

**APPROVED MINUTES**  
Special Meeting  
February 18, 2021  
11:00AM – 1:00PM  
Wisconsin State Laboratory of Hygiene  
2601 Agriculture Drive  
Madison, WI 53718

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**Attendees:**

**WSLH/DNR Participants:** Dave Webb, Dr. Jamie Schauer, Jan Klawitter, Kevin Karbowski, Camille Danielson, Erin Mani, Noel Stanton, Tom Trainor (DNR Chemist)

**Board Members:** Chair Jim Morrison, Vice Chair Greg Pils, Dr. Richard Moss, Dr. German Gonzalez, Dr. Jon Meiman, Jeff Kindrai, Gina Green-Harris, DNR Alternate – Zana Sijan

**Northern Lake Service, Inc. Participants:** RT Krueger, Steve Hefter, Grant Johnson, GK Williams

**Public Attendees:** Jim Rosenberg, Ron and Winnie Krueger

<p><b>1. Call to Order – Roll call by Chair James Morrison 11:05am</b> <i>Issues with Zoom connection caused a small delay</i></p>
<p><b>2. Approval of Agenda</b></p>
<p><b>3. Scheduled Public Hearings</b></p>
<p><b>4. Adjournment 1:03PM</b></p>

Chairman Jim Morrison introduced himself and requested brief introductions for the benefit of Mr. RT Krueger, president of Northern Lake Service, Inc. (NLSI), which were made by each board member, followed by WSLH staff.

Chairman Morrison then invited Mr. RT Krueger to introduce himself, and others present, supporting him: Employees Steve Hefter (Northern Lake Service Inc. (NLSI) Lab Manager) and

Grant Johnson (NLSI Assistant to QA Officer/Special Projects); GK Williams (NLSI Board Member); and Jim Rosenberg (Northern Regional Economic Development Director, WEDC)

Chairman Morrison stated that the purpose of holding this Special Meeting was to provide a forum to hear the concerns that Mr. Krueger had shared with UW-Madison Chancellor Blank in a letter dated Dec 21, 2021. This letter was one of three exhibits submitted by Mr. Krueger and provided to Board Members.

Chairman Morrison advised that this session would allow Mr. Krueger to present these concerns and then allow response by Dave Webb on behalf of the WSLH, and then the Board would have the opportunity to discuss what actions they should or could take, regarding the presented concerns.

Chairman Morrison then yielded the floor to RT Krueger to present.

RT Krueger offered his thanks to Chairman Morrison and the Board. He informed the board that he is the second-generation president of Northern Lakes Service, Inc., which was started by his father in 1974. One of the first certified labs in Wisconsin, the lab employs 31 staff full-time in Crandon and 3 at their Waukesha facility. The lab has a focus on environmental compliance, testing for waste/drinking/groundwater, and works directly for municipalities via contracts. NLSI has been performing PFAS testing for nine years.

Mr. Krueger stated that he initially had two issues to address. The first was his having had made contact to protest the Wisconsin State Laboratory of Hygiene's (WSLH) pursuit of UCMR5 (Fifth Unregulated Contaminant Monitoring Rule) program approval.

The second issue was with WSLH's PFAS pricing. In doing their research and speaking with WSLH employees, they found that the WSLH website had posted incorrect prices. The matter was looked into and the website corrected, although Mr. Krueger stated that he was not provided any explanation as to why the wrong prices had been posted. Since that matter was addressed, Mr. Krueger advised that, at this meeting, he would only focus on the UCMR5 approval being pursued by WSLH.

Mr. Krueger advised that, under jurisdiction of DNR and run through the United States Environmental Protection Agency (EPA), and utilizing methods which are "hot off the press," laboratories participate in three years of testing, where their investment must be recouped. Once UCMR is done, the instrumentation can be pretty much considered obsolete.

Mr. Krueger emphasized that NLSI has achieved a reputation of excellence, and that UCMR program participation is an important revenue stream for NLSI. He referred to the fact that NLSI has many loyal customers throughout the state, as well as some outside of the state, because they are a trusted laboratory.

UCMR has a 5-year cycle, with 30 analytes per cycle and Mr. Krueger emphasized that UCMR is a program, run through EPA. He stated that he is in no way arguing against WSLH testing compounds; his complaint involves WSLH's participation in the UCMR program. He was surprised to find out and the past 4 UCMR rounds WSLH had not participated and it seemed to be competition for his laboratory.

