PROPOSED PERMANENT REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

LCB File No. R070-99

EXPLANATION – Matter in ***italics*** is new; matter in brackets **[~~omitted material~~]** is material to be omitted. Matter **<u>underscored</u>** is proposed Divisional amendments to the LCB version of the regulations.

AUTHORITY: §§1 to 46, NRS 445A.425 and 445A.428.

Section 1. Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 43, inclusive, of this regulation.

Sec. 2. ***As used in NAC 445A.057 and 445A.066 and sections 2 to 43, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 23, inclusive, of this regulation have the meanings ascribed to them in those sections.***

Sec. 3. ***"Accuracy" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.***

Sec. 4. ***"Analyst" means a chemist, microbiologist, physicist or technician who:***

1. Is qualified to conduct analyses of environmental samples pursuant to the provisions of the manual specified in subsection 5 of section 25 of this regulation; and

2. Performs those tests or assists in performing those tests with other qualified employees of a certified laboratory.

Sec. 5. ***"Analyte" means any compound, element, radical, isotope, contaminant organism, species or other substance for which an environmental sample is tested by a laboratory***.

Sec. 6. ***"Approved method of testing" means a laboratory procedure specified in subsection 4 of section 29 of this regulation that is approved by the Environmental Protection Agency or the division to test an environmental sample.***

Sec. 7. ***"Certified laboratory" means a laboratory for which a certificate to conduct analyses of [drinking] water is issued pursuant to the provisions of sections 2 to 43, inclusive, of this regulation.***

Sec. 8. "***Director" means:***

1. A person who is qualified to administer any technical or scientific operation of a certified laboratory and supervise the procedures for the testing and reporting of the results of tests pursuant to the provisions of the standards; or

2. A chemist, microbiologist or physicist who is qualified to engage in an activity specified in subsection 1 pursuant to the provisions of the manual specified in subsection 5 of section 25 of this regulation.

Sec. 9. ***"Division" means the division of environmental protection of the state department of conservation and natural resources.***

Sec. 10. ***"Environmental sample" means a sample of any substance obtained from any natural source or any source that may reasonably be expected to pollute or receive pollution from the atmosphere, supplies of drinking water, ground water, surface water, soil, sediment or ecosystem biota of this state, including, without limitation:***

1. Ambient air;

2. Emissions of air from point sources;

3. Drinking water;

4. Receiving waters;

5. Soil or sediment;

6. Effluents from industrial, municipal or residential sources;

7. Samples from facilities used to store or handle chemicals;

8. Facilities used to dispose of waste;

9. Runoff of surface water; and

10. Samples obtained from facilities used to handle or apply substances for the control of weeds or insects.

Sec. 11. ***"Federal Act" means the Clean Water Act, 33 U.S.C. §§ 1251 et seq.***

Sec. 12. ***"National Environmental Laboratory Accreditation Conference" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.***

Sec. 13. ***"National Environmental Laboratory Accreditation Program" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.***

Sec. 14. ***"Performance-based measurement system" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.***

Sec. 15. ***"Point source" has the meaning ascribed to it in NRS 445A.395.***

Sec. 16. ***"Precision" has the meaning ascribed to it in Appendix B of chapter 5 of the standards***.

Sec. 17. ***"Proficiency test sample" has the meaning ascribed to it in Appendix B of chapter 5 of the standards***.

Sec. 18. ***"Proficiency testing program" has the meaning ascribed to it in Appendix B of chapter 5 of the standards***.

Sec. 19. ***"Quality control sample" means an uncontaminated environmental sample that is spiked with a known analyte and provided to a laboratory for analysis to determine the performance of the laboratory in testing for the presence of that analyte by using a specified method of testing for the analyte.***

Sec. 20. ***"Quality manual" has the meaning ascribed to it in Appendix B of chapter 5 of the standards***.

Sec. 21. ***"Sensitivity" has the meaning ascribed to it in Appendix B of chapter 5 of the standards***.

Sec. 22. ***"Spike" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.***

Sec. 23. ***"Standards" means the standards of the National Environmental LaboratoryAccreditation Conference adopted by reference pursuant to the provisions of section 23 of this regulation***.

Sec. 24. ***The state environmental commission hereby adopts by reference the "National Environmental Laboratory Accreditation Conference-Constitution, Bylaws and Standards," EPA 600/R-98/151, in the form most recently published by the Environmental Protection Agency, unless the state environmental commission gives notice pursuant to the provisions of NAC 445A.067 that the most recent publication is not suitable for this state. The publication is available, free of charge, from the Environmental Protection Agency, Office of Research and Development, 401 M Street, S.W., Washington, D.C. 20460, or from the Environmental Protection Agency at the Internet address http://www.epa.gov/ttn/nelac.***

Sec. 25. ***The state environmental commission hereby adopts by reference the following publications in the forms most recently published, unless the state environmental commission gives notice pursuant to the provisions of NAC 445A.067 that the most recent publication is not suitable for this state. The publications are available, unless otherwise provided in this section, by mail from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553-6847. The publications may also be obtained from the National Technical Information Service at the Internet address http://www.ntis.gov/ordering.htm. The publications are:***

1. "Consensus Method for Determining Groundwaters Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA)," EPA 910/9-92-029, Order Number PB93-180818, for the price of $31.50.

2. "DBP/ICR Analytical Methods Manual," EPA 814-B-96-002, Order Number PB96-157516, for the price of $36.

