes, without limitation:

- (1) The name of the program under which a sample is submitted;
- (2) The date and place at which the sample was taken;
- (3) The type of analysis requested; and
- (4) The person to whom the results of that analysis were reported.

(b) A log of the source and preparation of all reagents and the standards used to perform the approved methods of analysis; and

(c) Information relating to the preparation of each sample that includes, without limitation, a designation of the reagents and standards that were used to analyze a sample or batch of samples.

2. The records and information specified in subsection 1:

(a) May be kept at the site of the laboratory or may be made retrievable through a central system for maintaining records. If the records and information are retrievable through such a system, they must be made available for review at the request of the laboratory certification officer.

(b) Must be maintained and made available for review for at least 3 years.

(Added to NAC by Environmental Comm'n, eff. 10-3-96)

445A.067 Review by state environmental division of publication adopted by reference.

If any publication adopted by reference pursuant to NAC 445A.055 to 445A.067, inclusive, is revised, the state environmental commission will review the revision to determine its suitability for this state. If the commission determines that the revision is not suitable for this state, it will hold a public hearing to review its determination and give notice of that hearing within 6 months after the date of the publication of the revision. If, after the hearing, the commission does not revise its determination, the commission will give notice that the revision is not suitable for this state within 30 days after the hearing. If the commission does not give such notice, the revision becomes part of the publication adopted by reference pursuant to NAC 445A.055 to 445A.067, inclusive.

(Added to NAC by Environmental Comm'n, eff. 10-3-96)

End of Petition 1999-08