

**WEST VIRGINIA  
SECRETARY OF STATE  
Betty Ireland  
ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In This Box

2008 JUL -2 PM 2:10

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Water Resources  
Department of Environmental Protection, DWWM TITLE NUMBER: 47

RULE TYPE: Legislative CITE AUTHORITY: WV Code §22-1-15

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 32

Environmental Laboratories Certification and Standards of Performance

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: August 14, 2008 TIME: 6:00 PM

LOCATION OF PUBLIC HEARING: Cooper's Rock Training Room (1203 and 1204)

WV DEP Headquarters Building

601 57th Street SE  
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL  WRITTEN  BOTH

DATE WRITTEN COMMENT PERIOD ENDS: August 14, 2008 TIME: close of hearing

WRITTEN COMMENTS MAY BE MAILED TO:


The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Kathy Cosco  
Public Information Office

WV DEP  
601 57th Street SE  
Charleston, WV 25304

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
Authorized Signature

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**BRIEFING DOCUMENT**

**Rule Title:**

47 CSR 32, "Environmental Laboratories Certification and Standards of Performance"

**A. AUTHORITY:**

West Virginia Code §22-1-15

**B. SUMMARY OF RULE:**

This rule governs the certification of laboratories conducting environmental analyses of waste and wastewater as required by rules or orders issued pursuant to covered statutory programs. The rule establishes the provisions for obtaining and maintaining laboratory certifications and the criteria and procedures laboratories will be required to follow in analyzing samples.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

Revisions are made to update laboratory procedures and requirements consistent with the many advances that have been made in analytical protocol. The changes also increase the annual lab certification fees and impose a new application fee designed to recover the agency's costs of administering the program

**D. FEDERAL COUNTERPART REGULATIONS – INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**

There is no federal counterpart regulation, thus no determination of stringency is required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At its meeting on June 24, 2008, the Environmental Protection Advisory Council discussed this rule. (See attached minutes for Council's discussion.)

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Tuesday, June 24, 2008

601 57<sup>th</sup> Street, SE, Charleston, WV

West Virginia Room – 3<sup>rd</sup> Floor

**IN ATTENDANCE:**

***Members of the Council:***

Jackie Hallinan  
Karen Price  
Bill Raney  
Rick Roberts

***DEP:***

Randy Huffman	Cabinet Secretary
Lisa McClung	Deputy Cabinet Secretary and Director, Division of Water and Waste Management
Raymond Franks II	General Counsel
Karen Watson	Associate General Counsel
Kathy Cosco	Communications Director
Pam Nixon	Environmental Advocate
Ken Politan	Mining & Reclamation
Lewis Halstead	Mining & Reclamation
Charlie Sturey	Mining & Reclamation
Carroll Cather	Water & Waste Management
Don Martin	Land Restoration
Brian Long	Water & Waste Management
Dan Arnold	Water & Waste Management
Mike Zeto	Environmental Enforcement
Terrie Sangid	Water & Waste Management
Jim Mason	Air Quality
Mike Johnson	Water & Waste Management
Kathy Emery	Water & Waste Management
Scott Mandirola	Water & Waste Management

***Visitors:***

Tom Boggs	Chamber of Commerce
Don Garvin	WV Environmental Council
Ruth Lemmon	WV Auto/Truck Dealers Association

## **OLD BUSINESS:**

Secretary Huffman called the meeting to order at 1:35 p.m., and he announced that Members Lisa Dooley and Larry Harris would not be attending. On motion made by Mr. Raney and seconded by Ms. Hallinan, the Council approved the minutes from the March 18, 2008 meeting. Secretary Huffman then ceded the floor to Mr. Franks.

## **NEW BUSINESS:**

Mr. Franks noted that for the 2009 regular legislative session, DEP was proposing changes to 20 rules, grouped by Division for presentation to the Council. Depending on who had shepherded the rule through its initial drafting, either Mr. Franks or Ms. Watson would lead the discussion, with program administrators available to assist in answering the Council's questions.

Ms. Watson presented 60 CSR 3, the "Brownfields" Rule. Ms. Watson explained that the Rule was currently pending before the Secretary of State for authorization as an emergency rule, and that the proposed changes included adjustments to the "de minimis" table and enhancing DEP's flexibility in obtaining risk assessments.

Ms. Price referred to a letter recently sent to DEP seeking clarification of the Rule's provisions concerning land use covenants and long-term maintenance agreements. Secretary Huffman stated that the letter would be retrieved and the issue noted for further consideration by the agency.

Mr. Raney inquired whether the Council could recommend changes to the rules as presented. Ms. Watson responded in the affirmative. Mr. Raney then asked whether written comments, such as those submitted by Mr. Harris prior to the meeting, would be appended to the minutes. Mr. Franks responded in the negative, and Ms. Watson expounded that Mr. Harris's comments would be summarized and addressed orally during the discussion of the particular rules involved.

Mr. Franks then presented 38 CSR 2, the Surface Mining Reclamation Rule. Mr. Franks explained that the proposed changes would expand the Secretary's oversight of "approved persons" authorized to render technical certifications contained within mining permit applications, and would clarify certain collateral activities as being within the scope of requests for incidental boundary revisions to existing permits. Mr. Franks also noted that the proposed Rule would set forth more relevant and exacting criteria for the Secretary to consider in evaluating applications for revisions.

Mr. Raney inquired generally about the provisions with respect to approved persons. Secretary Huffman replied that the increased oversight is necessary to improve the initial quality of the permit applications, such that the delays occasioned by subsequent corrections would be reduced or eliminated. Mr. Raney asked whether approved persons could include anyone other than engineers, and Mr. Halstead responded that the definition extended to surveyors and geologists. Mr. Raney noted the need to establish a procedure for suspension or revocation to limit the agency's unfettered discretion, to which Secretary Huffman and Mr. Franks replied that the Rule provided for notice and hearing prior to curtailing the privileges of anyone on the approved-person list.

Ms. Watson presented 47 CSR 30, establishing NPDES requirements for coal mining facilities. Ms. Watson explained that the proposed changes were relatively minor, designed to enhance consistency with the non-coal rule, to allow for digital signatures, and to permit correction of clerical errors.

The Council then considered the Air Quality rules. Mr. Franks presented 45 CSR 1 and 45 CSR 26, relating to control and reduction of nitrogen oxides from, respectively, non-electric and electric generating units, the latter by means of a budget trading program. The rules are to be repealed in their entirety, and Mr. Mason explained that both are being subsumed within the Clean Air Interstate Rule program.

Mr. Franks then presented 45 CSR 8, the Ambient Air Quality Rule. Mr. Franks explained that the 1-hour primary and secondary ozone standards were being replaced with 8-hour standards, with the maximum tolerance being reduced slightly. Mr. Raney inquired as to the practical effect of the proposed change, particularly with regard to whether non-compliance areas within the State might be expanded. Mr. Mason replied that an expansion might occur, but that it was difficult to predict at this early stage. Mr. Mason added that the time-period increase would inevitably lead to more accurate measurements.

Ms. Watson presented 45 CSR 13, governing permits for constructing and modifying non-major stationary sources of air pollutants. Ms. Watson explained that the Rule was being amended to reflect the recent statutory changes reducing the lag time for issuing permits and authorizing certain pre-permit construction. It was noted that Mr. Harris had submitted in writing his concern that courts would be loath to enforce agency cease-and-desist orders based on defects discovered during the permitting process after construction had already begun. Ms. Watson pointed out that the statute had been carefully crafted to avoid facile invocation of detrimental reliance, with Mr. Franks observing that the Rule strove to conform to the statute. Ms. Price wondered whether one or more of the timeframe provisions included within the existing Rule had been inadvertently omitted from the proposed version. Ms. Watson responded that the Rule had been carefully checked for completeness, but that she would once again verify the language to assure its accuracy.

Mr. Franks presented 45 CSR 14, governing permits for constructing and significantly modifying major stationary sources of air pollutants. Mr. Franks explained that references to pollution control projects and clean units were deleted in accordance with a federal appellate court decision vacating those provisions.

Mr. Franks went on to present 45 CSR 16, 45 CSR 25, and 45 CSR 34, relating respectively to performance standards for new stationary sources, pollution from hazardous waste treatment, storage, and disposal facilities, and emission standards for hazardous air pollutants. Mr. Mason noted that the changes incorporate revisions to the Rules' federal counterparts, except that some of the new standards were not incorporated within 45 CSR 34, because they constituted unfunded mandates. Mr. Garvin was recognized, and he asked whether the failure to incorporate equated to a lack of regulation. Mr. Mason responded in the negative, explaining that the monitoring and regulation would be performed by the federal government. Mr. Garvin inquired as to the affected industries, and Mr. Mason referred to a list including smaller gas facilities and paint-stripping shops.

Ms. Watson presented 45 CSR 37, detailing the budget trading program to reduce mercury emissions. Ms. Watson explained that the rule is being repealed as inconsistent with a federal appellate court decision, pending alternative action by the EPA. Mr. Garvin inquired whether the Rule repealed two years ago would be reinstated upon revocation of the current version, to which Ms. Watson and Mr. Franks replied that it would not, if there had indeed been a previous rule in place, which was somewhat in question. Mr. Mason explained that mercury emissions would be monitored and regulated as usual, except that budget trading would not be available as a method of reduction. He also stated that there have been discussions on a national level as to whether to reinstate the federal mercury monitoring requirements.

The Council then turned its attention to the Water and Waste Management Rules. Ms. Watson presented 33 CSR 20, governing hazardous waste management systems. Ms. Watson explained that the Rule incorporated by reference its federal counterpart, the most salient change to which is its attempt to reduce disposal by permitting facilities to stage hazardous waste for three days pending recycling. Mr. Raney asked whether three days was sufficient time, and Mr. Cather responded in the affirmative.

Mr. Franks presented 33 CSR 24, the Hazardous Waste Management Fee Rule. Mr. Franks explained that increases to the fee assessments are necessary to sustain the underlying Fund by ensuring sufficient matching revenue for federal grants. Ms. Price indicated her belief that, as part of the legislative compromise extending the fee's duration, no increases would be forthcoming until completion and review of the Fund's legislative audit. Secretary Huffman responded that the preliminary audit findings in no way indicate any misallocation within the Fund or contravene the agency's determination that fee increases are necessary. Ms. Lemmon was recognized, and she commented that the proposed increase was unfair to automobile and truck dealers, as well as other small generators. Ms. Lemmon suggested that a study be done to identify the industries causing DEP to incur program costs, with fee assessments to be made proportionately.

Ms. Watson presented 33 CSR 22 and 47 CSR 56, governing the assessment of civil administrative penalties for, respectively, hazardous and solid waste violations and violations relating to groundwater. Ms. Watson explained that the Rules were being modified for the first time since their initial promulgation, with the purpose of clarifying their application by listing additional factors to be considered in calculating penalties, providing ratings examples, and expanding facility categories.

Ms. Watson then presented 47 CSR 31, addressing the State Water Pollution Control Revolving Fund. Ms. Watson explained that the proposed changes include the creation of a state review process for sewer projects in lieu of a wholesale adoption of the federal requirements. Mr. Roberts observed that many of the eligibility criteria would be deleted, but Ms. Emery assured the Council that inasmuch as the criteria were not being uniformly met, the deletion would have no practical effect on the Fund's administration. Ms. Watson advised Mr. Roberts that if he continued to have concerns upon further review, he should submit written suggestions for changes during the formal comment period.