3. "ICR Microbial Laboratory Manual," EPA 600/R-95/178, Order Number PB96-157557, for the price of $51.

4. "ICR Sampling Manual," April 1996, EPA 814-B-96-001, Order Number PB96-157508, for the price of $36.

5. "Manual for the Certification of Laboratories Analyzing Drinking Water: Criteria and Procedures, Quality Assurance," 4th edition, EPA 815-B-97-001, Order Number PB90-220500, for the price of $36.50.

6. "Method 1613: Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS, Revision B," October 1994, EPA 821-B-94-005, Order Number PB95-104774, for the price of $34.

7. "Methods for the Chemical Analysis of Water and Wastes," EPA 600 4-79-020, Order Number PB84-128677, for the price of $101.

8. "Methods for the Determination of Inorganic Substances in Environmental Samples," August 1993, EPA/600/R-93-100, Order Number PB94-120821, for the price of $45.

9. "Methods for the Determination of Metals in Environmental Samples," EPA/600-4-91/010, Order Number PB91-231498, for the price of $70.

10. "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA/600/R-94/111, Order Number PB95-125472, for the price of $63.

11. "Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, Volume I, Revision 1," August 1993, EPA-821-R-93-010-A, Product Number PB94-121654, for the price of $133.

12. "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms," 4th edition, EPA/600/4-90/027F, Order Number PB94- 114733, for the price of $70.

13. "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms," 3rd edition, EPA/600/4-91/002, Order Number PB96-141452, for the price of $60.

14. "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Marine and Estuarine Organisms," 2nd edition, EPA/600/4-91-003, Order Number PB96-141445, for the price of $77.

15. "US EPA Contract Laboratory Program-Statement of Work for Organics Analysis-Multi-Media, Multi-Concentration, OLM01.0 (Includes Revisions OLM01.1 throughOLM01.8)," Order Number PB95-963508, for the price of $86.50. The publication is also available, free of charge, from the Environmental Protection Agency at the Internet address http://www.epa.gov/superfund/programs/clp/prodserv.htm.

16. "US EPA Contract Laboratory Program-Statement of Work for Inorganics Analysis-Multi-Media, Multi-Concentration, ILM02.1," Order Number PB95-963514, for the price of $70. The publication is available, free of charge, from the Environmental Protection Agency at the Internet address http://www.epa.gov/superfund/programs/clp/prodserv.htm.

Sec. 26. ***The state environmental commission hereby adopts by reference the following publications in the forms most recently published, unless the state environmental commission gives notice pursuant to the provisions of NAC 445A.067 that the most recent publication is not suitable for this state. The publications are available, unless otherwise provided in this section, by mail from the Superintendent of Documents, United States Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, or by telephone at (202) 512-1800:***

1. "Method 1600-Membrane Filter Test Method for Enterococci in Water," May 1997, EPA-821-R-97-004, which is available, free of charge, from the

Environmental Protection Agency, National Center for Environmental Publications and Information, 11029 Kenwood Road, Building 5, Cincinnati, Ohio 45242.

2. "Method 1664, Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry," February 1999, EPA-821-R-98-002. The publication is also available, free of charge, from the Environmental Protection Agency at the Internet address http://www.epa.gov/OST/Methods/oil.html.

3. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846," 3rd edition, and "Updates I, II, IIA, IIB and III," Publication Number 955-001-00000-1, for the price of $319. The publication is also available from the United States Government Printing Office at the Internet address http://search.epa.gov/epaoswer/hazwaste/test/txmain.htm.

Sec. 27. *The following publications are hereby adopted by the state environmental commission in the forms most recently published unless the Environmental Protection Agency fails to publish notice of its approval of the publication in the Federal Register or the state environmental commission gives notice pursuant to the provisions of NAC 445A.067 that the most recent publication is not suitable for this state:*

1. "Annual Book of ASTM Standards, Section 5, Petroleum Products, Lubricants, and Fossil Fuels," which is available from the American Society For Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, for the price of $528.

2. "Annual Book of ASTM Standards, Section 11, Water and Environmental Technology," which is available from the American Society For Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania, for the price of $589.

3. "ISO/IEC Guide 25, General Requirements for the Competence of Calibration and Testing Laboratories," 1990, which is available from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112, for the price of $38.

4. "Standard Methods for the Examination of Water and Wastewater," [20th] 18th edition, Order Number 10079, available from the American Water Works Association, Customer Service, 6666 West Quincy Avenue, Denver, Colorado 80235, for the price of $155 for members and $200 for nonmembers.

Sec. 28. ***1. The provisions of sections 2 to 43, inclusive, of this regulation must not be interpreted to circumvent any of those provisions to make them less effective. If more than one interpretation exists for any of those provisions, the more restrictive interpretation applies.***

2. If any publication adopted by reference pursuant to the provisions of sections 25, 26 and 27 of this regulation conflicts with any provision of sections 2 to 43, inclusive, of this regulation or the standards, the provision set forth in sections 2 to 43, inclusive, of this regulation or the standards applies.

Sec. 29. ***1. Laboratory testing is the category of testing specified in Figure 1-3 of the standards for which a laboratory may obtain certification pursuant to the provisions of sections 2 to 43, inclusive, of this regulation.***

2. The scientific disciplines within the category of testing specified in subsection 1 for which a laboratory may obtain certification are:

(a) Chemistry;

(b) Whole Effluent Toxicity;

(c) Microbiology; and

(d) Radiochemistry.

