

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R123-16

Effective November 2, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-17, NRS 459.500 and 459.826.

A REGULATION relating to underground storage tanks; providing for certification by the Division of Environmental Protection of the State Department of Conservation and Natural Resources of providers of approved underground storage tank training programs; repealing provisions relating to the certification by the Division of specialists in the management of hazardous waste; repealing provisions providing for reciprocal certification of environmental managers, specialists in the management of hazardous waste, handlers of underground storage tanks and testers of underground storage tanks; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Federal regulations adopted by the Environmental Protection Agency define Class A, Class B and Class C operators of underground storage tanks and require such operators, on and after October 13, 2018, to be designated appropriately and trained in accordance with the standards set forth in the federal regulations. (Subpart J of 40 C.F.R. Part 280) This regulation implements provisions governing certification by the Division of Environmental Protection of the State Department of Conservation and Natural Resources of providers of approved underground storage tank training programs in accordance with the regulations adopted by the Environmental Protection Agency. **Sections 2-4** of this regulation define Class A, Class B and Class C operators by reference to the requirements for the training of such operators set forth in 40 C.F.R. § 280.242. **Section 5** of this regulation defines a “provider of an approved underground storage tank training program” consistent with the applicable provisions of the federal regulations. **Section 6** of this regulation sets forth the requirements applicable to applicants for certification as a provider of an approved underground storage tank training program.

Existing regulations provide for certification by the Division of specialists in the management of hazardous waste and for reciprocal certification by the Division of environmental managers, specialists in the management of hazardous waste, handlers of underground storage tanks and testers of underground storage tanks who are certified by another state or by an organization recognized by the Division. (NAC 459.9714, 459.9721, 459.9724) **Section 17** of

this regulation repeals these provisions, and **sections 8-10, 13 and 16** of this regulation make conforming changes.

Section 1. Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *“Class A operator” means an operator described in 40 C.F.R. § 280.242(a), as that section existed on November 2, 2016.*

Sec. 3. *“Class B operator” means an operator described in 40 C.F.R. § 280.242(b), as that section existed on November 2, 2016.*

Sec. 4. *“Class C operator” means an operator described in 40 C.F.R. § 280.242(c), as that section existed on November 2, 2016.*

Sec. 5. *“Provider of an approved underground storage tank training program” means a natural person who is certified by the Division pursuant to section 6 of this regulation and who provides information to and evaluates the knowledge of Class A operators and Class B operators as part of an underground storage tank training program that meets the requirements of Subpart J of 40 C.F.R. Part 280, as those provisions existed on November 2, 2016.*

Sec. 6. *An applicant for certification as a provider of an approved underground storage tank training program must:*

1. Be of good reputation as determined by the Division upon review of the applicant’s application and such other considerations as the Division deems necessary and proper.

Certification must be denied if such a review indicates that the applicant fails to meet the applicable standards.

2. Submit to the Division:

(a) An application on a form provided by the Division;

(b) A nonrefundable fee of \$100 for review of the application; and

(c) Documentation satisfactory to the Division that the applicant's training program meets the requirements of Subpart J of 40 C.F.R. Part 280, as those provisions existed on November 2, 2016.

Sec. 7. NAC 459.970 is hereby amended to read as follows:

459.970 As used in NAC 459.970 to 459.9729, inclusive, *and sections 2 to 6, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 459.9701 to 459.9716, inclusive, *and sections 2 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 8. NAC 459.9704 is hereby amended to read as follows:

459.9704 "Environmental manager" means a natural person who is certified by the Division pursuant to NAC 459.972 ~~for 459.9724~~ to act as a consultant relating to:

1. The management of hazardous waste;
2. The investigation of a site to determine the release or potential release of a hazardous substance;
3. The sampling of air, soil, surface water or groundwater to determine the release of a hazardous substance;
4. The response to a release of a hazardous substance;
5. The cleanup of a release of a hazardous substance; or
6. The remediation of water or soil contaminated by a hazardous substance.