Mr. Franks presented 47 CSR 32, governing the certification of laboratories conducting analyses of waste and wastewater. Mr. Franks explained that the proposed changes are designed to modernize outdated procedures and protocols that have remained constant since 1995, and to increase program funding through increased certification fees and a new application fee. Mr. Raney asked whether the new fees would render the program self-sustaining, and Mr. Arnold replied that it would for the time-being. In response to further inquiry, Mr. Arnold stated that DEP conducts annual, on-site audits of commercial and industrial labs, with municipal labs typically audited every two years, depending on the experience of the support personnel.

Ms. Watson presented 47 CSR 34, the Dam Safety Rule. Ms. Watson explained that the Rule is being extensively augmented to govern disbursement and use of a new Revolving Fund to finance repair and rehabilitation of deficient dams. Secretary Huffman commented that it appeared imminent that the Legislature would approve a transfer of \$350,000 from excess general revenue as seed money for the Fund.

Lastly, Ms. Watson presented 47 CSR 2, the Water Quality Standards Rule. Ms. Watson explained that the proposed revisions are designed to clarify the definition of Category A use, while providing specific standards to be applied in the permitting process to determine in a more streamlined fashion whether the use is unsuitable in cases of insufficient flow and hydrologic modification. Mr. Raney commented that the Category A determination process has always been a significant problem for the coal industry. Ms. Price also agreed for her members. Mr. Garvin noted that the environmental community had expressed some initial concern regarding the proposed streamlining mechanisms, but that there was some general support for taking the matter out of the legislative arena. Mr. Huffman affirmed that the revisions are designed solely for the benefit of the regulated public and that the revisions must include the clarification that Category A applies statewide.

Ms. Watson reported that the rules will proceed to be filed with the Secretary of State, some perhaps as early as the week following the Council meeting, and that some will have an extended 45-day comment period.

Mr. Franks requested closing comments from Council members and from the public. Following the cessation of discussion, Mr. Franks reminded the Council that the next meeting is scheduled for 1:30 p.m. on September 9, 2008.

Secretary Huffman declared the meeting adjourned at 3:25 p.m.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Environmental Laboratories Certification and Standards of Performance

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Department of Environmental Protection

Address: 601 - 57th Street  
Charleston, WV 25304

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Phone Number: 304-926-0499 ex 1341 Email: darnold@wvdep.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no costs associated with this rule change. Estimated revenue increase is \$107,466.00 annually, beginning upon full implementation. This increase will be generated by an increase in the annual certification fees paid by laboratories and a new application fee, and is necessary to recover the agency's actual costs in administering this program.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	107,466.00

Rule Title: Environmental Laboratories Certification and Standards of Performance

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

To recover the costs needed to cover the expenditures occurring in this program, the agency determined that it needed an additional \$107,000 in fees annually. To generate this amount of money, the agency examined the fees it has been assessing laboratories over the last four (4) years, and derived the percentage increase that was necessary by type of laboratory. The average increase in certification fees determined by this method was approximately 80%.

In addition, the proposed rule contains a new fee that is intended to recover the administrative costs of reviewing applications under the rule. It will generate \$12,240.00 based on the 153 labs currently certified under the rule.

Increase in current certification fee-----	\$95,266.00
New application fee-----	\$12,240.00
Total increase in revenue generated-----	\$107,466.00

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The program's annual expenditures amount to \$250,000, but the revenues generated by the current certification fee are only \$118,000 with an additional \$39,000 in audit fees. The proposed changes in the fee schedule are designed to generate the approximately \$107,000 additional revenues needed to match current expenditures. The program's expenditures will still be below the \$300,000 statutory maximum allowed.

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

\_\_\_\_\_

2013 JUL -2 PM 2:15

TITLE 47  
 LEGISLATIVE RULES RULE  
 DIVISION DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 OFFICE OF WATER RESOURCES

SERIES 32  
~~REGULATIONS GOVERNING ENVIRONMENTAL LABORATORIES~~  
 CERTIFICATION AND STANDARDS OF PERFORMANCE

§47-32-1. General.

1.1. Scope. - This rule governs the certification of laboratories conducting environmental analysis of waste and wastewater performed as required by rules or orders issued pursuant to the covered statutory programs. The rule establishes the provisions for obtaining and maintaining laboratory certifications and the criteria and procedures laboratories will be required to follow in analyzing samples.

1.2. Authority. - W. Va. Code §22-1-15.

1.3. Filing Date. - ~~May 1, 1995.~~

1.4. Effective Date. - ~~May 1, 1995.~~

1.5. Incorporation by Reference. - The ~~Division~~ Department hereby adopts and incorporates into this rule the approved "Guidelines Establishing Test Procedures for the Analysis of Pollutants" 40 CFR 136, EPA SW 846 Methods, and such other methods as may be approved by U.S. Environmental Protection Agency (EPA) or the ~~Director~~ Secretary.

1.6. Construction. - This rule shall be liberally construed to permit the ~~division of environmental protection~~ Department to discharge its statutory functions and to effectuate the purposes of the laboratory certification program.

1.7. Purpose of this Rule. - This rule is promulgated to ~~insure~~ ensure that the results of environmental analyses are accurate, reproducible and verifiable. This purpose will be achieved by:

1.7.1. Establishing the administrative procedures to be followed by certified laboratories and laboratories seeking certification;

1.7.2. Establishing the categories ~~and parameters~~ in which, and the parameters for which laboratories may be certified;

1.7.3. Establishing the minimum requirements, criteria and procedures for laboratory equipment and supplies, practices, methodology, quality control, personnel, facilities, data reporting, and laboratory and record maintenance, which a certified laboratory shall continually meet; and

1.7.4. Establishing the enforcement procedures the ~~division~~ Department will follow to ensure that all certified laboratories or laboratories seeking certification are in compliance with this rule.

## 1.8. Certification Program Requirements.

1.8.1. A laboratory analyzing samples for compliance with adopted rules, permits, or orders issued pursuant to a covered statutory program will follow the procedures set forth in this rule in order to obtain and maintain certification. The provisions of this rule are only applicable to tests required by State and Federal regulatory programs.

1.8.2. Certified laboratories and laboratories seeking certification will analyze all samples requiring testing under this rule in accordance with the procedures and methods required by this rule.

1.9. Program Information and Communications. - Questions concerning the requirements of this rule should be directed to the ~~Division~~ Department of Environmental Protection, ~~Office~~ Division of Water Resources and Waste Management, Quality Assurance Program, ~~1201 Greenbrier Street~~ 601 57<sup>th</sup> Street SE, Charleston, WV ~~25311~~ 25304-2345.

## §47-32-2. Definitions.

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

2.1. "Accredited" means an approval conferred upon institutions or programs where appropriate by a nationally recognized accrediting agency or association as determined by the ~~Division~~ Department.

2.2. "Accuracy" means the closeness of agreement between and observed value and the accepted reference value. Accuracy is best determined through the analyses of matrix spikes.

~~2.2~~ 2.3. "Analyte" means an element, ion, isotope, or compound, or component of interest to the analyst.

~~2.3~~ 2.4. "Analytical Reagent Grade" (AR), "ACS reagent grade", and "Reagent Grade" are synonymous terms for reagents which conform to the current specifications of the Committee on Analytical Reagents of the American Chemical Society.

2.5. "Analyst" means the individual who performs the analytical methods and associated techniques and who is responsible for applying the required laboratory practices and quality controls to meet the required level of quality.

~~2.4~~ 2.6. "APHA Standard Methods" or "Standard Methods for the Examination of Water and Wastewater" means the methods published by the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

~~2.5~~ 2.7. "Approved analytical methods" are those analytical or test methods cited in the Code of Federal Regulations as being approved by EPA or such other methods as shall be approved by the ~~Director~~ Secretary.

2.8. "Batch" means the environmental samples that are prepared or analyzed together using the same procedures, personnel, lots of reagents, and standards.

2.9. "Batch, Analytical" means a batch composed of prepared environmental samples that are analyzed together as a group. An analytical batch may contain samples originating from various environmental matrices and can exceed 20 samples.

2.10 "Batch, Preparation" means a batch composed of 1 to 20 environmental samples of the same matrix with a maximum time between the start of processing of the first and last sample in the batch to be 24 hours.

2.11 "Cancellation" means the voluntary removal of a previously certified laboratory from the laboratory certification program.

~~2.6~~ 2.12. "Category" means a group of parameters for which certification is offered.

~~2.7~~ 2.13. "Certification" means the approval granted by the chief Secretary authorizing a laboratory to provide environmental compliance data.

~~2.8~~ 2.14. "Certification parameter" means a parameter ~~which that~~ is identified in a ~~performance evaluation sample test proficiency test sample~~ and that is used to evaluate the overall analytical performance of a laboratory on the specific method.

~~2.9~~ 2.15. "Certification year" is that period of time following the date upon which the laboratory first receives certification for any parameter or category and lasting for 365 consecutive days.

~~2.10~~ 2.16. "Certified thermometer" is a thermometer that has documentation from the manufacturer showing that it has been compared against a National Institute for Standards Testing (NIST) thermometer covering the temperature ranges employed by the laboratory.

~~2.11~~ 2.17. "CFR" means the Code of Federal Regulations.

~~2.12.~~ "~~Chief~~" means the ~~Chief of the Division of Environmental Protection's Office of Water Resources.~~

~~2.13~~ 2.18. "Compliance analysis" means the analysis of a sample that is required to be analyzed by a ~~division~~ Department rule, permit or order.

~~2.14~~ 2.19. "Covered statutory programs" means one of the regulatory programs developed under statutory authority of one of the following acts of the Legislature:

~~2.14~~ 2.19.1. Water Pollution Control Act, WV Code §22-11-1.

~~2.14~~ 2.19.2. Hazardous Waste Management Act, WV Code §22-18-1.

~~2.14~~ 2.19.3. Hazardous Waste Emergency Response Fund Act, WV Code §22-19-1.

~~2.14~~ 2.19.4. Underground Storage Tank Act, WV Code §22-17-1.

~~2.14~~ 2.19.5. Solid Waste Management Act, WV Code §22-15-1.

~~2.14~~ 2.19.6. Groundwater Protection Act, WV Code §22-12-1.

~~2.20.~~ "Deficiency" means a deviation from acceptable procedures or practices.

~~2.15~~ 2.21. "Division" "Department" means the West Virginia Division Department of Environmental Protection, Bureau of Environment.

~~2.16.~~ "Director" means the director of the West Virginia Division of Environmental Protection, Bureau of Environment. The Director may designate the Chief of the Office of Water Resources to administer this rule.

~~2.17~~ 2.22. "EPA" and "USEPA" means the United States Environmental Protection Agency.

~~2.18~~ 2.23. "Laboratory" means a facility conducting tests or analyses of parameters for which certification is required, where the results of such tests or analyses are used for purposes of demonstrating compliance under the covered statutory programs. Provided; The term "laboratory" shall not include individuals conducting analyses of constituents that must be conducted in the field because of practical constraints; such as, but not limited to pH, dissolved oxygen, total residual chlorine and sulfide.

~~2.19~~ 2.24. "Laboratory pure water" means distilled or deionized water which is free of contaminants that interfere with analytical tests.

~~2.20~~ 2.25. "Laboratory seeking certification" means an uncertified laboratory which has submitted an acceptable application and the appropriate fee.

2.26. "List of certified parameters" means the document displaying the categories and parameters for which a laboratory is certified.

