

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 97003

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-028-97

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

For Filing Administrative
Regulations

For Emergency
Regulations Only

Effective Date _____

Expiration Date _____

Governor's Signature

State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: Petition 97003 (LCB File R-028-97) permanently amends NAC 445A.055 to 445A.066, the Certification of Laboratories to Analyze Substances in Water, by amending the existing regulation to be more consistent with the Safe Drinking Water Acts laboratory certification program by replacing "warning limits" with "acceptance limits". Affected citations includes NAC 445A.057, 445A.060, 445A.061 and 445A.062.

Authority citation other than 233B: NRS 445A.425 and 445A.428

Notice date: August 21, August 27 and September 2, 1997

Hearing date: September 23, 1997

Date of Adoption of Agency: September 23, 1997

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 97003 (LCB R-028-97)**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445A.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 97003 (LCB R-028-97), was noticed three (3) times: April 29, May 7 and May 15, 1997 as a temporary regulation and on August 21, August 27 and September 2, 1997 as a permanent regulation in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. The public was also mailed the public notice through the Environmental Commission's mailing list. The regulatory workshop was held on September 9, 1997. Notice was provided in the above public notice during permanent adoption process. No public or business comments were received at the workshop. No public comments were received in regards to this petition. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

- | | | |
|-----|---|----|
| (a) | Attended each hearing; | 22 |
| (b) | Testified at each hearing; | 14 |
| (c) | Submitted to the agency written comments: | 6 |

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. Three water quality testing laboratories testified at the temporary hearing. All the comments were supportive of the change in the regulations. No further comment was received during permanent adoption of the regulation. No written comments were received from the regulated community during the temporary and permanent adoption by the Commission. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 138, Carson City, Nevada 89706-0851.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted by the State Environmental Commission without amendments. No amendments were proposed or offered at the September 23, 1997 hearing.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

This petition does not have an adverse economic effect upon the public, nor is there an estimated immediate or long-term economic effect upon the public. There will be no new costs to affected businesses since the current regulations addresses payments necessary to cover the cost of site evaluations. The regulation will not have an adverse economic effect upon businesses and the regulation will have a beneficial effect by creating more consistency with other state's certification programs and EPA's laboratory certification program. The regulated business community will receive a positive immediate and long term benefit by the increased consistency of the regulations.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no increased cost to the Division of Environmental Protection for enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agencies which the proposed regulation overlaps or duplicates.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This regulation is no more stringent than federal requirements.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation does not include an increase in fees.

END OF FILING STATEMENT FOR 97003 (LCB R-028-97)

**ADOPTED PERMANENT REGULATION OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R-028-97
Petition 97003**

Explanation: Matter in italics is new language. Matter in [] is material to be omitted.

AUTHORITY: NRS 445A.425 and 445A.428

Section 1. NAC Chapter 444A.057 is hereby amended to read as follows:

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

1. The laboratory has otherwise complied with the requirements set forth in NAC 445A.055 to 445.067, inclusive;

2. The laboratory is certified by:

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

(b) The United States Environmental Protection Agency;

3. The laboratory certification officer determines that the state providing the certification has adopted a certification program that is equivalent to the certification program adopted by this state and that state accepts the results of evaluations conducted pursuant to that program; and

4. The laboratory files with the laboratory certification officer a copy of an acceptable report relating to the latest evaluation conducted at the site of the laboratory by;

(a) The state in which the laboratory is certified;

(b) An independent certification organization which has been approved by the laboratory certification officer; or

(c) The United States Environmental Protection Agency.

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

Sec. 2. NAC Chapter 444A.060 is hereby amended to read as follows:

445A.060 1. Except as otherwise provided in subsection 3, to be certified and to maintain certification to analyze:

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

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set.

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

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

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

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

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

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

Sec. 3. NAC Chapter 444A.061 is hereby amended to read as follows:

445A.061 1. If a laboratory that is certified to analyze for a contaminant, trace metals, minerals, nutrients, demands, total cyanide, nonfilterable residue, oil and grease, total phenolics, total residual chlorine or other category of contaminant fails to determine *satisfactorily* one or more levels of concentration of a contaminant pursuant to the **[warning] acceptance** limits established by the United States Environmental Protection Agency, the certification of the laboratory must be changed to provisional certification for that contaminant. If, in the next available sample set provided by the United States Environmental Protection Agency, the laboratory fails to determine *satisfactorily* one or more levels of concentration for that contaminant pursuant to the required criteria, the certification of the laboratory for that contaminant must be revoked.

2. If a laboratory that is certified to analyze for polychlorinated biphenols in water or in oil, pesticides, volatile halocarbons or volatile aromatics fails to analyze *satisfactorily* a minimum of 80 percent of the compounds provided pursuant to the **[warning] acceptance** limits established by the United States Environmental Protection Agency, the certification of the laboratory must be changed to provisional certification for that category of contaminants. If, in the next available sample set provided by the United States Environmental Protection Agency, the laboratory fails to analyze *satisfactorily* at least 80 percent of the compounds provided in the category pursuant to the required criteria, the certification of the laboratory for that category of contaminants must be revoked.

3. If a laboratory that is certified to analyze a radiochemical contaminant fails to analyze *satisfactorily* that

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contaminant pursuant to the criteria for acceptance established by the United States Environmental Protection Agency, the certification of the laboratory for that contaminant must be changed to provisional certification. If, in the next available sample set provided by the United States Environmental Protection Agency, the laboratory fails to analyze *satisfactorily* the sample set pursuant to the requirements of this subsection, the certification of the laboratory for that contaminant must be revoked.

4. If a laboratory that is certified to analyze a microbiological contaminant fails to analyze satisfactorily 80 percent of at least one sample set in each category, the certification of the laboratory must be changed to a provisional certification for that contaminant. If, in the next sample set provided by the United States Environmental Protection Agency, the laboratory fails to analyze satisfactorily a minimum of 80 percent of one set of samples in each category, the certification of the laboratory for that contaminant must be revoked.

5. If a laboratory that is certified to perform toxicity bioassays fails to analyze *satisfactorily* the samples for performance evaluation pursuant to the criteria for acceptance established by the United States Environmental Protection Agency, the certification of the laboratory must be changed to a provisional certification for that category. If, in the next sample set provided by the United States Environmental Protection Agency, the laboratory fails to analyze satisfactorily for toxicity, the certification of the laboratory for that category must be revoked.

Sec. 4. NAC Chapter 444A.062 is hereby amended to read as follows:

445A.062 1. Except as otherwise provided in subsection 2, the laboratory certification officer shall conduct an evaluation at the site of each laboratory in this state that applies for certification pursuant to NAC 445A.055 to 445A.067, inclusive. The evaluation must be conducted after the laboratory certification officer receives acceptable data from the United States Environmental Protection Agency or other supplier concerning the analysis of samples by the laboratory pursuant to NAC 445.060 and 445.061. Within 60 days **[of] after** receiving the data, the laboratory certification officer shall conduct an evaluation at the site of the laboratory unless another mutually acceptable date is established in writing.

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

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

3. The laboratory certification officer shall:

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

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

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

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

END OF LCB File No. R-028-97