3. A laboratory may obtain certification pursuant to the provisions of sections 2 to 43, inclusive, of this regulation for any program relating to the analysis of water approved by the Environmental Protection Agency pursuant to the Federal Act.

4. Except as otherwise provided in subsection 5, the approved methods of testing for which a laboratory may obtain certification are set forth in:

(a) Title 40 C.F.R. § 136.3 and Appendices A, C and D to 40 C.F.R. Part 136;

(b) Appendices A and B to 40 C.F.R. Part 425;

(c) Title 40 C.F.R. § 434.64;

(d) Appendices 1 and 2 to 40 C.F.R. Part 435, Subpart A;

(e) Table 7 to 40 C.F.R. Part 455;

(f) Title 40 C.F.R. § 465.03(c);

(g) Title 40 C.F.R. § 503.8; and

(h) The publications specified in subsections 7 to 14, inclusive, of section 25, subsections 1 and 2 of section 26 and subsections 1 ,[and] 2 and 4 of section 27 of this regulation.

5. A laboratory may obtain certification to use a performance-based measurement system or any other alternative method of testing if the laboratory:

(a) Complies with the provisions of subsection 5 of section 31 of this regulation;

(b) Obtains approval for that method of testing from the Environmental Protection Agency pursuant to the provisions of 40 C.F.R. §§ 403.7(b)(2)(v), 403.12(b)(5)(vi) or 403.12(g)(4);

(c) Complies with the requirements for application set forth in 40 C.F.R. § 136.4; and

(d) Provides proof and evaluates the performance-based measurement system or other alternative method of testing in accordance with the provisions of:

(1) Appendix E of chapter 5 of the standards;

(2) "Guidelines Establishing Test Procedures for the Analysis of Pollutants: Flexibility in Existing Test Procedures and Streamlined Approach for Approving New Test Methods," set forth in Volume 62 of the Federal Register at pages 14975 et seq., March 28, 1997; and

(3) "Performance Based Measurement System" set forth in Volume 62 of the Federal Register at pages 52098 et seq., October 6, 1997.

6. To be certified to conduct an analysis of an analyte using an approved method of testing specified in subsection 4, the analyte must be listed by the division in the approved method of testing pursuant to that subsection.

Sec. 30. ***For the purposes of charging and collecting fees and conducting performance evaluations pursuant to the provisions of sections 2 to 43, inclusive, of this regulation, the division shall classify each analyte for which a laboratory may be certified into the following categories:***

1. Trace metals;

2. Minerals;

3. Nutrients;

4. Demands;

5. Polychlorinated biphenyls (water);

6. Polychlorinated biphenyls (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 contaminants;

16. Radiochemical contaminants; or

17. Any other individual contaminant as defined by the Environmental Protection Agency.

Sec. 31. ***1. To be certified to conduct laboratory testing, a laboratory must comply with the requirements set forth in sections 1.8.3, 4.1.1, 5.0, 5.1 and 5.4 to 5.16, inclusive, of the standards.***

2. To be certified in:

(a) Chemistry, a laboratory must comply with the requirements set forth in section 1.8.5 and Appendix D.1 of chapter 5 of the standards;

(b) Whole effluent toxicity, a laboratory must comply with the requirements set forth in section 1.8.6 of the standards and Appendix D.2 of chapter 5 of the standards;

(c) Microbiology, a laboratory must comply with the requirements set forth in section 1.8.7 and Appendix D.3 of chapter 5 of the standards; or

(d) Radiochemistry, a laboratory must comply with the requirements set forth in section 1.8.8 and Appendix D.4 of chapter 5 of the standards.

3. To be certified pursuant to the program specified in subsection 3 of section 28 of this regulation, a laboratory must comply with:

(a) The provisions concerning method detection limits, sample containers, holding times and preservation set forth in 40 C.F.R. § 136.3(e) and Appendix B to that part;

(b) The provisions of 40 C.F.R. §§ 403.7(b)(2), 403.12(b)(5) and 403.12(g)(4), if applicable;

(c) The provisions concerning the methods set forth in 40 C.F.R. § 455.50, if the laboratory conducts tests for active ingredients in pesticides; and

(d) The provisions concerning the collection of representative samples and the methods set forth in 40 C.F.R. Parts 501.15(b)(10)(iv) and 503.8, if the laboratory conducts tests of sewage sludge.

4. To be certified for an approved method of testing, a laboratory must comply with therequirements for using that approved method of testing specified in subsection 4 of section 29 of this regulation and the standards. If a conflict occurs between a provision specified in that subsection and the standards concerning an approved method of testing, the standards apply. If a manufacturer provides instructions for maintaining any equipment used for testing or for ensuring the performance of any test or demonstrating the performance of any system of measurement, the laboratory shall comply with those instructions. If a conflict occurs between a provision of those instructions and a provision specified in subsection 4 of section 29 of this regulation or the standards, the provisions specified in that section or the standards apply.

5. If a laboratory intends to use a performance-based measurement system or any other alternative method of testing, the laboratory shall, before the division conducts an inspection of the laboratory pursuant to the provisions of section 37 of this regulation, submit to the division a written statement setting forth the performance-based measurement system or other alternative method of testing it intends to use. The division may approve the performance-based measurement system or alternative method of testing if, as determined by the division:

(a) The system or method is equivalent to or exceeds any approved method of testing for accuracy, precision, completeness and comparability relating to determining compliance with any regulatory concentration levels or system conditions; or

(b) An approved method of testing is not available for use by the laboratory to determine the presence of an analyte for which the laboratory requests certification pursuant to the provisions of sections 2 to 43, inclusive, of this regulation; or

(c) The laboratory obtains approval for the system or method from the Environmental Protection Agency.