2.27. "Matrix or matrices" means the media of an environmental sample, either non-potable water or solid and chemical materials.

2.28. "Method" means the scientific technique used to perform testing or analyses of an environmental sample.

2.29. "Mobile laboratory" means a portable enclosed structure within which testing or analyses of environmental samples occurs.

2.30. "NPDES" means National Pollutant Discharge Elimination System.

2.31. "Nonpotable water" means wastewater, ambient water, surface water, groundwater, effluents, water treatment chemicals, and toxicity characteristic leaching procedure or other extracts.

~~2.24~~ 2.32. "Parameter" means an analytical method or test within a category and for which certification is offered.

~~2.22~~ 2.33. "Performance evaluation sample" "Proficiency test sample" means a sample containing a known amount of a specific or combination of parameters used in part to evaluate the performance of a laboratory.

~~2.23~~ 2.34. "Person, Persons, or applicant" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county

commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

~~2.24~~ 2.35. "Personal and direct supervision" means that a supervisor is available either in person or on call at all times when laboratory procedures are being performed.

~~2.25.~~ "Primary Standard" means a highly pure reagent used as a reference for standardizing other reagent solutions:

2.36. "Precision" means the agreement among a set of measurements performed on duplicate samples without assumption of knowledge of the true value. Precision is estimated by means of duplicate/replicate analyses.

~~2.26~~ 2.37. "Quality Assurance Program" means a regulatory program developed to achieve the purposes of subsection 1.7 of this rule for the covered statutory programs of the Division of Environmental Protection Department.

2.38. "Quality Manual" means the document stating, or making reference to the policies, objectives, principles, responsibilities, accountability, implementation plans, methods, operation procedures, or other documents of an environmental laboratory for ensuring the quality of its testing analyses.

~~2.27~~ 2.39. "Raw Data" means that data acquired in the process of collecting and analyzing samples for compliance testing purposes. Raw data includes such sampling report forms, sample log books, laboratory bench sheets, calculations and formulas, and analytical data and notes as are used during sample analysis. Raw data may be in the form of graphs, line recorder charts, handwritten data, or computer printouts made at or near the time of the analysis or sample collection.

2.40. "Revocation of certification" means the action taken by the Department to halt the certification of a laboratory for cause.

~~2.28~~ 2.41. "Replicate sample" "Sample Duplicate" means a sample prepared by dividing a homogeneous sample into separate parts so that each part is also homogeneous and representative of the original sample.

2.42. "Secretary" means the Secretary of the West Virginia Department of Environmental Protection or his or her designee.

2.43. "Solid and Chemical Materials" means soils, sediments, sludges, solid waste, drill cuttings, overburden, minerals, coal ash, and products and by-products of an industrial process that result in a matrix that is not otherwise defined.

~~2.29.~~ "Standard curve" means a curve plotting concentrations of a known parameter standard minus a blank, versus the standard's absorbance or percent transmittance or other instrument response:

2.44. "Standard Operating Procedure" means a written document that provides detailed instructions for the performance of all aspects of test analyses, operation, or action.

2.45 "Suspension of certification" means the temporary removal of approval to perform analyses under

this rule until such time as the basis for suspension is rectified.

2.30. "Supervisor" means that designated person responsible for the technical adequacy and quality of data for a certification category, and who possesses the qualifications required under subsection 3.7 ~~of this rule.~~

**§47-32-3. Certification Program; Application, Procedures, and Requirements.**

3.1. Requirements of Certification.

3.1.1. With the exception of those tests not normally performed in a laboratory proper, all sample analyses required by order of the ~~Division~~ Department or performed for the purpose of determining compliance with chemical, microbiological, aquatic toxicity and radiological requirements of the State's covered statutory programs must be performed in laboratories certified for this purpose pursuant to this rule. Analyses performed in laboratories not so certified shall not be accepted by the ~~Division~~ Department as being in compliance with the requirements, rules or orders of the ~~Division~~ Department. All analyses not performed in a laboratory proper must be performed by personnel under the direction of a supervisor from a certified laboratory.

3.1.2. Laboratories doing business in other states where a state certifying agency grants reciprocal certification, approval, or other authorization to laboratories located in West Virginia, and which is certified, approved or authorized by the agency of that state having primary certification responsibility under Federal programs delegated to such other state under conditions equivalent to those required by this rule, are considered to be certified for the purpose of this rule once they have complied with the provisions of Section 3.4. Laboratories doing business in other states where certification is not required, and who are not certified in another state, may be considered for certification by following the conditions and requirements stated in Section 3.3.

3.1.3. Only laboratories certified pursuant to this rule or maintained by the EPA may be called West Virginia Certified Environmental Laboratories and no laboratory may adopt any name or make any oral or written statement intended or likely to mislead the public with respect to its certification status.

3.2. Categories of Certification. - A laboratory applying for certification in one or more of the following categories must demonstrate acceptable performance on ~~performance evaluation~~ proficiency test samples ~~for all matrices~~, where available, and meet all other requirements of this rule. The laboratory certificate, including the list of certified parameters, will specify the categories and the parameters within each category for which the laboratory is certified and it must be displayed in a location visible to the public. Tests for all categories, except Aquatic Toxicity, must be conducted in accordance with the method and procedures specified in the Code of Federal Regulations, Chapter 40 as ~~appropriate~~, applicable or other methods that may be approved by EPA or the ~~Director~~ Secretary. The certification categories are:

3.2.1. ~~Atomic Absorption, Emission Spectroscopy, and Flame Photometry - which comprises tests or analyses for which the atomic absorption methods are applicable or required.~~ Nonpotable Water Trace Metals;

3.2.2. ~~Limited Chemistry - which comprises chemical tests or analyses except those for which the atomic absorption, gas chromatography and/or mass spectrometry methods are specifically required.~~ Nonpotable Water Inorganic Nonmetals;

3.2.3. ~~Gas Chromatography (GC) and Mass Spectrometry (MS) - which comprises tests for which the~~

~~GC and/or MS methods are applicable or required.~~ Nonpotable Water Volatile Organic Chemicals;

3.2.4. Nonpotable Water Extractable and Semi-volatile Organic Chemicals;

3.2.5. Nonpotable Water Dioxin and Difuran;

~~3.2.4.~~ 3.2.6. Nonpotable Water Microbiology — ~~which comprises~~ , comprising tests for Coliform Bacteria, Fecal Streptococci, Pathogenic Bacteria, Plate counts, Viruses, ~~Paraeites~~ Parasites and ~~Paraeite~~ Parasite ova;

~~3.2.5.~~ 3.2.7. Aquatic Whole Effluent Toxicity—, testing which must be conducted in accordance with the methods and procedures specified in ~~Standard Methods or EPA 600/485-013 et seq. (acute) or EPA 600/489-001 et seq. (chronic) or other methods that may be approved by EPA or the Director~~ 40 CFR 136;

~~3.2.6. Radiological.~~ 3.2.8. Nonpotable Water Radiochemistry;

~~3.2.7.~~ 3.2.9. Hazardous Waste Characteristics — ~~which include~~ , including Corrosivity, Ignitability, Reactivity, Extraction Procedure Toxicity, and ~~Toxic~~ Toxicity Characteristic Leaching Procedure, or other tests or analyses designated by the Secretary;

3.2.10. Solid and Chemical Trace Metals;

3.2.11. Solid and Chemical Inorganic Nonmetals;

3.2.12. Solid and Chemical Volatile Organic Chemicals;

3.2.13. Solid and Chemical Extractable and Semi-volatile Chemicals;

3.2.14. Solid and Chemical Dioxin and Difuran;

3.2.15. Solid and Chemical Microbiology; and

3.2.16. Solid and Chemical Radiochemistry.

### 3.3. Application Procedures and Requirements for Laboratories Located in West Virginia.

3.3.1. A person operating a laboratory in West Virginia who wants to be certified in one or more of the categories and parameters thereof or, who if already certified, wants to add a category or a parameter within a category, must apply for certification to the West Virginia ~~Division~~ Department of Environmental Protection, Quality Assurance Program, refer to subsection ~~(4.9) of this rule~~ 1.9 for the address. The applicant shall submit the appropriate fee with the application for certification.

3.3.2. An application for certification is acceptable when a complete application is submitted. This includes the appropriate fee, and the information requirements of this rule for the category, categories or parameter(s) for which certification is requested. Acceptance of a complete application does not authorize the laboratory to perform analyses regulated by this rule. The applicant will be notified ~~of the acceptance if the application is not acceptable~~ and the laboratory inspected to determine if it is in compliance with the requirements of this ~~chapter~~ rule prior to the issuance of certification.

3.3.3. An application will be rejected without prejudice for not being a complete application.

3.3.4. ~~Performance evaluation~~ Proficiency test samples will be ~~a part of this inspection~~ an element of the laboratory evaluation. Proficiency testing will be in accordance with subsection 3.10 of this rule. ~~Following acceptable analytical values for the performance evaluation samples the Quality Assurance office will contact the laboratory to arrange a mutually acceptable date for an on-site inspection. The laboratory must receive acceptable scores on two separate proficiency test studies prior to an on-site inspection being performed.~~ Certified laboratories that desire to ~~extend the range of tests or analyses offered~~ include additional parameters within previously certified categories must demonstrate satisfactory results ~~in testing~~ Performance Evaluation for proficiency test samples for these additional parameters.

3.3.5. The results of the analysis ~~or testing of performance evaluation~~ proficiency test samples shall be considered in determining whether the certification of the laboratory should be granted, renewed, denied, revoked, or suspended. Certification may be granted only for those parameters for which the laboratory performs acceptably.

3.3.6. An applicant for certification who either does not perform acceptably on the ~~performance evaluation~~ proficiency test samples or does not otherwise meet the requirements of this rule shall be notified by ~~Certified Mail that the requirements for certification has been denied~~ have not been met. ~~Laboratories notified of certification denial must immediately cease performing analyses required of a certified laboratory by this rule or the covered statutory programs.~~

3.3.6.a. Applicants receiving a notification of ~~that certification denial may not reapply for certification until the laboratory assures the Quality Assurance Office in writing that all reasons for certification denial have been rectified~~ requirements have not been met may not reapply for certification until the laboratory assures the Quality Assurance Office in writing that corrective actions have been taken and documented that bring the laboratory into compliance with this rule.

3.3.6.b. Owners, principal officers, managers or supervisors of a laboratory, for which certification has been denied, may not reapply for certification of this same facility by simply changing the company or laboratory name.

3.3.6.c. Certification is transferrable. A laboratory facility must, ~~on a form prescribed by the director,~~ notify the Division Department in writing at the address listed in subsection 1.9 of this rule that the facility is being sold or has a change of principal officer(s), manager(s) or supervisor(s) within 30 days of the change or activity.

3.3.7. Certifications may contain conditions requiring correction of minor deficiencies identified by the Quality Assurance Officer by a date or dates specified therein.

3.3.8. ~~The following special provisions are applicable to the phase in of the West Virginia Environmental Laboratory Certification Program:~~

3.3.8.a. ~~Laboratories in operation upon the effective date of this rule may continue to conduct tests and analyses for compliance purposes for a period of 60 days following the effective date of this rule. Within the 60 days following the effective date of this rule, laboratories that desire to continue performing tests and analyses for compliance purposes must complete and submit, on a form prescribed by the Director, an Application for Certification specifying the tests and analyses for the parameter(s) for which the laboratory seeks~~

certification, along with the appropriate fee for such application, as established under subsection 3.6 of this rule. Laboratories that have submitted a complete application and the appropriate fee to the Director within the 60 days following the effective date of this rule may continue to perform tests and analyses for the parameters listed in the application until the Director takes final action upon the application.

