

Permanent Regulation - Informational Statement

A Regulation Relating to Air Quality

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC) LCB File No: R123-16

Regulation R123-16:

Nevada Revised Statutes (NRS) 459.500 and NRS 459.826 establish the authority of the State Environmental Commission (SEC) to adopt regulations to carry out the provisions of this chapter related to certification associated with Underground Storage Tanks (UST).

SPECIFIC CHANGES:

The adopted changes are as follows: Remove reciprocity as a mechanism for certification; Remove the “specialist in the management of hazardous waste” designation; Comply with the updated underground storage tank code of federal regulations (40 CFR 280.245) by including the certification of persons providing approved training programs for UST operators; and Require certification renewal within 1 year of the certificate expiration date.

1. Need for Regulation:

Removal of NAC 459.9724, certification of person certified by another state or recognized organization: Under NRS 459.500, the NDEP is responsible for the certification of professionals who provide fee-based consulting services for the following: response to and the cleanup of leaks of hazardous waste, hazardous material or a regulated substance, the management of hazardous waste, and the testing, installation, removal and repair of underground storage tank systems. In order to demonstrate basic knowledge of and proficiency in interpreting and applying Nevada-specific regulations pertaining to reporting and management of regulated substance releases in Nevada, NDEP administers a standardized test for Certified Environmental Managers (CEMs). NDEP regulations also require specific experience requirements for CEMs, underground tank handlers and testers that are not equivalent to other state programs.

Removal of NAC 459.9714 and 459.9721, Specialist in the management of hazardous waste: Since 2002, only four individuals have applied to be a specialist in the management of hazardous waste with no renewals for this certification since 2007. In general, there has not been a market for this certification since the CEM can perform the same duties. Therefore, this provision of the regulations has become obsolete.

Addition of Certification of Provider of an approved UST Training Program: It is a federal requirement for states that implement the UST program to identify and approve operator training programs for UST operators. Certification of the persons implementing the training programs will standardize the programs and ensure each program meets the federal regulation requirements.

NAC 459.9728: Addition of a certificate renewal time requirement: This change will clarify that individuals who wish to renew their certification must do so within 1 year after the certificate date of expiration or they must re-apply as a new applicant. This change is needed because individuals who do not keep their certificate renewal current will not receive information regarding future changes to Nevada regulations, policy and guidance pertaining to their certification and standards of practice.

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

Two workshops were held and video conferenced. The first workshop was held on August 12, 2016. It was held at the State Legislative Building located at 401 S. Carson St. Ste. 2134 and video conferenced in Las Vegas at the Grant Sawyer Building located at 555 E. Washington Ave. Ste. 4412E. Eight (8) people were in attendance. The second workshop was held on September 12, 2016. It was also held at the State Legislative Building and video conferenced to the Grant Sawyer Building. Fifteen (15) people were in attendance.

Questions from the public were addressed by NDEP staff. Summary minutes of the workshop are posted on the SEC website at:

http://www.sec.nv.gov/main/hearing_1016.htm .

Following the workshop, the SEC held a formal regulatory hearing on October 12, 2016 at the Bryan Building Tahoe Conference room located at 901 South Carson Street, Carson City. A public notice for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R123-16 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://www.sec.nv.gov/main/hearing_1016.htm.

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended October 12, 2016 hearing: 18 (approximately)
- (b) Testified on this Petition at the hearing: 0
- (c) Submitted to the agency written comments: 0

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

Comments were solicited from affected businesses through e-mail, a public workshop and at the October 12, 2016 SEC hearing as noted in number 2 above.

5. 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 regulation was adopted without change because the public was satisfied with the proposed amendments.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry. The regulation amendments provide for a nominal \$100 application fee and \$100 bi-annual renewal fee. This fee is not mandatory. It is required only by the business or person who voluntarily chooses to do this type of work in Nevada. The regulation may have a positive economic impact on businesses/persons that choose to do this type of work in Nevada because they will potentially profit from their operating training programs.

Public. The amendments will have no economic effect on the public.

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

Enforcing Agency. There may be a nominal impact to NDEP for bi-annual application reviews.

8. 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.

The amendments adopt federal USEPA regulations from 40 CFR 280.245 to allow the NDEP to implement them in Nevada through delegation under State Program Approval by the federal government.

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

The regulation is no more stringent than what is established by federal law.

10. 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 regulation addresses a new fee but it is not a mandatory fee. It applies only to businesses/persons that choose to provide UST operator training programs. Please see #6 above. The fees collected are anticipated to pay for the time and resources necessary to review program applications that are received.