Sec. 9. NAC 459.9705 is hereby amended to read as follows:

459.9705 “Handler of underground storage tanks” means a natural person who is certified by the Division pursuant to NAC 459.9722 ~~for 459.9724~~ to install, repair, upgrade or close underground storage tanks pursuant to 40 C.F.R. Part 280, as that part existed on June 12, 1990.

Sec. 10. NAC 459.9715 is hereby amended to read as follows:

459.9715 “Tester of underground storage tanks” means a natural person who is certified by the Division pursuant to NAC 459.9723 ~~for 459.9724~~ to test the tightness of underground storage tanks pursuant to 40 C.F.R. Section 280.43(c), as that section existed on June 12, 1990.

Sec. 11. NAC 459.9717 is hereby amended to read as follows:

459.9717 The intent of NAC 459.970 to 459.9729, inclusive, *and sections 2 to 6, inclusive, of this regulation* is to carry out the provisions of NRS 459.500 to protect persons who employ consultants concerning hazardous materials and wastes.

Sec. 12. NAC 459.9718 is hereby amended to read as follows:

459.9718 The provisions of NAC 459.970 to 459.9729, inclusive, *and sections 2 to 6, inclusive, of this regulation, other than the provisions which impose requirements on providers of approved underground storage tank training programs,* do not apply to:

1. Services provided by an employee of a business or public agency relative to the hazardous waste management, release investigation or response or underground storage tank management responsibilities of his or her employer, exclusively, while acting in the course of that employment.
2. Services provided by an employee of a public agency with the responsibility of regulatory enforcement, emergency response, or protection of public health, welfare or the environment, while acting in the course of that employment.
3. Services provided by a person who is a transporter of hazardous waste that are:

(a) Designated as the specific responsibility of the transporter of hazardous waste under the applicable state or federal regulations; and

(b) Necessary to perform the service of transportation of hazardous waste in accordance with the applicable state or federal regulations.

4. Services provided by a person under contract at a federal facility, while acting within the scope of that contract.

5. Services provided by a person that are requested by a state agency or political subdivision of the State if fees are not charged for those services.

6. Services provided by a public utility to its customers if incidental to the services ordinarily provided by the utility.

Sec. 13. NAC 459.9719 is hereby amended to read as follows:

459.9719 1. A person shall not provide services as:

(a) An environmental manager;

(b) ~~A specialist in the management of hazardous waste;~~

~~—(e) A handler of underground storage tanks; ~~for~~~~

~~—(d) (c) A tester of underground storage tanks ~~†~~; or~~

(d) A provider of an approved underground storage tank training program,

↪ for a fee or in conjunction with other services for which a fee is charged, unless those services are performed under the direction and responsible control of a natural person who has obtained certification from the Division.

2. The provisions of this section do not prohibit the engagement of an apprentice or assistant if a natural person who is certified by the Division pursuant to the provisions of NAC 459.970 to

459.9729, inclusive, *and sections 2 to 6, inclusive, of this regulation* supervises that apprentice or assistant and maintains responsibility for the work of that apprentice or assistant.

Sec. 14. NAC 459.9728 is hereby amended to read as follows:

459.9728 A holder of a certificate who wishes to renew his or her certificate must ~~+~~, *not later than 1 year after the date on which the certificate expires:*

1. Demonstrate to the Division that he or she continues to meet all qualifications and performance requirements of NAC 459.970 to 459.9729, inclusive ~~+~~, *and sections 2 to 6, inclusive, of this regulation;*
2. Submit an application for renewal of the certificate to the Division on a form provided by the Division;
3. Submit a nonrefundable fee set by the Division not to exceed \$100; and
4. Complete an examination for renewal if the Division has determined that such a renewal examination is appropriate.