~~3.3.8.b. Laboratories conducting tests and analyses for compliance purposes prior to certification as provided in subparagraph 3.3.8.a of this rule must follow the procedures and requirements of all applicable EPA test methods or other methods approved by the Director.~~

~~3.3.8.b.A. Laboratories that fail to acceptably analyze performance evaluation samples will be granted two additional opportunities within 60 days of notification of such failure to successfully analyze the samples for such parameters that the laboratory has been unsuccessful in analyzing, as provided in paragraph 3.10.7 of this rule.~~

~~3.3.8.b.B. Laboratories that otherwise fail to meet the requirements of this rule will be allowed to continue to conduct tests and analyses if within 15 days of notification of such deficiencies, the laboratory submits to the Director a plan to correct the deficiencies. A plan accepted by the Director, with or without revision, will afford the laboratory 60 days from the date of notification of acceptance to correct such deviations in accordance with the approved plan. The 60 day period may be extended if the Director determines that more than 60 days is necessary to correct the deficiencies in accordance with the approved plan.~~

#### 3.4. Application Procedures and Requirements for Laboratories Not Located in West Virginia.

3.4.1. Owners of laboratories located in a state other than West Virginia, which have been certified, approved or otherwise authorized by that state's agency having primary certification, approval or authorization responsibility for laboratory certification programs with conditions equivalent to those required by this rule, and who have entered into a reciprocity agreement with West Virginia, and who ~~wishes~~ wish to perform analyses covered by this rule for West Virginia clients shall:

3.4.1.a. Annually complete the application form provided by the ~~Division's~~ Department's Quality Assurance Office;

3.4.1.b. Have the form certified by the state agency having primary certification authorization/enforcement responsibility; and

3.4.1.c. Return the form to the Quality Assurance Office of West Virginia at the address listed in subsection 1.9 ~~of this rule.~~

3.4.2. The application will be reviewed and if found to be complete the laboratory will be certified or recertified.

3.4.3. If the laboratory's certification, approval or authorization is revoked by the state agency having primary certification, approval or authorization responsibility, the West Virginia certification is automatically canceled for the same parameter(s) as has been revoked in the other state. The laboratory manager shall notify the West Virginia Quality Assurance Office and all clients in West Virginia of the revocation within 48 hours of receipt of notice of revocation.

3.4.4. The owner of a laboratory in a state other than West Virginia which is not certified by that

state or is certified under conditions not equivalent to those required by this rule and who wishes to perform analyses for West Virginia clients may apply for certification in accordance with the procedure set forth in subsection 3.3 of this rule. In addition, prior to conducting the on-site laboratory inspection, the laboratory shall submit to the Quality Assurance Office a per diem sum the ~~Division~~ Department determines to be sufficient to cover the travel, room, and board expenses of the certification inspector(s).

3.5. Renewal of Certification. - Applications for renewal of certification must be submitted, on forms provided therefor, no later than ~~60~~ 180 days before the expiration date of certification, and accompanied by the appropriate fee. A laboratory submitting an application for renewal of certification may continue to operate under the previous certification until the Quality Assurance Office notifies the laboratory of the approval or denial of renewal.

### 3.6. Fees.

3.6.1. Owners of Laboratories applying for certification or renewal of certification, shall submit the appropriate fee obtained from the following annual fee schedule specified in Table 1 for each category in which the laboratory seeks certification for one or more parameters, along with the required application materials. Fees are nonrefundable.

~~NOTE: SEE TABLE 1 ATTACHED.~~

3.6.2. Laboratories owned or operated by the State of West Virginia or an agency of the Federal Government are exempt from the above fees, except in situations addressed in paragraph 3.6.2.a., but shall make appropriate application for certification in accordance with the other provisions of this rule.

3.6.2.a. In situations where a laboratory under this subdivision is conducting analyses for a fee, an appropriate certification fee will be assessed.

3.6.3. All application fees collected under this rule will be paid into a special state treasury fund designated the "Environmental Laboratory Certification Fund" which will be used to defray the cost of administering this rule.

### 3.7. Required Laboratory Personnel Qualifications.

3.7.1. Each laboratory must have one individual designated as the person responsible or in charge and irrespective of any local title or designation, is herein referred to as the laboratory manager.

3.7.2. Current employee records must include a resume documenting each employee's training, degrees held, experience, duties, and date(s) of relevant employment. This provision is applicable only to the employees employee's laboratory and environmental sampling work history. Table 2 lists the minimum education and experience requirements.

~~NOTE: SEE TABLE 2 ATTACHED.~~

3.7.3. Laboratory supervisors who are also laboratory technicians and who do not have the required laboratory experience will be considered a Supervisor-in-Training and must have their work reviewed by an individual meeting the above education and experience requirements for supervisors.

3.7.4. Technicians holding a West Virginia Environmental Training Center Wastewater Laboratory Technician certificate meet the education and experience requirements of this rule only in the conduct of analyses while employed at a Publicly Owned Treatment Works (POTW).

~~3.7.4. Those persons in a supervisory position upon the effective date of this rule are not subject to the above education requirements of this rule. Those persons who do not meet the above minimum experience requirements upon the effective date of this rule may remain in a supervisory position as a Supervisor in Training until such time as experience requirements have been met.~~

### 3.8. Duties and Responsibilities of Laboratory Personnel.

3.8.1. The laboratory manager or his designee will administer the operations of the laboratory including the approval of test and ~~analysis~~ analytical results.

3.8.2. Each laboratory supervisor shall provide personal and direct supervision for ~~technical~~ personnel and for the reporting of ~~tests~~ test and ~~analyses~~ analytical results.

### 3.9. Management of Laboratories.

3.9.1. A certified laboratory may offer as a service those laboratory tests, analyses, or procedures that are within the category or categories for which it is certified.

3.9.2. A laboratory that is certified shall only report ~~test and~~ test and analytical data for samples which are properly labeled, and for which there is reasonable assurance the samples have been collected, preserved, stored and transported in such a manner as to assure identity, stability of the sample, and proper analysis.

### 3.10. Proficiency Testing.

3.10.1. Except when determined by the Quality Assurance Office that an appropriate performance evaluation test is not readily available, all certified laboratories or laboratories seeking certification shall participate in ~~an annual performance evaluation~~ a proficiency testing program covering all tests, ~~matrices~~, and analyses made available within the category, categories or parameter(s) for which the laboratory is certified or seeks certification. The laboratory must participate in two studies per certification year at a frequency of one study every six (6) months.

3.10.2. ~~The Quality Assurance Office or its authorized agent will send to the laboratory, at the laboratory's expense, a set of performance evaluation samples, if available, for the parameters for which certification is requested, but only following acceptance of the laboratory's application by the Division.~~ Each certified laboratory or laboratory applying for certification must obtain proficiency test samples from an approved provider for each parameter and matrix for which certification is requested. The list of approved providers is located at <http://www.a2la.org/dirsearch/nelacptproviders.cfm>.

3.10.3. Laboratories certified or those seeking certification must test or analyze the ~~performance evaluation~~ proficiency test samples and submit the results to the Quality Assurance Office or its authorized agent, as appropriate, within the time frame allowed each participant testing that set of samples for evaluation. ~~Any laboratory found to send performance evaluation samples to another laboratory for testing will be denied certification and not allowed to reapply for certification for a period of five (5) years from the date of the denial.~~

3.10.3.a. A laboratory may not send proficiency test samples to another laboratory for testing.

3.10.3.b. A laboratory shall not knowingly receive proficiency test samples from any laboratory seeking certification or certified by this office.

3.10.3.c. A laboratory shall not discuss proficiency test sample data with any other laboratory for any purpose.

3.10.3.d. Any laboratory found in violation of 3.10.3a, 3.10.3.b, or 3.10.3.c will be denied certification and not allowed to reapply for certification for a period of five (5) years from the date of the denial.

3.10.4. The laboratory will have satisfied the requirements for testing for a parameter when it acceptably analyzes the range of values receives an 'Acceptable' evaluation for that parameter, within a given set of performance evaluation samples for which the laboratory seeks certification, in two of the last three proficiency test studies.

3.10.5. The laboratory will be informed of the results of such each evaluation by the agency providing the test samples proficiency test provider. For those parameters for which a laboratory has not successfully completed the performance evaluation proficiency test after three attempts, the laboratory will be reevaluated upon written request.

3.10.6. Acceptable analysis for a value occurs when the reported value falls within the 99 percent confidence interval calculated for that sample from available performance evaluation data. Acceptance limits for proficiency tests will be established according to the USEPA document "National Standards for Water Proficiency Testing, Criteria Document." For analytes and matrices not found in this document, limits will be established in accordance with the procedures set forth by the current National Environmental Laboratory Accreditation Conference (NELAC).

3.10.7. The laboratory will have three separate opportunities within 90 days to acceptably analyze one of three different sets of performance evaluation proficiency test samples for any parameter for which the laboratory seeks certification. The laboratory need only repeat performance evaluation proficiency tests for those parameters for which the laboratory has failed to perform acceptably. Parameters for Organic Samples shall mean a method, or method subdivision (i.e. Volatiles, Extractables, BTEX, etc.). Laboratories that fail to successfully analyze at least one of the two of three different sets or rounds of performance evaluation proficiency test samples in the time period allotted will not be reevaluated for a period of one year from the last failure certified for the failed parameters until two consecutive sets or rounds have been successfully analyzed.

3.10.8. This rule incorporates by reference the National Environmental Laboratory Accreditation Conference (NELAC) Proficiency Testing standard, Chapter 2 with appendices for the purposes of Proficiency Testing Criteria for Laboratory Certification.

### 3.11. Laboratory Inspections.

3.11.1. As a condition of obtaining and maintaining certification, a laboratory will permit and facilitate inspections by personnel of the ~~Division~~ Department. This inspection will include the physical facilities as well as laboratory records and reports.

3.11.2. The ~~Division~~ Department will conduct at least one on-site inspection of a laboratory seeking certification to determine whether or not the laboratory meets the Quality Assurance Office standards as set forth in this rule.

3.11.3. Regular inspections of laboratories certified in accordance with this rule will be conducted during reasonable hours ~~at intervals of not more than two years.~~ These inspections will be conducted annually or as determined by the Secretary, however, in no situation may more than two years elapse between inspections.

3.11.4. Authorized representatives of the ~~Division~~ Department may make inspections of a certified ~~or an interim approved~~ laboratory whenever the ~~Division~~ Department in ~~its~~ its discretion considers such inspections necessary. A laboratory's refusal to allow entry to the ~~Division's~~ Department's representative will be grounds for denial or revocation of certification.

3.11.5. During inspections, consideration will be given to staff competence, working conditions, ~~testing tests~~ or analytical methods used, quality control procedures, quality assurance programs, maintenance of records and compliance with the requirements of this rule.

3.11.6. The laboratory will be furnished with a copy of the inspection report which will list deficiencies found, ~~and a listing of the parameters for which the laboratory has demonstrated proficiency during the inspection.~~

### 3.12. Cancellation, Suspension, and Revocation of Certification.

3.12.1. Any certified laboratory may cancel its certification in any category or parameter by notifying the Quality Assurance Office in writing of the laboratory's decision to cancel its certification. ~~The laboratory will enclose its Environmental Laboratory Certification with the letter of notification.~~ This cancellation notification will not entitle the laboratory to any refund of fees paid.