6. To be certified to test for a specific analyte using an approved method of testing, a laboratory must comply with the requirements established by the division for the approved method of testing and the standards for initial and continuing calibrations of test equipment and demonstrations by analysts of precision, accuracy, sensitivity and low system background for each analyte. If a conflict occurs between the requirements established by the division and the standards, the standards apply.

7. As used in this section:

(a) "Holding times" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.

(b) "Low system background" means an analysis of a method that does not yield contamination at a concentration that is greater than:

(1) One tenth of measured concentration of any sample in the associated batch; or

(2) The concentration that is present in the sample and that is greater than one tenth of the method detection level or maximum contamination level specified by the Environmental Protection Agency in the Federal Register.

(c) "Method blank" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.

(d) "Method detection limit" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.

(e) "Precision" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.

Sec. 32. ***1. A laboratory may apply for certification by the division or certification pursuant to the National Environmental Laboratory Accreditation Program.***

2. To obtain certification by the division, a laboratory must comply with the provisions of sections 2 to 43, inclusive, of this regulation.

3. A laboratory that is certified by the division may provide analytical data of an environmental sample originating in this state for each analyte for which the laboratory is certified.

4. To obtain certification pursuant to the National Environmental Laboratory Accreditation Program, a laboratory must:

(a) A laboratory must comply with the provisions of sections 2 to 43, inclusive, of this regulation;

(b) Before obtaining certification pursuant to the program and every [4] 2 years after obtaining that certification, submit to an assessment of the laboratory conducted at the laboratory under the direction of a person who is approved pursuant to the National Environmental Laboratory Accrediation Program;

[(c) Every 2 years after obtaining certification pursuant to the National Environmental Laboratory Accreditation Program, submit to an assessment of the laboratory conducted by the division at the laboratory; and]

[(d)](c) Specify in its application for certification at least one approved method of testing and analyte pursuant to the provisions of subsections 4 and 6 of section 29 of this regulation.

Sec. 33. ***1. To apply for certification pursuant to the provisions of sections 2 to 43, inclusive, of this regulation, the director of the laboratory for which certification is requested must submit an application to the division on a form approved by the division. The application must be accompanied by the fees prescribed in NAC 445A.066 and include the information specified in sections 4.1.7 and 4.1.9 of the standards.***

2. The provisions of this section do not require an application and certificate for each building or other portion of a laboratory that is located on the same or

adjoining grounds or within the boundaries of the same incorporated city or unincorporated town if, as determined by the division, each building or other portion of the laboratory is used to conduct an analysis of the same environmental samples.

3. The division shall not consider an application for certification submitted pursuant to this section to be complete unless:

(a) The laboratory specifies in the application the approved methods of testing in accordance with the provisions of section 29 of this regulation;

(b) The laboratory satisfactorily analyzes proficiency test samples in accordance with the provisions of section 35 of this regulation;

(c) The laboratory adopts a quality manual and submits the manual to the division pursuant to the provisions of section 36 of this regulation;

(d) The division conducts an inspection of the laboratory for the approved methods of testing and analytes for which the laboratory requests certification pursuant to the provisions of section 37 of this regulation;

(e) If the report of an inspection of the laboratory conducted by the division includes any deficiency that must be corrected, the laboratory submits to the division a written plan to correct the deficiency in accordance with the provisions of subsection 7 of section 37 of this regulation;

(f) The director of the laboratory is qualified for that position pursuant to the provisions of the manual specified in subsection 5 of section 25 of this regulation; and

(g) The applicable fees prescribed in NAC 445A.066 have been paid.

4. An application for certification shall be deemed withdrawn by the applicant if it is not completed pursuant to the provisions of this section within 1 year after the division receives the application. The division may extend the period in which an application must be completed pursuant to this subsection if the applicant submits to the division a written request for an extension setting forth the reasons for the request.

Sec. 34. ***If, as determined by the division, a change concerning a certified laboratory occurs which substantially affects the ability of the laboratory to perform any analysis for which the laboratory is certified, the director of the laboratory shall, not more than 30 days after the change occurs, notify the division of the change in writing. For the purposes of this section, a change includes, without limitation, a change in the name, ownership, location or personnel of a laboratory or any other change specified in sections 4.1.8 and 4.3.2 of the standards.***

Sec. 35. ***1. Each laboratory for which an application for certification is submitted and each certified laboratory must participate in a proficiency testing program. The laboratory must:***

(a) Obtain single-blind proficiency test samples from a provider approved by the National Institute of Testing Standards;

(b) Analyze a proficiency test sample, if available for each category of certification and analyte that is included in the program; and

(c) Report the results of the analysis to the provider specified in paragraph (a).

If the laboratory is a certified laboratory and if a test will be conducted for each category of certification and analyte for which the laboratory is certified, the certified laboratory must [conduct an analysis] analyze a proficiency test sample pursuant to the program not less than once every 6 months.

2. Each laboratory specified in subsection 1 shall pay the costs of subscribing to a program specified in that subsection.

3. Each laboratory specified in subsection 1 must satisfactorily analyze each analyte that is included in the program specified in subsection 3 of section 29 of this regulation on two of the most recent three rounds of testing. Each laboratory shall, before obtaining a proficiency test sample pursuant to paragraph (a) of subsection 1, authorize the provider of the proficiency test sample to submit to the division the

results of any test taken pursuant to the provisions of this section. If the laboratory fails to provide that authorization, the division may refuse to consider the results of any test taken pursuant to those provisions.