Mr. Krueger wrote a letter to WSLH director, Dr. Jamie Schauer, but the response he received, in his estimation, didn't seem to reflect an understanding of their competition. Mr. Krueger then filed a formal complaint, writing to the UW-Madison Chancellor, Rebecca Blank. In January 2022, Mr. Krueger received a response from the UW-Madison Office of the Chancellor, which advised that by state statute the WSLH Board, not the university, is authorized to *"approve the laboratory of hygiene budget, set fees, set priorities and make final approval of laboratory resources so that the laboratory can act in response to agencies' planned objectives and program priorities"* and referred Mr. Krueger to the WSLH Board of Directors. On January 19, 2022, Mr. Krueger had a conversation with WSLH Assistant Director, David Webb, and during that time Mr. Krueger was advised there was no formal documentation of what led to the Lab's decision to continue to participate, that it was left solely to Director Schauer.

Mr. Krueger, cited the WSLH's Board of Directors Policy and Procedures, Article 3, §3.04, which reads as follows:

*Board Approval Required. The Director shall seek Board approval for all of the following contracts, prior to execution. (See Appendix 2 for sample form.):*

- a) *Any contract which the Director feels may present either public policy or private competition questions which should be resolved by the Board.*

along with WSLH Board of Directors Policy and Procedures Appendix 2, Criteria for Approval of Contracts Under Sections 3.04 and 3.05, and WSLH Board of Directors Policy and Procedures Appendix 3, a form for assessing contracts prior to execution.

Mr. Krueger asserted that the Board did not complete an evaluation process and believes that a process should be performed before any effort is made before WSLH enters into programs.

Mr. Krueger referred to Appendix 2 regarding the issue of competition with the private sector and asserting that unfair competition, should be avoided whenever possible.

(The specific text of Appendix 2 reads:

5. *“The issue of competition with the private sector is not one of absolute prohibition rather one of unfair competition. In general, however, competition with the private sector should be avoided whenever practical.”*)

Dr. Schauer’s response to Mr. Krueger, additionally cited in his letter to Chancellor Blank, was referred to by Mr. Krueger: “The WSLH application to support the UCMR5 program is focused on the national need for PFAS testing that we believe will not be met by existing accredited labs across the country.”

Mr. Krueger said our research indicates 70-90 thousand samples, approx. half will be over 6-8 EPA labs, with half targeted for small business – rough math – Would 180/month for small and 13 labs approved and at least that many – Leaves fewer than 100 monthly on the free market – 40,000/month

Mr. Krueger believes this is not an appropriate program for WSLH to participate in, without adversely affecting business. NLSI is already competing with large, multi-state labs and doesn’t want publicly-supported competition from within their own state.

Mr. Krueger referenced a Wisconsin Public Radio interview given by Dr. James Hurley, director of the Wisconsin Sea Grant Institute, that aired only hours after a phone conversation with WSLH staff about WSLH’s pursuit of UCMR5 certification. The interview was about the 2018 Husky Energy oil refinery explosion in Superior, WI. Mr. Krueger said NLSI provided extensive testing in support of the response but was not mentioned by name by Dr. Hurley, who said that only one lab in the state was capable of testing and not even the State Lab could do the testing. In the interview Dr. Hurley referenced subsequent grant funding given to the WSLH by Sea Grant. Mr. Krueger said this public grant money enabled the WSLH to compete with the private sector, and it is unfair competition.

Mr. Krueger cited other opportunities that WSLH has for funding, while NLSI has more limited analytical services and can only generate revenue via those services. They make enough from one test in order to cover doing another test. NLSI does not have grants or public funding opportunities.

In conclusion, Mr. Krueger requested that WSLH not pursue UCMR certification and wanted the WSLH contracts process to be re-evaluated.

**END OF Mr. Krueger Presentation**

## **BEGINNING of Dave Webb Presentation**

WSLH Environmental Health Division Director Dave Webb then gave his presentation focusing on three areas –

- PFAS – Approval timelines and process
- Testing capability and capacity
- Pricing

UCMR/UMCR-5 –

DNR had asked WSLH to develop PFAS testing capability. WSLH had worked with DNR in 2018 to develop capabilities. WSLH also worked with the Association of Public Health Laboratories (APHL) as there is a national need, and our method was publicly shared.

March 2021 application for UCMR5 certification, proficiency tests going on right now, with March 2022 approval if February 2022 proficiency tests are passed. EPA holding stakeholders meetings in mid-March 2020. As UCMR5 evolves, samples would be collected. It would be about 2 years of sampling and reporting in 2026.