3.12.1.a. If the laboratory wishes to cancel the entire certification, all categories and parameters, the laboratory will enclose its Environmental Laboratory Certificate with the letter of notification.

3.12.2. ~~Whenever any deviations from the requirements of this rule are found, the laboratory shall comply with the provisions of paragraph 3.3.8 and parts 3.3.8.b.A and 3.3.8.b.B. A laboratory's certification may be suspended for failure to correct deficiencies within the specified timeframe.~~

3.12.3. A laboratory's certification may be suspended for failure to correct proficiency test sample failures.

3.12.4. A laboratory's certification may be revoked for falsifying data for failing to comply with the guidance in 3.10.

### 3.13. Effect and Duration of Suspension and Revocation.

3.13.1. The results of any tests or analyses performed after the effective date of a suspension or revocation order for any category or parameter will not be accepted by the ~~Division~~ Department as compliance with the requirements for ~~NPDES reporting of the Covered Statutory Programs as defined in subsection 2.20.~~

3.13.2. Suspension or revocation will not be withdrawn until ~~all~~ the basis for the suspension or revocation ~~have~~ has been eliminated or rectified.

3.14. Notice of Changes ~ In the event there are any changes in the name, location, ownership, address, telephone number or supervisory personnel of the laboratory to which the provisions of this rule apply, then the laboratory will immediately submit written notice thereof to the ~~Division~~ Department. For supervisory personnel this provision applies only to those whose responsibilities include analyses that must be made in compliance with this rule.

#### §47-32-4. Laboratory Requirements.

A certified laboratory or a laboratory seeking certification must continually meet and follow the requirements of this section.

4.1. Laboratories will have on the premises and under the control of the laboratory manager all of the equipment and instruments necessary to analyze each parameter in which the laboratory is certified, or is seeking certification. All equipment must meet the minimum standards required by the test method used.

#### 4.2. General Requirements for All Laboratories.

4.2.1. Adequate laboratory space and facilities, to include equipment and instruments must be available to properly carry out the services performed in, ~~or offered by,~~ the laboratory.

4.2.2. Laboratory work areas will be arranged so as to minimize problems in contamination, transportation and communication.

4.2.3. Workbench space within the laboratory must be ample for the tests or analyses to be performed, have adequate lighting and be convenient to a sink, water, gas, ~~suction~~ vacuum and electrical outlets or other utilities as necessary to properly carry out the specific tests or analyses to be performed.

4.2.4. Temperature and humidity within the laboratory are to be maintained within the limits required for the proper performance of each test or analysis, the proper operation of the various instruments, and the proper storage of expendable supplies.

~~4.2.5. Each laboratory will have available adequate equipment and instruments necessary to properly perform the tests and analyses for the parameters within the categories for which the laboratory is certified or is seeking certification.~~

~~4.2.6.~~ 4.2.5. pH meters must have an accuracy of and scale graduations within 0.1 standard unit.

~~4.2.7.~~ 4.2.6. Analytical and pan balances are to be clean, not corroded, and be provided with Class-S weights or equivalent. Analytical balances will be capable of weighing to 0.1 milligram minimum. Pan balances will be capable of weighing to 100 milligrams.

~~4.2.7.a.~~ 4.2.6.a. An analytical balance must be mounted on a heavy, shockproof table. The balance level must be checked ~~frequently~~ each use and adjusted as necessary;

~~4.2.7.b.~~ 4.2.6.b. An analytical balance must be located in an area that is not near laboratory traffic and is protected from ~~sudden~~ drafts and humidity changes; and

~~4.2.7.c.~~ 4.2.6.c. ~~Two~~ Three Class-S or equivalent weights are to be available for checking the

analytical balance, ~~one in the gram range and one in the milligram range.~~ These weights must cover the range expected to be encountered during routine analyses.

~~4.2.8. 4.2.7. Glass or metal thermometers~~ All temperature measuring devices will be graduated in one degree ~~centigrade Celsius~~ (or 2 degrees Fahrenheit) increments and readable to 0.5 degrees ~~centigrade Celsius~~ (1 degree Fahrenheit) for all analyses except fecal coliform analysis; in which case glass or metal thermometers are to be readable to 0.2 degrees ~~centigrade Celsius~~.

~~4.2.8.a. 4.2.7.a.~~ Continuous temperature recording devices will be sensitive and accurate to within 1.0 degree ~~centigrade Celsius~~ (2 degrees Fahrenheit).

~~4.2.8.b. 4.2.7.b.~~ The column of liquid in glass thermometers will have no separation.

~~4.2.8.c. 4.2.7.c. Liquid column in glass and electronic type Thermometers~~ thermometers without a current manufacturer's certificate of accuracy must be ~~calibrated~~ verified as accurate annually, for glass types and quarterly for metal types against All other types, to include Automatic Temperature Compensation (ATC) devices, must be verified as accurate quarterly. Verification must be accomplished by comparison to a certified thermometer traceable to a National Institute for Standards Testing thermometer. See also subparagraph 5.2.2.g of this rule for additional thermometer requirements.

~~4.2.7.d.~~ Each temperature measuring device must be uniquely identified. The results of accuracy verifications must be documented. The corrected temperature must be recorded whenever temperatures are required to be recorded.

~~4.2.9. 4.2.8.~~ Sample storage refrigerators must maintain an internal temperature of ~~1 to 4~~  $4 \pm 6$  degrees ~~centigrade Celsius~~.

~~4.2.10. 4.2.9.~~ Laboratory glassware, plastic ware, and metal utensils will meet the following requirements:

~~4.2.10.a. 4.2.9.a.~~ Glassware and metal utensils must resist corrosion, and be capable of withstanding high temperatures, and vigorous cleaning;

~~4.2.10.b. 4.2.9.b.~~ Flasks, beakers, dilution bottles, culture dishes, culture tubes and other glassware are to be of borosilicate glass and free of chips, cracks, and excessive etching;

~~4.2.10.c. 4.2.9.c.~~ Volumetric glassware ~~should~~ must be Class A and need not be calibrated before use. Non Class A glassware must be calibrated before use; and

~~4.2.10.d. 4.2.9.d.~~ Metal utensils must be made of stainless steel or other inert material.

~~4.2.11. 4.2.10.~~ Pipettes must meet the following requirements:

~~4.2.11.a. 4.2.10.a.~~ Glass pipettes are to be made of borosilicate glass;

~~4.2.11.b. 4.2.10.b.~~ Plastic pipettes must be compatible with the reagents being measured, i.e. will not dissolve or show signs of etching or numbers being removed;

~~4.2.11.c.~~ 4.2.10.c. Plastic pipettes ~~may be used~~ must be sterile or sterilizable for microbiological procedures only;

~~4.2.11.d.~~ 4.2.10.d. Pipettes must deliver the required volume quickly and accurately within a 2.5 percent tolerance; and

~~4.2.11.e.~~ 4.2.10.e. Pipettes must not be excessively etched, nor the mouthpiece or delivery tips chipped, or the graduation marks illegible.

~~4.2.12.~~ 4.2.11. Magnetic stirrers must have variable speeds, and use Teflon coated stirring bars.

4.2.12. Volumetric dispensing devices including autopipetors, autotitrators and digital burets must be of sufficient sensitivity for the application. Delivery volumes of mechanical volumetric dispensing devices must be checked using the gravimetric method or using Class A volumetric glassware one every 3 months.

4.2.13. All purchased reagents and solutions must be certified as appropriate for the intended use by the manufacturer or supplier or must be verified as appropriate by the laboratory prior to use.

#### 4.3. Criteria and Procedures for Trace Metal Testing.

4.3.1. The Department incorporates methods approved in 40 CFR §136.3 Table IB, the current approved edition of EPA publication SW-846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, and other methods as may be approved by EPA or the Secretary, including all standards, criteria, sample collection procedures, analytical procedures, methodology, quality assurance and quality control specifications for evaluation and certification purposes.

#### 4.4. Criteria and Procedures for Inorganic Nonmetals.

4.4.1. The Department incorporates methods approved in 40 CFR §136.3 Table IB, the current approved edition of EPA publication SW-846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, and other methods as may be approved by EPA or the Secretary, including all standards, criteria, sample collection procedures, analytical procedures, methodology, quality assurance and quality control specifications for evaluation and certification purposes.

#### 4.5. Criteria and Procedures for Volatile Organic Chemicals, Extractable and Semi-volatile Chemicals and Dioxin and Difuran.

4.5.1. The Department incorporates methods approved in 40 CFR §136.3 Table IC, ID and IG, the current approved edition of EPA publication SW-846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, or such other methods as may be approved by EPA or the Secretary, including all standards, criteria, sample collection procedures, analytical procedures, methodology, quality assurance and quality control specifications for evaluation and certification purposes.

#### ~~4.3.~~ 4.6. Criteria and Procedures for Microbiological Testing.

~~4.3.1.~~ 4.6.1. The ~~Division~~ Department incorporates from ~~the latest approved edition of APHA Standard Methods and Microbiological Methods for Monitoring the Environment, EPA 600/8-78-017 et seq.~~ methods approved in 40 CFR §136.3 Table IA, or such other methods as may be approved by EPA or the Direc-

~~to~~ Secretary, including all the standards, criteria, sample collection procedures, and analytical procedures, and methodology, quality assurance and quality control specifications for evaluation and certification purposes under subsection 4.3 of this rule.

4.3.2. 4.6.2. Laboratory pure water for use in microbiological examinations will be analyzed for the parameters listed in the following table Table 3. Should the test results for any of the substances exceed the standards set forth in the table, corrective action must be taken and the water retested.

4.6.2.a. Analysis of laboratory pure water for use in microbiological examinations must be performed by a laboratory certified under this rule. Results must be maintained and include the date, type of analysis, results and identity of the individual responsible for the results.

4.6.2.b. For purchased laboratory pure water for use in microbiological examinations, a current certificate of analysis from the producer documenting that the purity of the water is traceable. The purchased laboratory pure water must meet the requirements of Table 3.

NOTE: SEE TABLE 3 ATTACHED:

~~4.4. Criteria for Chemical, Gas Chromatography and Mass Spectrometry Testing and Analysis—The Division incorporates from the latest approved edition of APHA Standard Methods, Methods for Chemical Analysis of Water and Wastes, EPA 600/4-79-020 et seq., and US EPA SW-846 manuals, or such other methods as may be approved by EPA or the Director, all the standards, criteria, sample and analytical procedures and methodology, quality assurance and quality control specifications for evaluation and certification purposes under subsection 4.4 of this rule.~~

~~4.5. 4.7. Criteria and Procedures for Whole Effluent Toxicity Testing. —All work is to be performed in accordance with procedures outlined in APHA Standard Methods and/or in Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, EPA 600/4-85-013 et seq., or Short Term Methods for Estimating Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA 600/4-89/001 et seq. or such other methods as may be approved by EPA or the Director for the test to be performed.~~

4.7.1. All work is to be performed in accordance with procedures outlined in Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, EPA/821/R-02/012, or Short Term Methods for Estimating Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, EPA/821/R-02/013 and other methods as may be approved by EPA or the Secretary for the test to be performed.