4. The division shall consider the results of any test taken pursuant to this section to be satisfactory if the results are within the limits of acceptance established by the provider of the proficiency testing program in accordance with the provisions of Appendix C of chapter 2 of the standards.

5. If the division determines that the results of a test are satisfactory, the laboratory may be certified to use any approved method of testing for each analyte that is satisfactorily analyzed by the laboratory if, as determined by the division, data sufficient to validate the use of that method of testing on an annual basis are available. If such data are not available, the division shall deny or revoke certification for that method of testing.

(a) As used in this section: "data sufficient to validate" means performance of an initial demonstration of capability as defined in subsection 5 of section 25 of this regulation.

6. If a certified laboratory fails:

(a) Two rounds of testing pursuant to subsection 3, the division shall suspend the certification of that laboratory for each analyte the laboratory failed to analyze during those rounds; or

(b) Three rounds of testing pursuant to that subsection, the division shall revoke the certification of that laboratory for each analyte the laboratory failed to analyze during those rounds.

7. If the division suspends the certification of a certified laboratory pursuant to subsection 6 because the laboratory failed two nonconsecutive rounds of testing, the division shall reinstate the certification of that laboratory for the method of testing and analyte for which the certification was suspended if the certified laboratory

satisfactorily analyzes the analyte in a proficiency test sample that is approved by the division.

8. If the division suspends the certification of a certified laboratory pursuant to subsection 6 because the laboratory failed to analyze an analyte on two consecutive rounds of testing, the laboratory must satisfactorily analyze the analyte during each of two consecutive rounds of testing conducted after the division suspends the certification.

9. If the division revokes the certification of a certified laboratory pursuant to subsection 6, the laboratory must:

(a) Analyze satisfactorily the analyte for which the certification was revoked during each of two consecutive rounds of testing conducted after the division revoked the certification; and

(b) Reapply for certification and pay the applicable fees pursuant to the provisions of sections 2 to 43, inclusive, of this regulation.

If a certified laboratory complies with the provisions of this subsection and is otherwise qualified for certification pursuant to the provisions of sections 2 to 43, inclusive, of this regulation, the division shall reinstate the certification of the laboratory for each method of testing and analyte for which the laboratory was certified.

10. Each certified laboratory must comply with the requirements concerning enrollment, testing, conduct and participation in the program specified in subsection 1 pursuant to the provisions of sections 2.4, 2.5 and 2.7 of the standards.

Sec. 36. ***1. Each laboratory that applies for certification pursuant to sections 2 to 43, inclusive, of this regulation shall adopt a quality manual and comply with the provisions of that manual. The director of the laboratory shall submit the manual to the division before the division conducts an inspection of the laboratory.***

2. Each quality manual specified in subsection 1 must be adopted in accordance with the provisions of section 5.5 of the standards and include, without limitation:

(a) A statement setting forth the requirements of the laboratory for sensitivity, precision and accuracy for each method of testing or analyte for which the laboratory requests certification; and

(b) The policy of the laboratory concerning any unauthorized use of data or fraudulent activity that occurs at the laboratory.

Sec. 37. ***1. Unless a laboratory satisfies the provisions of subsection 4 of NAC 445A.057, the division shall conduct an inspection of the premises and operation of each certified laboratory or laboratory for which an application for certification is submitted pursuant to the provisions of section 33 of this regulation. An inspection conducted pursuant to this section must be conducted in accordance with the provisions of sections 3.4 to 3.7, inclusive, of the standards. If a certified laboratory conducts analyses of wastewater, the laboratory must be inspected in accordance with the manual adopted by reference pursuant to the provisions of subsection 5 of section 25 of this regulation. Each certified laboratory shall analyze [annually at least one] a quality control sample for each method of testing and analyte for which it is certified each time a new calibration is generated or annually, which ever is more frequent.***

2. The division shall conduct an inspection specified in subsection 1:

(a) Not less than once every 2 years, if the laboratory is a certified laboratory; or

(b) If the laboratory submits an application for certification pursuant to the provisions of section 33 of this regulation, not more than 30 days after the division determines that the laboratory has complied with the provisions of paragraphs (a), (b) and (c) of subsection 3 of that section.

3. The division may conduct an inspection of a laboratory more than once every 2 years pursuant to this section if:

(a) The division receives a complaint concerning the quality of the laboratory from a member of the general public or any public agency;

(b) The division has reasonable cause to believe the laboratory is engaging in fraudulent activity;

(c) The division identifies deficiencies in the operation of the laboratory after conducting an inspection of the laboratory pursuant to this section;

(d) The laboratory notifies the division pursuant to section 34 of this regulation of any changes specified in that section; or

(e) Any circumstance specified in section 3.3 of the standards occurs.

4. An inspection conducted pursuant to the provisions of this section may include, without limitation:

(a) Requiring the laboratory to conduct an analysis of a proficiency test sample; and

(b) Photocopying, photographing or videotaping any portion of the laboratory or any equipment, activity, environmental sample, records, results of any test, data concerning the control of the quality of any analysis conducted by the laboratory or any other information required by the division to ensure compliance with the provisions of sections 2 to 43, inclusive, of this regulation.