Large Public Water Systems (PWS) with populations of 10,000 or more, and the open market is the price between Large PWS and the lab chosen, paid directly. For small PWS, where the population is 3,300-10,000, the financial mechanism is the contracting process with EPA, which pays the bill. For the tiny PWS (population <3,300) across year, randomly selected to be participants, nationwide

Monitor 2-4 times per year – 2000 samples/year, 45,000 nationwide

Capacity at WSLH is 750 water samples per year

EPA Website – 18 laboratories total approved, 14 for community services. To do small PWS, need all 3 methods, and 10 labs nationwide have all 3. Two labs in Wisconsin, WSLH and Northern Lakes are in application status, along with state public health labs in Iowa, Arkansas, and Georgia, who may apply

Pricing Principles from bylaws:

- To price tests to at least cover all costs (direct, indirect and full overhead) except where the test is priced below cost because of its public health significance and/or the need for the WSLH to maintain the capability and capacity to do this testing.
- To price test comparatively with the private sector providers when private sector prices are reasonably available, except where that is in conflict with the prior principle.
- Board members may inquire about individual test costs outside of Board meetings.
- WSLH will bring pricing changes to the Board for implementation when changes in test inputs affect cost.

The letter to Chancellor Blank was the first that WSLH heard about any pricing concerns. Our goal is to recover costs and evaluate how this fits into public cost needs.

2021-2022 –There were lowered prices if a blank was not incorporated

UCMR – uncertainty about blanks QC

Other lab prices – Tough to know – From APHL listserv and other communications, average price for PFAS is \$570 with blank included, \$285 without blank included

UCMR Pricing – Doesn't have to equate with the number

Large system pays Lab Price

Small Systems: Lab Price not applicable. EPA pays, price can be negotiated

WSLH – UCMR5 certification needed to support public health mission and PFAS crisis

Seeking guidance from Board on UCMR5 testing after EPA approval

WSLH PFAS pricing is evolving and WSLH is seeking Board guidance on pricing in the context of Board policies

**END of Dave Webb Presentation**

Prior to deliberation beginning, Chairman Morrison advised that a letter had also been submitted from WI Senator Mary Felzkowski. Chairman Morrison advises that his read on the letter is that it dealt with business that would be between NSLI and the Department of Natural Resources (DNR). Vice Chair Greg Pils confirmed that Chairman Morrison identified its issues correctly. In reference to testing in paragraph 3 of the letter, the DNR received federal funding and will work solely with WSLH in a program apart from UCMR5 and therefore does not require the Board's attention; this is best left to the NLSI and the DNR. Vice-Chair Pils made a motion that Board can discuss it further, but doesn't require board interaction here, today, and to refer the letter to DNR. Dr. German Gonzalez seconded the motion.

Mr. Jeff Kindrai offered a point of order: No motion would be needed as the Board is simply taking no action. The Vice Chair offered to rescind his motion, but Dr. Rick Moss states that the motion is a matter of entering the discussed issue into formal record, so it is reasonable to have the motion, the second and vote. Mr. Kindrai states that the item was not on agenda.

Vote: The board unanimously passed the motion to refer the February 14, 2022 letter from Senator Felzkowski to the DNR.

### **Board discussion –**

Chairman Morrison stated that with respect to pricing, that issue has been resolved and at issue is whether or not WSLH should be involved in UCMR.

Mr. Krueger interjected that there had been no satisfactory explanation regarding pricing and WSLH's website; NSLI's research found it and he wonders how long would it have been out there, otherwise.

### **Discussion opened to board members:**

Vice Chair Pils referred to Appendix 2, submitted by RT Krueger, citing bullet 4, "The SLH may provide any service, consistent with its unique mission, as long as revenues generated from that activity are used to support the SLH's board approved mission."

The WSLH develops and provides essential public lab health support...this includes analytical service, local government service and Vice Chair Pils stated we can draw a pretty clear line between that bullet, WSLH's mission statement and the UCMR5 program being a monitoring program linked to public health and water supply. WSLH's participation in UCMR5 is consistent with its mission.

Mr. Kindrai: Given the public health significance and the evolving impact on public health he was glad there is no suggestion for no PFAS testing at the State Lab, as that wouldn't be appropriate. Both labs seem to have gone through the approval process and are able to support testing. We have these two labs alone in Wisconsin, with both of good quality and both of which might get into the program. What if two WI labs don't get in? If there isn't enough lab capacity, and some labs drop out, having enough potential capacity in reserve isn't a bad thing. Whether you execute contracts in the future – Sample size may expand – It's not a bad thing to have both labs involved.