~~4.6. 4.8. Criteria and Procedures for Radiochemical Radiochemistry Testing.~~

~~4.6.1. 4.8.1. The types of radiation counting systems needed to comply with this rule are described in 40 CFR 136. Laboratories are required to have on the premises and under the control of the laboratory manager those instruments needed to analyze for those activities or specific radionuclides for which the laboratory is certified. The Department incorporates methods approved in 40 CFR §136.3 Table IE, the current approved edition of EPA publication SW-846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, or other methods as may be approved by EPA or the Secretary, including all standards, criteria, sample collection procedures, analytical procedures, methodology, quality assurance and quality control specifications for evaluation and certification purposes.~~

~~4.6.2. Laboratories must use the analytical procedures specified in Chapter 40 of the Code of Federal Regulations, or such other procedures as may be approved by EPA or the Director.~~

#### 4.9. Criteria and Procedures for Characteristics Testing.

4.9.1. The Department incorporates the current approved edition of EPA publication SW-846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, and other methods as may be approved by EPA or the Secretary, including all standards, criteria, sample collection procedures, analytical procedures, methodology, quality assurance and quality control specifications for evaluation and certification purposes.

#### §47-32-5. Methodology, Quality Control and Record Keeping.

##### 5.1. Methodology.

~~5.1.1. Sample collection, handling, and preservation technique techniques specified in Chapter 40 of the Code of Federal Regulations 40 CFR §136.3 Table II, or other procedures approved by EPA or the Director Secretary are to be followed.~~

5.1.1.a. Samples requiring preservation will be preserved at the time of collection in accordance with 40 CFR §136.3 Table II for compliance with subsection 2.19.1 and the NPDES. All other samples will be preserved in accordance with applicable methods and regulations.

5.1.1.b. Sample collection, handling and preservation techniques specified by the analytical methods will be followed for the parameters analyzed by those methods in the absence of guidance under paragraph 5.1.1.a.

5.1.1.c. The ~~sample report~~ chain of custody form (chain of custody) must be completed immediately after at the time of sample collection and will state the sampling location, date and time of collection, collector's name, type(s) of preservation, number of containers per sample, type of sample (grab or composite) and any remarks.

5.1.1.d. After the sample has been collected, the appropriate information as to identity of the sample is to be written on the label. The identity of the sample must be the same on the label and the chain of custody form. The label must remain affixed to the sample container and is not to be removed until the required analyses have been completed and the surplus sample has been discarded.

5.1.1.e. The chain of custody must accompany the sample at all times. Custody of the sample must be documented on the chain of custody throughout the life of the sample (from collection to disposal of surplus sample after all required analyses have been completed). Any time the custody of the sample is transferred from one person to another, except analysts in the same laboratory, this transfer must be documented in the appropriate fields on the chain of custody form.

~~5.1.1.e.~~ 5.1.1.f. Immediately upon delivery of the sample to the laboratory, the sample collector individual delivering the sample will complete the appropriate section(s) of the chain of custody section of the sample report form or chain of custody form. A chain of custody form is not required where the sampler is also the analyst and in situations where the laboratory and the sample site(s) are within the property boundaries of the facility in which the laboratory is located.

~~5.1.1.f.~~ 5.1.1.g. Prior to accepting custody of a sample, laboratory personnel must be reasonably assured that the sample has met the chemical and temperature preservation requirements. If the sample fails to meet these requirements, the sample chain of custody form is to be marked indicating the sample was improperly preserved. Analytical data resulting from improperly preserved samples must be accompanied by a statement indicating the condition of the sample upon receipt by the laboratory. Analytical data resulting from samples improperly preserved will not be accepted as being in compliance with this rule.

~~5.1.1.g.~~ 5.1.1.h. When it is necessary to send samples by mail, bus, courier service, or private shipping, the chain of custody form is to be completed by the sample individual relinquishing custody of the sample for shipping and is to accompany the samples during shipping. Upon receipt of the samples in the laboratory, the provisions of subparagraph ~~5.1.1.f.~~ 5.1.1.g. of this rule are to be followed.

5.1.2. Test procedures identified in ~~Chapter 40 of the Code of Federal Regulations~~ 40 CFR §136.3, EPA publication SW-846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods or other methods approved by EPA or the ~~Director~~ Secretary will be utilized for the analysis of all samples required to be reported to the ~~Division of Environmental Protection~~ Department.

5.1.2.a. All procedures other than those set forth in ~~paragraph subdivision~~ 5.1.2 of this rule are considered ~~alternative analytical methods~~ alternate test procedures (ATP). Laboratories must make special application to the ~~Division~~ Department for the use of alternate analytical methods and such application must include a showing of acceptable comparability data ATPs in accordance with 40 CFR §136.4.

5.1.2.b. All laboratories which have previously been granted approval to use an alternate analytical method ATP by the US EPA will be allowed to continue using such method after ~~it submits~~ submitting written proof of the approval to the ~~Division~~ Department.

### 5.1.3. General Laboratory Practices.

#### 5.1.3.a. Chemistry - Inorganic Nonmetals and Trace Metals.

5.1.3.a.A. Laboratories utilizing visual comparison devices must calibrate the standards incorporated into ~~such~~ of this type devices at least once every four months. The laboratory will make and maintain records of the date and method of each ~~such~~ calibration.

5.1.3.a.B. Distilled and deionized water is to have ~~at a minimum,~~ resistivity values value ~~between~~ ≥ 0.5 -2.0 megohms-cm (2.0-0.5 umhos/cm) at 25 degrees ~~centigrade~~ Celsius.

5.1.3.a.C. Analytical Reagent grade chemicals should be used for most analyses. Detailed information on reagent grades is set forth in the approved analytical methods and their recommendations must be followed for the reagent quality to be used for each test or analysis.

5.1.3.a.D. ~~Determine~~ Where applicable, method detection limits must be determined for all ~~Limited Chemistry, Atomic Absorption, Gas Chromatography/Mass Spectroscopy parameters tested categories and parameters.~~ The Method method found in 40 CFR Part 136, Appendix B must be used for this calculation.

5.1.3.a.E. ~~Field blanks, field duplicates and trip blanks~~ must be ~~performed on those prepared and analyzed for the~~ test categories named in part 5.1.3.a.D of this rule and parameters identified in

subdivisions 3.2.1 and 3.2.2, at a minimum of two times per year, ~~one~~ once during the cold wet season and ~~one~~ once during the warm dry season.

5.1.3.a.F. Field duplicates must be collected and analyzed for the test categories and parameters identified in subdivisions 3.2.1, 3.2.2, 3.2.10, and 3.2.11, at a minimum of two times per year, once during the cold wet season and once during the warm dry season.

#### 5.1.3.b. Microbiology.

5.1.3.b.A. Laboratory sterilization procedures are to meet the requirement of 121 degrees centigrade and the time adjusted for the type and volume of material to be sterilized as specified in the standardized methods. All practices and procedures for the conduct of microbiological examinations must follow the guidance in methods approved in 40 CFR §136.3 Table IA.

5.1.3.b.B. Membrane filter assemblies must be sterilized after each sample filtration series, the end of which is marked by the lapse of 30 minutes or more between sample filtrations. The temperature of incubators, water baths and heat blocks must be monitored in accordance with approved methods or as specified by regulation.

5.1.3.b.B.1. Each incubator, water bath or heat block must have a thermometer placed so as to give a representative temperature measurement for the device.

5.1.3.b.B.2. Incubators, water baths and heat blocks must be clean and properly maintained in accordance with the manufacturer's instructions.

5.1.3.b.C. At least two minutes of ultraviolet light or boiling water may be used on a membrane filter assembly to prevent bacterial carry over between filtrations. Autoclaves must meet the specified temperature tolerances in the approved method. The use of a pressure cooker is not recommended.

5.1.3.b.C.1. A continuous temperature recording device or a maximum temperature registering thermometer must be used to measure the temperature during each autoclave cycle.

5.1.3.b.C.2. The laboratory must use a sterilization verification technique such as autoclave tape to indicate proper sterilization of equipment and contaminated materials.

5.1.3.b.C.3. Autoclaves must be clean and properly maintained in accordance with the manufacturer's instructions.

5.1.3.b.C.4. Autoclaves must be serviced annually by a qualified person. Servicing must include a pressure check and calibration of temperature devices.

5.1.3.b.D. Dried glassware may be sterilized in a hot air oven at 170 centigrade for a minimum of two hours. Hot air sterilization ovens must be of sufficient size to prevent crowding and constructed to give uniform sterilization.

5.1.3.b.D.1. Hot air sterilization ovens must be clean and properly maintained according to the manufacturer's instructions.

5.1.3.b.E. Media may be prepared from dehydrated media stock or commercially prepared ampouled media may be used for routine bacteriological procedures. Appropriate optical counting equipment must be used in accordance with approved methods.

5.1.3.b.F. Rinse water and dilution water used by the laboratory must be prepared according to instructions in the standardized methods and the final pH adjusted to  $7.2 \pm 0.1$ . Appropriate inoculating equipment must be used in accordance with approved methods.

5.1.3.b.G. Appropriate membrane filters, pads and dishes must be used in accordance with approved methods.

5.1.3.b.H. A sterility blank must be analyzed:

5.1.3.b.H.1. with each lot or batch of media, either purchased or prepared in the laboratory;

5.1.3.b.H.2. with each lot of membrane filters, pads and dishes;

5.1.3.b.H.3. with each lot or batch of sample containers, either purchased or prepared in the laboratory;

5.1.3.b.H.4. with each lot or batch of rinse/dilution water, either purchased or prepared in the laboratory; and

5.1.3.b.H.5. with each lot or batch of culture tubes, either purchased or prepared in the laboratory.

5.1.3.b.I. Field blanks must be prepared and analyzed for the test categories and parameters identified in subdivision 3.2.6, at a minimum of two times per year, once during the cold wet season and once during the warm dry season.

5.1.3.b.J. Field duplicates must be collected and analyzed for the test categories and parameters identified in subdivision 3.2.6, at a minimum of two times per year, once during the cold wet season and once during the warm dry season.

5.1.3.b.K. All equipment and reagents must be sterilized prior to use. All contaminated equipment must be sterilized prior to reuse. All contaminated material must be rendered innocuous prior to disposal.

5.1.3.c. Aquatic Toxicity Whole Effluent Toxicity Testing.

5.1.3.c.A. Natural or artificial sources of water may be used, but natural sources are preferred.

5.1.3.c.B. Natural sources are to be free of pollution, low in turbidity, high in dissolved oxygen, low in B.O.D., and the pH must be favorable to the maintenance of the organisms.

5.1.3.c.C. Municipal water supplies are acceptable. Water from a municipal source must be passed through a filter to remove organic chemicals and chlorine before use, and be conditioned for the species under test.

5.1.3.c.D. Test organisms are to be fed as outlined in ~~Methods of Measuring Acute Toxicity, EPA manual 600/4-85-013~~ the approved methods, subdivision 3.2.7.

5.1.3.c.E. Treatment of diseased or parasitized organisms is to be in accordance with the procedures given in ~~APHA Standard Methods and Methods for Measuring Acute Toxicity, EPA manual 600/4-85-013~~ the approved methods, subdivision 3.2.7.

5.1.3.c.F. Organisms treated for disease or parasites are not to be used in aquatic whole effluent toxicity tests for at least 10 days after treatment.

5.1.3.d. Radiochemistry.

5.1.3.d.A. Analytical reagent grade (AR) chemicals will be used for all analyses, unless otherwise required for an individual analytical procedure.

5.1.3.d.B. Radioactive standards and radioactive wastes are to be stored in an enclosed and properly labeled area, either within the laboratory or in a separate room or facility. All radioactive materials must be safely stored in suitable containers.