5. Except as otherwise provided in this subsection, the division shall announce each inspection conducted pursuant to the provisions of this section. The division may conduct an unannounced inspection of a laboratory if the division determines that such an inspection is required to ensure compliance by the laboratory with the provisions of sections 2 to 43, inclusive, of this regulation. In determining whether to conduct an unannounced inspection, the division shall consider:

(a) The laboratory's record of compliance with the provisions of sections 2 to 43, inclusive, of this regulation;

(b) The results of any proficiency test taken by the laboratory;

(c) The performance of any analyst or other employee of the laboratory in conducting an analysis of an environmental sample pursuant to the provisions of sections 2 to 43, inclusive, of this regulation;

(d) Any complaints concerning the laboratory that the division has received from members of the general public or any public agency; and

(e) The performance of the laboratory in conducting analyses pursuant to the provisions of sections 2 to 43, inclusive, of this regulation.

6. If the division conducts an inspection of a laboratory pursuant to the provisions of this section, the laboratory shall:

(a) Ensure that any record or other information required by the division to conduct the inspection is available for review, including, without limitation:

(1) The quality manual adopted pursuant to the provisions of section 36 of this regulation;

(2) Any information concerning the methods of testing used by the laboratory;

(3) Any data concerning the control of the quality of an analysis conducted by the laboratory; and

(4) Any information concerning any proficiency test taken by the laboratory; and

(b) Allow the division to:

(1) Examine any records of the laboratory concerning the operation or certification of the laboratory;

(2) Observe the operation, facilities and equipment of the laboratory;

(3) Interview any employee of the laboratory; and

(4) Engage in any other activity required by the division to determine compliance by the laboratory with the provisions of sections 2 to 43, inclusive, of this regulation.

7. If the division conducts an inspection of a laboratory, it shall within 30 days after it conducts the inspection, provide to the laboratory a copy of the report of the inspection. The report must include any deficiency the division discovers during its inspection of the laboratory. The laboratory shall prepare a plan to correct the deficiency specified in the report. The plan must:

(a) Be submitted to the division not more than 30 days after the laboratory receives the report from the division;

(b) Be submitted on a form approved by the division; and

(c) Include, without limitation:

(1) The signature of the person who prepared the plan; and

(2) The proposed date by which the laboratory will correct the deficiency.

8. If, after reviewing the plan submitted pursuant to subsection 7, the division determines that the plan is insufficient to correct the deficiency, the division shall notify the laboratory of that fact in writing. Upon receipt of the written notice, the laboratory shall, not more than 30 days after receiving the notice, submit a revised plan to the division. If, after reviewing the revised plan, the division determines that the revised plan is insufficient to correct the deficiency, or if the division conducts an inspection of the laboratory and determines that the deficiency has not been corrected, the division shall deny the laboratory's application for certification or revoke its certification.

Sec. 38. ***If the division denies an application for certification submitted by a laboratory or revokes the certification of a certified laboratory, the laboratory may, after the period specified in section 4.4 of the standards expires, reapply for certification in the manner prescribed in section 33 of this regulation.***

Sec. 39. ***1. The division may renew the certificate of a certified laboratory if:***

(a) The laboratory pays the applicable fee to renew the certificate;

(b) The laboratory submits a statement on a form approved by the division indicating that it is in compliance with the provisions of sections 2 to 43, inclusive, of this regulation concerning each category of testing, method of testing and analyte for which it is certified;

(c) The laboratory submits a report to the division indicating that it has received satisfactory proficiency test results for each category of testing and analyte for which it is certified; and

(d) The division determines that the laboratory is in compliance with the provisions of sections 2 to 43, inclusive, of this regulation.

2. A certificate issued to a laboratory pursuant to the provisions of sections 2 to 43, inclusive, of this regulation expires on June 30 of each year. If the certificate of a certified laboratory expires, the laboratory may apply for certification in the manner prescribed in section 33 of this regulation.

3. Not later than June 1 of each year, the division shall mail to each certified laboratory a notice for the renewal of the certificate and a form to provide a statement of compliance specified in paragraph (b) of subsection 1.

4. Each certified laboratory shall maintain any record specified in section 4.3.3 of the standards in accordance with the provisions of that section.

Sec. 40. ***1. The director of the laboratory shall display the certificate issued by the division in a conspicuous place in the laboratory to which the members of the general public have access.***

2. The certificate is the property of the division and must be surrendered to the division if:

(a) The division revokes the permit;

(b) The laboratory for which the certificate is issued ceases to conduct analyses of water for which a certificate is required; or

(c) The division ceases to be an accrediting authority approved by the Environmental Protection Agency. As used in this subparagraph, "accrediting authority" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.

3. In addition to issuing a certificate to each certified laboratory, the division shall provide to each certified laboratory a document which indicates each category of testing [method of testing and] an analyte for which the laboratory is certified. If, after the division provides the document to the laboratory, the division certifies the laboratory for an additional [method of testing or] analyte or the division revokes, suspends or limits the certification of the laboratory for a category of testing, [method of testing or analyte] or analyte, the division shall revise the document to include the additional [method of testing or analyte] or analytes for the which the laboratory is certified or the category of testing, [method of testing or analyte] or analytes that [is] are revoked, suspended or limited by the division.

Sec. 41. ***1. A certified laboratory shall ensure that each analysis it performs complies with the provisions of Appendix D of chapter 5 of the standards.***

2. A certified laboratory shall maintain any document or other information required by the provisions of chapter 5 of the standards for not less than 5 years.