Mr. Krueger countered that UCMR5 is a program that doesn't have state borders to it. It is wide-open competition and as far as only 2 laboratories in Wisconsin, and NLSI was the only laboratory in the previous 4 rounds. Dave Webb mentioned about 2018 being the start, when it was 2015 in UCMR-3, looking for analytes.

Dr. Gonzalez stated that he concurred with the idea that the laboratory should have the ability and capacity to test for anything in support of the community, and that he fails to see the competition. Dr. Gonzalez worked in 4 different states, including Georgia, where we always work as the safety net to come in and serve the community. It's in the best interest of the community, if the state is able to execute any and every testing possible.

Ms. Green-Harris stated that she agrees with what everyone else said, regarding the public health issues in the state.

Dr. Moss also agrees with the prior comments that have been made: The board's use of the word "reserve." With respect to PFAS we are facing a burgeoning issue and need for testing, over time... If there were great capacity overall – Vice Chair Pils did a great job of pulling our mission out – Terrific to pursue the notion for at least drinking water.

Vice Chair Pils asked Mr. Webb, "Do you go into this with the idea of marketing or is this a "let them come to you"?" to which Mr. Webb responded that, if approved WSLH would be put on a list (of certified labs).

Vice Chair Pils referred back to Dr. Moss' statement, saying that, as far as providing reserve capacity, this seems consistent with that idea.

Mr. Kindrai: Playing an assurance role is important, as the state lab keeps a foot in the game just in case, so there are no delays. He would encourage WSLH's involvement in PFAS testing

outside UCMR5 such as blood work for SHOW and other environmental areas where there may not be as much capacity.

Dr. Jamie Schauer, WSLH director, advised that he appreciates Mr. Krueger's position and where things sit – It's not our intention to adversely affect or hurt their business – We should proceed with... no contracts/testing.

Assurance that there are boundaries to this. WSLH needs to be approved to do the work, because if it doesn't happen now, it won't happen later. If the board were to direct WSLH not to actively pursue testing after UCMR5 approval, he wouldn't object to that.

Chairman Morrison: Considering pending health issues... What is the breaking mechanism? A competitive dynamic is set up with the other labs – Appreciates the review mechanism but ponders how to define what a "meaningful impact" is, on others.

Dr. Meiman: Directed toward State Lab, Mr. Webb– A clarification: UCMR5 being accepted means sufficient capacity – Is it reasonable to assume that, if capacity exists, WSLH would not participate if there was not the need?

Dr. Schauer responded: "We would not pursue this without direct engagement with the Board and NLSI. Rationale is to assure that capacity is there. We don't know where this is headed or where needs will be. There is a lot of PFAS work out there for us. We would be negligent in our duties to not pursue being available and we have the capacity to do the work."

Dr. Meiman: Directed toward Mr. Krueger – A lot of lab capacity is out there, so why cut off the state lab?

The concern lies in that its additional competition within the state of Wisconsin.

Mr. Krueger: Large amount of dollars generated for NLSI comes from within the state of Wisconsin and wanted to be sure there were public dollars...Direct competition among private sector labs and it is not appropriate for WSLH involvement.

Ms. Danielson: To Dr. Schauer's point, if WSLH receives approval for this, public water supplies will directly contact us and WSLH would have to say the board has directed us not to do the testing. The number of samples nearly double those in UCMR3, so WSLH was honestly concerned. Ms. Danielson questioned whether the EPA could be contacted to see if they do need us, as an incredible amount of work on the part of WSLH went into this process.

Mr. Kindrai: Side concerns related to approval – Use accreditation numbers of lab, which impacts public confidence. There is value for WSLH to be approved to do this, beyond the task at hand, and he cited French Island. Peer review, adds credence to information produced under them.

Mr. Webb: Being certified for UCMR5 because it includes EPA method 533 – State method will get us most of the way to point - Proficiency testing to gain approval

Chairman Morrison: Wisconsin is in a stronger position, having two labs be accredited, with that capacity not exclusive to one entity, but both sharing information and resources – WSLH has a collaborative relationship and we can't say there won't be any impact financially, but on those interests of public health... Can we find a way to accommodate both interests?

Mr. Krueger agrees while stating WSLH shouldn't be pursuing this. Maybe more critically evaluating where there is existing capacity and capability and to be cognizant of the competition it might create with small business laboratories.

Dr. Moss: These last few comments are taking us toward a solution which Jamie suggested – Addresses issue of competition and from Chairman Morrison and Mr. Krueger, Wisconsin testing should be done in Wisconsin. Whatever formal agreement we come to should include a reverse flow – Should NLSI be exceeded, WSLH could be there to handle overflow.