5.1.3.d.C. Standards and samples are to be prepared in an area of the laboratory specifically designated for and exclusively used for the preparation of radioactive standards and samples. Adequate precautions must be taken in this area to ensure against radioactive contamination.

5.1.3.e. ~~Gas Chromatography/Mass Spectrometry - Volatile Organic, Extractable, and Semi-volatile Organic Testing.~~ Equipment must be capable of meeting the quality control requirements specified in paragraph subdivision 5.2.6 of this rule.

5.1.3.e.A. Trip blanks must be prepared, transported and analyzed for each batch of samples for analysis for Nonpotable Volatile Organic Chemicals, subdivision 3.2.3.

5.1.3.e.B. A method blank must be analyzed with each batch of samples.

5.1.3.e.C. A laboratory control sample must be analyzed with each batch of samples.

5.1.3.e.D. A matrix spike and a matrix spike duplicate must be analyzed with each batch of samples. In situations where the laboratory does not receive sufficient sample volume or quantity to perform a matrix spike and a matrix spike duplicate, a laboratory control sample and a laboratory control sample duplicate must be analyzed.

5.1.3.e.E. Surrogate spike compounds must be added to all samples and quality control standards prior to preparation/extraction and analysis where applicable. The recovery of surrogate compounds must be compared to acceptance limits established in the appropriate method. If acceptance limits are not provided in the method, the laboratory must use appropriate procedures to establish in-house acceptance limits.

5.1.3.e.F. Any time criteria are not met with respect to blanks, laboratory control samples,

matrix spikes, matrix spike duplicates, or surrogates, data must be reported with appropriate qualifiers describing the situation and explaining the effect on the results.

5.2. Quality Control Programs ~ Each laboratory will develop, and have on file available for inspection a written description of the current laboratory Quality Assurance Program Plan. This written description will outline the procedures which the laboratory uses in meeting the quality control requirements set forth in this subsection. Managers, supervisors, and analysts should participate in developing the ~~quality control program~~ Quality Assurance Program Plan. Each participant within the laboratory is to have access to a copy of the quality control program Quality Assurance Program Plan and the detailed guidelines for implementation of the participant's responsibility. A record of analytical control tests and quality control checks on media, materials, and equipment will be prepared by the laboratory and retained for at least three years.

5.2.1. A written description includes, but need not be limited to, the following for each category:

5.2.1.a. Procedures which the laboratory will use in meeting the quality control requirements of this rule pertaining to laboratory equipment and instrumentation, and the frequency with which ~~such~~ these procedures will be performed.

5.2.1.b. Each laboratory will develop and maintain a written ~~laboratory procedures standard operating procedure (SOP)~~ manual, which sets forth, in detail, the methods ~~which~~ the laboratory will use in chemical analyses or tests for all parameters for which the laboratory is seeking certification.

5.2.1.c. Each laboratory must record and retain all raw data and calculations derived from analyses and quality control procedures in a manner that will provide easy verification of the data and calculations during on-site inspections.

5.2.2. ~~Limited Chemistry and Atomic Absorption laboratories must perform the following internal quality control checks:~~ Laboratories conducting analyses for Inorganic Nonmetals and Trace Metals must perform the following internal quality control checks:

5.2.2.a. Each analytical balance, with the exception of electronic balances without internal calibration controls, is to be checked and adjusted annually by a balance service technician. The accuracy of each analytical balance must be checked on each day of use using at least ~~two Class S weights, one in the gram range and one in the milligram range~~ three Class S weights covering the range expected to be encountered during routine analysis. The weights used, weight detected, dates on which checks were performed, analyst, record of balance level check and other pertinent information is to be recorded in a log book. The daily weighing check will be used as an indication of proper operation of electronic balances.

5.2.2.b. The accuracy of the wavelength setting of the ~~spectrophotometer~~ spectrophotometers without built-in automatic system diagnostics is to be checked yearly by comparing the wavelength setting to the absorption maxima of ~~colored standards of filters such as didymium glass or by using standard Cobalt Chloride solution which has a maximum absorbance at a wavelength of 510 nm~~ appropriate standards. Any observed variation of the wavelength setting from the expected value must be within the manufacturer's stated tolerance for the instrument. The check data ~~is to~~ must be recorded in a ~~log book~~ logbook.

5.2.2.c. pH meters are to be calibrated prior to ~~usage~~ use with two pH buffer standards bracketing the value to be measured and the calibration recorded. Records of pH meter standardization must

be maintained in a laboratory notebook that documents the date of standardization, calibration buffers used and the initials of the individual conducting the standardization. If the meter displays a slope or other indicator of performance, this information must also be recorded.

5.2.2.c.A. Aliquots of standard buffers may not be used for longer than one day.

5.2.2.d. ~~The linearity of Conductivity~~ conductivity meters must be checked over the range of the instrument using at least five concentrations of standard solutions yearly. The cell constant, k, is to be determined from this data. The meter must be calibrated using at least one standard with each use. The results of these calibrations must be recorded in a log book.

5.2.2.e. A daily record of the drying oven temperature must be maintained for each day on which the drying oven is in use. The oven thermometer must be kept in a sand bed or other inert material.

5.2.2.e.A. The oven temperature must be recorded immediately prior to placing samples in the oven and then again immediately prior to removing samples at the end of the drying cycle.

5.2.2.f. The temperature of each refrigerator and each incubator is to be either recorded continuously or recorded daily from in-place thermometers immersed in liquid and placed on one of the shelves being used. The refrigerator thermometer must be kept in a low vapor pressure liquid such as 50/50 water/Ethylene Glycol.

5.2.2.g. The accuracy of all thermometers used to monitor temperatures will be verified by comparing the readings of such thermometers with the readings of a certified thermometer. ~~Glass thermometers are to be verified yearly and metal thermometers quarterly. A record of each thermometer identification and the results of the test are to be kept in a log book. Refer to paragraphs 4.2.7.c and 4.2.7.d.~~

~~5.2.2.h. Standard curves consisting of a minimum~~ A calibration curve must consist of one reagent blank and 4 four standards ~~are to be prepared for each analysis requiring such a calibration curve. This curve will be verified in prior to each subsequent analyses analysis by using analyzing at least one reagent blank and one standard at or near the concentration levels normally encountered in such analyses midpoint of the curve. Such~~ These verifications are considered satisfactory if the results are within 10 per cent of the original curve when result for the reagent blank is less than the method detection limit and the result for the midpoint standard is within 10 per cent of the expected value following vendor approved procedures for instrument calibration.

5.2.2.i. Standard curves used in the analysis of parameters in the ~~Atomic Absorption Trace Metals~~ category will be prepared ~~as stated above in subparagraph 5.2.2.h of this rule except that a minimum of one reagent blank and 2 standards are required~~ in accordance with approved methods.

5.2.2.j. ~~In all cases where possible~~ Where practicable, replicated duplicate sample analyses are to be conducted for parameters in the ~~Limited Chemistry and Atomic Absorption~~ Inorganic Nonmetals and Trace Metals categories to verify the precision of the method. ~~Replicate Duplicate~~ Duplicate analyses will be performed at a frequency of 5 percent. Where less than 20 samples are analyzed at one time the analyst is to verify the precision once per analysis batch. Documentation will be made, in tabular form and on control charts, of precision testing.

5.2.2.j.A. In cases where sample results are normally below the method detection limit,

precision must be determined by analysis of matrix spikes and matrix spike duplicates.

5.2.2.k. ~~In all cases where possible~~ Where practicable, spiked sample analyses will be conducted to verify the accuracy of the method at the same frequency as set forth in ~~subparagraph~~ paragraph 5.2.2.j of this rule. Documentation will be made, in tabular form and on control charts, of ~~both precision and~~ accuracy testing.

5.2.2.l. ~~In all cases where possible~~ Where practicable, standard deviations are to be calculated and documented for all applicable measurements being conducted in the ~~Limited Chemistry and Atomic Absorption~~ Inorganic Nonmetals and Trace Metals categories (spiked sample recoveries). Standard deviations must be documented in tabular form and on control charts.

### 5.2.3. Microbiology.

5.2.3.a. A start and finish ~~MF~~ membrane filter (MF) sterile control test of rinse water, media and supplies will be conducted for each sample filtration series. If the control tests indicate contamination, then all data which has been generated through tests involving the use of the contaminated materials will be rejected and the laboratory must request immediate resampling of those ~~waters involved in the laboratory error samples associated with the observed contamination.~~

5.2.3.b. When analyzing duplicate aliquots to assess precision, the same series of volumes/dilutions must be utilized for the sample and the duplicate.

5.2.3.c. The method detection limit for bacteria by the membrane filter method is defined as 1 colony /100 ml, adjusted as necessary for filtered volumes other than 100 ml.

~~5.2.3.b.~~ 5.2.3.d. The MPN most probable number (MPN) test for bacteria must be carried through the "confirmed" stage for Fecal Coliform.

5.2.4. ~~Aquatic~~ Whole Effluent Toxicity Testing - An acceptable degree of precision for definitive toxicity tests is the 95 percent confidence level or fiducial intervals within less than  $\pm 30$  percent of the 48 hour or incipient LC50 value.

5.2.4.a. ~~A Five~~ reference toxicant test is tests on each reference toxicant and species combination evaluated by the laboratory are to be performed to establish the validity of effluent toxicity data generated by bioassay laboratories.

5.2.4.a.A. After completion of the requirements in paragraph 5.2.4.a, a reference toxicant test must be performed each month in which whole effluent toxicity testing is conducted using the same method and species as used for the whole effluent toxicity testing.

~~5.2.4.b. Reference toxicant materials are available from the Environmental Protection Agency, Environmental Support Laboratory, Cincinnati, Ohio. Instructions for their use and the expected LC50 values are provided with the samples.~~ Quality control and proficiency test samples are available from commercial sources.

5.2.4.c. The reference toxicant test must be conducted within 7 days immediately preceding ~~an~~ a whole effluent toxicity test or concurrently with the whole effluent toxicity test.

5.2.4.d. A control chart, as described in Methods of Measuring Acute Toxicity EPA manual approved methods, should be prepared for each reference toxicant/~~organism~~ species combination, and successive LC-50's plotted and examined to determine if the results are within prescribed limits.

5.2.4.e. If the LC-50 of a reference toxicant does not fall in the expected range for the test organisms, the sensitivity of the test system is suspect. In this case, the test procedure should be examined for defects, and a different batch of test organisms should be employed in repeating the reference toxicant and effluent toxicity test.

5.2.5. Radiochemistry - Permanent records must be maintained of preventive maintenance, periodic inspections, testing, and calibration for the proper operation of radiation instruments and analytical balances; validation of methods; evaluation of reagents and volumetric equipment; surveillance of results; and remedial actions taken in response to detected defects. Such records must be kept on file by the laboratory for a period of at least five years.

5.2.5.a. To verify internal laboratory precision, duplicate analyses equal to ten percent of sample analyses shall be performed. The differences between duplicate measurements shall be less than twice the standard deviation of the specific analysis as described in Environmental Radioactivity Laboratory Intercomparison Studies Program, EPA 600/4-77-001 ~~et seq~~ and other guidance for EPA or the Secretary.

5.2.5.b. One background and one calibration standard must be tested each day at a 5 percent level or fraction thereof.

5.2.5.c. Work records of quantitative tests are to indicate final results together with all corresponding instrument readings and calculations. Where instrumentation produces tracings or printouts, such tracings or printouts may serve as the work record.