3. If a certified laboratory prepares a report of any test conducted pursuant to the provisions of this section, the report must be prepared in accordance with the provisions of section 5.13 of the standards.

4. If a certified laboratory is not certified to conduct a test in a category of testing or to use a method of testing or test for an analyte pursuant to the provisions of sections 2 to 43, inclusive, of this regulation, the director of the laboratory may contract with a certified laboratory to perform that test if:

(a) Before entering into the contract, the director notifies in writing the person for whom the test will be conducted of his intent to enter into the contract; and

(b) The laboratory complies with the requirements specified in section 5.14 of the standards.

5. If a certified laboratory contracts with another certified laboratory pursuant to the provisions of this section, the director of the certified laboratory shall ensure that the certified laboratory that will conduct the test is certified pursuant to the provisions of sections 2 to 43, inclusive, of this regulation. If the certified laboratory that offered the contract maintains any record of the contract or of any test conducted pursuant to the contract, it shall include in that record:

(a) Any report submitted by the certified laboratory that conducted the test concerning the results of the test; and

(b) The certification number of the certified laboratory that conducted the test.

6. If the certified laboratory that offered the contract prepares a report concerning the results of any test conducted pursuant to the contract, it shall specify in the report that the results of that test were obtained by contract pursuant to the provisions of this section.

Sec. 42. ***1. The division may deny an application for certification of a laboratory or revoke, suspend or limit the certification of a certified laboratory if the laboratory:***

(a) Makes a false statement in:

(1) An application for certification;

(2) A report concerning the analysis of an environmental sample; or

(3) Any other document relating to certification in violation of the provisions of sections 2 to 43, inclusive, of this regulation;

(b) Consistently makes errors in laboratory testing or in any report prepared by the laboratory pursuant to the provisions of sections 2 to 43, inclusive, of this regulation;

(c) Falsifies any results of laboratory testing or misrepresents any information obtained from laboratory testing in violation of the provisions of section 31 or 41 of this regulation;

(d) Fails to use approved sampling protocols or methods of testing while engaging in any activity of the laboratory for which certification is required;

(e) Fails to provide written notice before entering into a contract in violation of the provisions of subsection 4 of section 41 of this regulation;

(f) Fails to maintain the facilities or equipment of the laboratory in accordance with:

(1) The quality manual of the laboratory;

(2) The quality system of the laboratory;

(3) Any approved methods of testing; or

(4) The standards;

(g) Fails to report the results of any test conducted by the laboratory in the form or manner required for that test or fails to maintain any required records of those results in violation of the provisions of section 31 or 41 of this regulation;

(h) Fails to participate satisfactorily in a proficiency testing program, if the program is available, in violation of the provisions of section 35 of this regulation;

(i) Fails to comply with the quality manual of the laboratory in violation of the provisions of section 36 of this regulation;

(j) Falsely claims certification for a method of testing or an analyte for which the laboratory is not certified in violation of the provisions of section 41 of this regulation;

(k) Fails to prepare a plan of correction or to correct any deficiency specified by the division within the period specified in the plan in violation of the provisions of section 37 of this regulation;

(l) Fails to pay any fees or expenses of the division in violation of the provisions of NAC 445A.066;

(m) Fails to indicate in any report prepared by the laboratory that the results of a test were obtained by contract in violation of the provisions of subsection 6 of section 41 of this regulation;

(n) Fails to notify the division of any changes specified in section 34 of this regulation;

(o) Fails to analyze annually quality control samples for each method of testing and analyte for which a laboratory is certified in violation of the provisions of section 37 of this regulation;

(p) Authorizes a person who is not qualified to perform an analysis in violation of the provisions of section 31 of this regulation;

(q) Communicates with or receives a communication concerning the results of a proficiency test sample from a laboratory on or before the date established for submitting the results of that sample to the provider of the sample to the provisions of section 35 of this regulation;

(r) Knowingly receives a proficiency test sample from a laboratory or provides a proficiency test sample to a laboratory on or before the date specified in paragraph (q);

(s) Prohibits an employee of the division from conducting an inspection of the laboratory in violation of the provisions of section 37 of this regulation;

(t) Fails to provide to the division any information required by the division to determine whether a laboratory is operated in compliance with the provisions of sections 2 to 43, inclusive, of this regulation;

(u) Misrepresents any material fact to obtain or maintain certification pursuant to the provisions of sections 2 to 43, inclusive, of this regulation;

(v) Engages in any activity that is a ground for the denial of an application for certification or for the suspension or revocation of the certification of a laboratory set forth in sections 4.1.4(d) or 4.4 of the standards; or

(w) Otherwise violates or attempts to violate or assists or abets a person in the violation of any provision of sections 2 to 43, inclusive, of this regulation.

2. In determining whether to deny an application for certification or to revoke, suspend or limit the certification of a laboratory pursuant to this section, the division shall consider:

(a) The gravity of the violation;

(b) The harm to the health and safety of the members of the general public;

(c) The intent of the person who committed the violation;

(d) The extent of the violation; and

(e) Any proposed correction of the violation.

3. As used in this section:

(a) "Protocol" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.

(b) "Quality system" has the meaning ascribed to it in Appendix B of chapter 5 of the standards.

Sec. 43. ***1. If, as determined by the division, any facility, equipment, operation or other condition of a certified laboratory requires immediate action to protect the health and safety of the members of the general public, the division may, without notice or hearing, issue an emergency order:***

(a) Suspending the certification of the laboratory; and

(b) Requiring the person to whom the division issues the order to correct the condition for which the emergency order is issued.