Dr. Gonzalez: With all due respect, competition is healthy and develops business, even smaller business. Unfair would be if WSLH used federal funds, state funds and undercut prices. Clients who worked with NLSI for many years will stay with NLSI and WSLH will stay in its lane and be ready for the times we need them in emergencies or necessity. If we don't have availability and capacity, that is when the people suffer.

Mr. Kindrai: Reflecting on comments –Not actively engage in contracting or getting samples, other than list on EPA website–Pursue getting approval, come back for further approval from the board for further testing. Practical aspects?

Vice Chairman Pils offered that Dr Moss was correct when he stated that the Board was getting closer to a solution – Question to Dave Webb - 750 water samples capacity at WSLH, inclusive of all sources in different programs (Dave confirms) – UCMR would be a subset of the 750. Looking at the extent to which PFAS contamination is continued to be seen – More of a demand on WSLH down the road, from DNR, which would be a priority – Dr Schauer introduced a compromise that we are interested in

Mr. Krueger asked if the understanding is that WSLH is to continue to pursue approval for capacity purposes, but not actively market.

Chairman Morrison articulates the points being considered: 1) pursue certification, not actively advertise (market) 2) seek certification, but seek board approval before entering into services

Dr. Schauer: Whatever works well; either of these is workable

Mr. Kindrai: Caveat – If demand exceeds capacity, WSLH would be able to contribute, but that is down the road.

Dr. Moss: If demand exceeds Wisconsin capacity, we would presumably wish to engage, but also if NLSI runs into excess demand, we could have reciprocal responsibility in having NLSI notify WSLH, rather than having disappointed customers.

Mr. Krueger: With the small system work, that is all EPA contract, tightly driven and we wouldn't have the opportunity to work with the state lab, regarding that aspect.

Chairman Morrison: Motion of proposals: Capacity but not actively advertise and come to the Board before providing services

Dr. Moss: Complementary models, embracing both concepts, should drive our decision making – Approving concepts would be a good thing, but we would need a MOU between WSLH and NLSI. Definitive action in terms of an agreement would be what we would need to relieve letters like we received from the Legislature.

Mr. Kindrai: WSLH should seek certification but the WSLH should be advised not to move forward in testing without Board Approval

**Motion 1: Board recommends that the WSLH continue to pursue approval to participate in UCMR5. (Vice Chair Pils moves - Mr. Kindrai seconds – Motion passes unanimously)**

**Motion 2: Board recommends the WSLH not actively market services or pursue contracts for the UCMR5 program without first securing board approval. (Vice Chair Pills moves – Dr. Gonzalez seconds – Motion passes unanimously)**

**Motion 3: WSLH continue discussions with Northern Lake Services about capacity and competition issues moving forward. (Mr. Kindrai moves - Vice Chair Pills seconds – Motion passes unanimously)**

Entertainment of discussion on the motion at hand –

Mr. Krueger stated that he felt “this is very reasonable, thank you.”

Mr. Pills asked: Does advertising on website or posting capacity constitute advertising?

Mr. Kindrai clarified – Not reaching out to solicit business

UCMR5 will be advertising the labs to an extent with their presence on the list, and Mr. Krueger stated that he is okay with that.

Mr. Krueger advised the program is too dynamic to go back for board approval; should WSLH be contacted they won't have the time for that.

Mr. Krueger stated that he would like more transparency and dialogue between NLSI and WSLH.

Chairman Morrison thanks everyone – Regarding Mr. Krueger's question raised about WSLH's pricing – The Board would like to refer Mr. Krueger to further discussion with Dave Webb regarding details.

Move to adjourn – Chairman Morrison thanked Mr. Krueger and colleagues for bringing his issues before the board and thanked him for his work. The goal is to have and maintain collaborative relationship for public health concerns.

Mr. Kindrai moved to adjourn and thanked Mr. Krueger and NLSI. Vice Chair Pils seconds motion to adjourn and thanked NLSI and Mr. Krueger. He also thanked WSLH's Dr Schauer for offering a workable compromise.

Mr. Krueger also thanked the Board and stated that he doesn't like feeling at odds with meeting our missions.

Meeting concludes 1:03pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James J. Schauer". The signature is written in a cursive style with some loops and flourishes.

James J. Schauer, PhD, P.E., M.B.A.  
Secretary, Wisconsin State Laboratory of Hygiene Board of Directors  
Director, Wisconsin State Laboratory of Hygiene