5.2.6. Gas Chromatography and Mass Spectrometry Volatile Organic, Extractable and Semi-volatile Organic Testing.

5.2.6.a. The frequency and procedures for satisfying each of the requirements listed in ~~subparagraphs paragraphs~~ 5.2.6.b and 5.2.6.c of this rule are described in detail in EPA publication SW-846, Chapter 40 of the Code of Federal Regulations 40 CFR Part 136, and/or in the US EPA Contract Laboratory Program Statement of Work for Organics Analysis.

5.2.6.b. Minimum quality control operations necessary to satisfy the analytical requirements associated with the determination of semi-volatile and volatile organic compounds by gas chromatographic methods will include the following:

5.2.6.b.A. Evaluation of Appropriate Blank Materials.

5.2.6.b.B. Surrogate Spike Response Monitoring.

5.2.6.b.C. Matrix Spike and Duplicate Analyses or Matrix Spike Duplicate.

5.2.6.b.D. Verification of Response and Calibration.

## 5.2.6.b.E. Conformational Analysis.

5.2.6.c. Minimum quality control operations to satisfy the analytical requirements associated with gas chromatographic/mass spectrometry determinations of semi-volatile and volatile compounds will be as follows:

5.2.6.c.A. Documentation of GC/MS Mass Calibration and Tune Abundance Patterns.

5.2.6.c.B. Documentation of GC/MS Response Factor Stability.

5.2.6.c.C. Internal Standard Response and Retention Time Documentation.

5.2.6.c.D. Surrogate Spike Recovery Monitoring

5.2.6.c.E. Matrix Spike and Duplicate Analyses or Matrix Spike Duplicate.

## 5.3. Records and Data Reporting.

5.3.1. Records of analyses, including but not limited to all raw data, calculations, quality control data, and laboratory reports, are to be kept by the laboratory for at least ~~three~~ five years unless otherwise specified.

5.3.2. The following information is to be retained by the laboratory as part of the records of analysis and the records of custody:

5.3.2.a. The laboratory number or other form of identification of the sample;

5.3.2.b. ~~The date, time, specific site of sampling, and the name of the person who collected the sample or the laboratory which submitted the sample~~ The chain of custody form as required under paragraph 5.1.1.c;

5.3.2.c. The date and time when the laboratory received the sample, whether the sample was received preserved or unpreserved;

5.3.2.d. The date and time of analysis of the sample;

5.3.2.e. The person or persons who performed the analysis;

5.3.2.f. The type of analysis performed and the analytical method or methods employed;

5.3.2.g. ~~The results of the analysis and the raw data generated by the analysis~~ and results of the analysis; and

5.3.2.h. The name and address of the laboratory to which the sample was forwarded, if the analysis was not performed at the laboratory which first received the sample.

5.3.3. If the chain of custody information is reported on a chain of custody form, a copy of the form must be attached to the sample report form.

5.3.4. The results of each analysis are to be calculated and entered on the sample report form which is to be forwarded to the person requesting the analysis of the sample. A careful check is to be made to assure that each result entered on the sample report form is the same as the result generated by the analysis and entered on the bench sheet or other raw data document.

5.3.5. The original or true duplicate of the results of the test or analysis is to be sent promptly to the person who requested such tests or analysis, and must be signed by the laboratory manager or a designee whose designation has been submitted to the Division in writing documented in the laboratory Quality Assurance Manual or other instrument describing pertains within the laboratory.

5.3.6. Whenever a laboratory ~~refers~~ subcontracts samples to another laboratory, the person ordering the examination is to receive the original laboratory report or a true duplicate of that report on the form ~~of the~~ generated by the subcontract laboratory that actually performed the test or analysis.

5.3.7. If results are entered into a computer storage system, a printout of the data must be verified with the raw data.

5.3.8. The final data report must contain the following:

5.3.8.a. The name, address, and contact information of the laboratory performing the analyses;

5.3.8.b. Sample identification number (unique identifier assigned by the laboratory);

5.3.8.c. Sample description;

5.3.8.d. Date sample was collected;

5.3.8.e. Date sample was received at the laboratory;

5.3.8.f. Date of each individual analysis;

5.3.8.g. Method detection limit for each parameter;

5.3.8.h. Identity of the test method(s);

5.3.8.i. Deviations from the test method, if applicable;

5.3.8.j. Disclosure of contract laboratory and original or true copy of the results from the contract laboratory; and

5.3.8.k. Identity of the responsible agent.

§47-32-6. Appeals.

Appeal to Environmental Quality Board - Any person aggrieved or adversely affected by an order or action of the ~~Director~~ Secretary made and entered in accordance with the provisions of this rule or by issuance or denial of certification under the provisions of this rule, may appeal to the Environmental Quality Board in the same manner as appeals are taken under W. Va. Code §22B-1-7 to have the order vacated or modified. The filing of a notice of appeal will not automatically stay an order or action of the ~~Director~~ Secretary. The Environmental Quality Board will be reimbursed from the Environmental Laboratory Certification Fund for expenses incurred for appeal hearings filed with the Board relative to the provisions of this rule.

TABLE 1:

ENVIRONMENTAL LABORATORY CERTIFICATION  
ANNUAL FEE SCHEDULE

Limited Chemistry .....	\$25.00 per analyte or parameter
Atomic Absorption .....	\$10.00 per metal
Gas Chromatography/Mass Spectroscopy .....	\$500.00 for 600 or SW846 series methods each
Microbiology .....	\$50.00 per parameter per method
Aquatic Toxicity .....	\$500.00 Acute or Chronic each
Radiochemistry .....	\$500.00
Hazardous Waste Characteristics .....	\$100.00 per procedure
Application fee - initial application .....	\$100.00
Application fee - renewal application .....	\$80.00
Application fee - additional parameters/methods .....	
When added other than at renewal .....	\$50.00
Trace Metals - per metal - one method .....	\$20.00
Each additional method for the same metal .....	\$10.00
Nonpotable water Inorganic Nonmetals - per analyte or parameter - one method .....	\$50.00
Each additional method for the same analyte or parameter .....	\$25.00
Nonpotable water Volatile Organic Chemicals - per method .....	\$250.00
Per category maximum .....	\$750.00
Nonpotable water Extractable and Semi-volatile Organic Chemicals - per method .....	\$250.00
Per category maximum .....	\$750.00
Nonpotable water Dioxin and Difuran .....	\$1000.00
Nonpotable water Microbiology - per parameter per method .....	\$75.00
Whole Effluent Toxicity - acute .....	\$750.00
Whole Effluent Toxicity - chronic .....	\$750.00
Nonpotable water Radiochemistry .....	\$600.00
Solid and Chemical Trace Metals - per metal - one method .....	\$20.00
Each additional method for the same metal .....	\$10.00
Solid and Chemical Inorganic Nonmetals - per analyte or parameter - one method .....	\$50.00
Each additional method for the same analyte or parameter .....	\$25.00
Solid and Chemical Volatile Organic Chemicals - per method .....	\$250.00
Per category maximum .....	\$750.00
Solid and Chemical Extractable and Semi-volatile Organic Chemicals - per method .....	\$250.00
Per category maximum .....	\$750.00
Solid and Chemical Dioxin and Difuran .....	\$1000.00
Solid and Chemical Microbiology - per parameter per method .....	\$75.00
Solid and Chemical Radiochemistry .....	\$600.00

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Hazardous Waste Characteristics - per procedure.....\$150.00

TABLE 2:

EDUCATION & EXPERIENCE REQUIREMENTS  
FOR SUPERVISORS

CERTIFICATION CATEGORY	EDUCATION + EXPERIENCE (Years)(1)	EXPERIENCE (Years)(2)	SPECIAL REQUIREMENTS	
Limited Chemistry & Microbiology	12 14 16	+ + +	2 or 1 or 1	ETC Certificate(3)
Atomic Absorption	16	+	2(4)	2 years of <u>which experience</u> must be in atomic absorption
Gas Chromatography	16	+	2(4)	2 years of <u>which experience</u> must be in gas chromatography
Mass Spectrometry	16	+	2(4)	2 years of <u>which experience</u> must be in mass spectrometry
<del>Aquatic</del> <u>Whole Effluent</u> Toxicity	16	+	2(4)	2 years of <u>which experience</u> must be in <u>aquatic whole effluent</u> toxicity testing
Radiochemistry	16	+	2(4)	2 years of <u>which experience</u> must be in radiochemistry

## Notes:

(1) 12 years = High School diploma or GED.

14 years = 2 years of college with emphasis in laboratory technology or a natural science.

16 years = Bachelors degree in Chemistry, Biology, Environmental Science, or other natural science.

(2) Substitution - 1 year of laboratory experience within the specific certification category may be used for each year of education beyond 12 years.

(3) ETC Certificate = Environmental Training Center Laboratory Technician Certificate required of all POTW laboratory supervisors.

(4) No substitution is allowed for the 2 years of minimum experience required.

TABLE 3:

## QUALITY OF PURIFIED WATER USED IN MICROBIOLOGY TESTS

Test	Monitoring Frequency	Limit
<u>Chemical Tests:</u>		
Conductivity	With each use	>0.5 megohms resistance or <2 umhos/cm at 25 degrees <del>centigrade</del> <u>Celsius</u>
pH	With each use	5.5 - 7.5
Heavy Metals ( <del>single</del> ) (Cd, Cr, Cu, Ni, Pb, Zn)		
<del>Cd, Cr, Cu, Ni, Pb, Zn</del> ( <del>single</del> )	Annually	<0.05 mg/L
(total)	Annually	<0.10 mg/L
Ammonia/Organic N	Monthly	<0.10 mg/L
Total Chlorine Residual	with each use	< detection limit ( <u>0.01 mg/L maximum which ever is lower</u> )
Total Organic Carbon	Monthly	<1.0 g/L
<u>Bacteriological Tests:</u>		
Heterotrophic Plate Count	Annually	<1000 colonies/mL

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Environmental Laboratories Certification and Standards of Performance **47-32**

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Department of Environmental Protection

Address: 601 - 57th Street  
Charleston, WV 25304

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Phone Number: 304-926-0499 ex 1341 Email: darnold@wvdep.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no costs associated with this rule change. Estimated revenue increase is \$107,466.00 annually, beginning upon full implementation. This increase will be generated by an increase in the annual certification fees paid by laboratories and a new application fee, and is necessary to recover the agency's actual costs in administering this program.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	107,466.00

Rule Title: Environmental Laboratories Certification and Standards of Performance

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

To recover the costs needed to cover the expenditures occurring in this program, the agency determined that it needed an additional \$107,000 in fees annually. To generate this amount of money, the agency examined the fees it has been assessing laboratories over the last four (4) years, and derived the percentage increase that was necessary by type of laboratory. The average increase in certification fees determined by this method was approximately 80%.

In addition, the proposed rule contains a new fee that is intended to recover the administrative costs of reviewing applications under the rule. It will generate \$12,240.00 based on the 153 labs currently certified under the rule.

Increase in current certification fee-----	\$95,266.00
New application fee-----	\$12,240.00
Total increase in revenue generated-----	\$107,466.00

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The program's annual expenditures amount to \$250,000, but the revenues generated by the current certification fee are only \$118,000 with an additional \$39,000 in audit fees. The proposed changes in the fee schedule are designed to generate the approximately \$107,000 additional revenues needed to match current expenditures. The program's expenditures will still be below the \$300,000 statutory maximum allowed.

Date: 7/11/08

Signature of Agency Head or Authorized Representative