2. An emergency order issued pursuant to the provisions of subsection 1 is effective upon issuance and is not subject to review unless, within 30 days after the date the order is served, the person to whom the division issues the order petitions for a hearing before the state environmental commission.

3. The state environmental commission shall continue, modify or revoke the emergency order within 30 days after it conducts the hearing required by the provisions of subsection 2.

Sec. 43. NAC 445A.057 is hereby amended to read as follows:

445A.057 The division **[will]** ***shall*** accept data relating to the analysis of contaminants regulatedpursuant 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 this section, NAC **[~~445A.055 to 445A.067, inclusive;~~]** ***445A.066 and sections 2 to 43, inclusive, of this regulation***;

2. The laboratory is certified by:

(a) The state **[~~in which~~]** ***where*** it is located or, if the state **[~~in which~~]** ***where*** the laboratory is located does not have a program for certifying laboratories for the analysis of water, by any other state which provides **[~~such~~]** ***those*** certifications; or

(b) The United States Environmental Protection Agency;

3. The **[~~laboratory certification officer~~]** ***division*** determines that the state **[~~providing the certification has~~]** ***where the laboratory is located***:

(a) ***Has*** adopted a **[~~certification~~]** program ***for certifying laboratories for the analysis of water*** that is equivalent to the **[~~certification~~]** program ***for certifying those laboratories*** adopted by this state ; and **[~~that state accepts~~]**

(b) ***Accepts*** the results of evaluations conducted pursuant to **[~~that program; and~~**

~~**4. The laboratory files with the laboratory certification officer**~~**]** ***the program adopted by this state;***

4. The laboratory:

(a) Is located in a state that has established an agreement with this state concerning certification of laboratories by reciprocity; or

(b) Is certified pursuant to the National Environmental Laboratory Accrediation Program; and

5. The laboratory submits to the division a copy of an acceptable report relating to the **[~~latest~~]** ***most recent*** evaluation conducted at **[~~the site of~~]** the laboratory by:

(a) The state **[~~in which~~]** ***where*** the laboratory is certified;

(b) An independent **[~~certification organization which has been~~]** ***organization that is*** approved by the **[~~laboratory certification officer;~~]** ***division to certify laboratories for the analysis of water***; or

(c) The United States Environmental Protection Agency.

The evaluation to which the report relates must **[~~have been~~]** ***be*** conducted within the **[~~12 months~~]** ***2 years*** immediately preceding the date of the **[~~laboratory's~~]** application ***of the laboratory*** for certification.

Sec. 44. NAC 445A.066 is hereby amended to read as follows:

445A.066 1. A laboratory must submit a one-time, nonrefundable fee of $400 with each application for certification **[~~.~~]** ***including, without limitation, any application for certification for additional analytes.***

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 requested by a laboratory during an annual period of certification is $400. The fee **[~~will~~]** ***must*** be prorated pursuant to subsection 4 if the provisions of that subsection otherwise apply. If the **[~~laboratory certification officer~~]** ***division*** conducts an evaluation for certification at **[~~the site of~~]** the laboratory, the laboratory must pay, at the rate provided for state officers ***and employees*** generally, the actual travel and per diem expenses of the **[~~officer.~~]** ***division***. 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 ***to test for an analyte*** is submitted during that period, the fees **[~~will~~]** ***for that certification must*** be prorated using the following formula:

Fee X .083 X the number of months remaining **[~~through June 30~~]** ***in the fiscal year***.

For the purpose of prorating fees, an application ***for certification to test for an analyte*** shall be deemed to have been submitted at the beginning of a month regardless of the date of the application. **[~~Prorated fees will~~]** ***The prorated fee must*** be rounded **[~~up~~]** to the next highest dollar. ***The fee for submitting an application for certification to test for an analyte must not be prorated.***

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~~]** ***employee of the division*** who conducts the evaluation. Payment of the expenses must be made in advance based on the estimated expenses of the **[~~officer.~~]** ***employee***. A payment made in excess of the actual expenses **[~~will~~]** ***must*** be reimbursed to the laboratory.

6. The fee for certification to test for a specific analyte must be paid before a certificate for that analyte may be issued.

7. Any fee paid pursuant to the provisions of this section is nonrefundable.

Sec. 46. NAC 445A.067 is hereby amended to read as follows:

445A.067 If any publication adopted by reference pursuant to **[~~NAC 445A.055 to 445A.067, inclusive,~~]** ***the provisions of sections 2 to 43, inclusive, of this regulation*** is revised, the state environmental commission **[will]** ***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 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.~~]** ***the provisions of sections 2 to 43, inclusive, of this regulation.***

Sec. 46. NAC 445A.055, 445A.056, 445A.058, 445A.059, 445A.060, 445A.061, 445A.062, 445A.063, 445A.0635, 445A.064, 445A.065 and 445A.0655 are hereby repealed.

TEXT OF REPEALED SECTIONS

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. 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.067, inclusive.

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.

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.

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.

(e) 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.

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 satisfactorily 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 or 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 a 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.

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 445A.060 and 445A.061. Within 60 days after 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 States 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 the 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 satisfactory analysis of a full-volume performance evaluation sample acquired by the laboratory certification officer at the laboratory's expense.

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 25 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 provision 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.

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 certificate 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 renovation.

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 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.

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. The report must be made within 30 days after the change.

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.

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 a least 3 years.

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