Sec. 15. NAC 459.9729 is hereby amended to read as follows:

459.9729 1. Each holder of a certificate issued by the Division pursuant to the provisions of NAC 459.970 to 459.9729, inclusive ~~+~~, *and sections 2 to 6, inclusive, of this regulation:*

(a) Shall provide services which are ethical, meet the current standards of the profession and which comply with federal, state and local regulations concerning hazardous substances or underground storage tanks.

(b) Is responsible for the work of other persons he or she employs or supervises.

(c) Shall have a copy of his or her certificate at the location where the holder of a certificate is supervising work. Upon the request of the Division, client or potential client, a holder of a certificate shall present the certificate for inspection.

(d) Shall make a written report to the facility owner or operator, within 24 hours, upon the discovery of a release of a hazardous substance or the existence of an unregistered underground storage tank and advise that facility owner or operator of any applicable reporting requirements.

(e) Shall report to the Division the discovery of a release of a hazardous substance which presents an imminent and substantial hazard to human health, public safety or the environment as soon as possible after the holder of a certificate has knowledge of a release.

(f) Shall secure the services of a qualified person to perform any part of his or her job which requires a level of service or skill which he or she is not qualified to provide.

(g) Shall make complete prior disclosures to his or her clients or potential clients of potential conflicts of interest or other circumstances which could influence his or her judgment or the quality of the services the holder of a certificate provides.

(h) Shall not falsify or misrepresent his or her education or experience, the degree of responsibility for prior assignments or the complexity of prior employment or business, relevant factors concerning employers, employees, associates or joint ventures or past accomplishments.

(i) Shall maintain a written record of each project requiring certification for 3 years after the project is completed. The Division may inspect those records during normal business hours and will establish requirements concerning the information which must be included in the records.

2. *In addition to the requirements of subsection 1, a provider of an approved underground storage tank training program shall provide to each Class A operator and Class B operator a record in paper or electronic format which includes the information described in 40 C.F.R. § 280.245(b), as that section existed on November 2, 2016.*

3. Certification may be suspended, revoked or denied for renewal if the Division determines that the certificate holder has not performed in accordance with ~~these~~ *the* standards ~~+~~ *described in this section.*

Sec. 16. NAC 590.760 is hereby amended to read as follows:

590.760 1. The operator of a storage tank shall report any discharge promptly in accordance with the requirements of NAC 445A.347 and 40 C.F.R. §§ 280.50 and 280.53.

2. As soon as possible after the discharge, the operator shall submit to the Division an application for coverage by the Fund for the discharge. The application for coverage must be submitted on the form prescribed by the Division and must include:

(a) A written description of how, when and where the discharge occurred;

(b) A description of any damage known to the operator to have been caused by the discharge;

and

(c) If the services of a person certified as an environmental manager pursuant to NAC 459.972 ~~for 459.9724~~ have been obtained, the name of that person.

3. The operator shall take all reasonable steps to protect the site of the discharge from further damage in accordance with the provisions of 40 C.F.R. §§ 280.61 and 280.62.

4. The operator shall:

(a) Prepare and maintain a record of all costs incurred by him or her in cleaning up the discharge.

(b) Permit the Division to inspect any property or records relating to the discharge or damage caused by the discharge.

(c) Notify the Division if the cost of:

(1) An emergency action; or

(2) The initial response actions and abatement measures prescribed by 40 C.F.R. §§ 280.61 and 280.62,

↳ will exceed \$5,000.

(d) If the operator is seeking reimbursement by the Fund for the costs of cleaning up the tank or of liability for damages, unless an employee of the operator will be providing services that are exempted from the provisions of NAC 459.970 to 459.9729, inclusive, *and sections 2 to 6, inclusive, of this regulation* by subsection 1 of NAC 459.9718, obtain the services of a person who is certified as an environmental manager pursuant to NAC 459.972 . ~~for 459.9724.~~

(e) Obtain approval from the Division or secure not less than three competitive bids for a task included in a corrective action that costs more than \$3,000, an amount which may be adjusted annually by the Division and published on the website of the Division on or before March 1 of each year to reflect the change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor between December 1989 and December of the immediately preceding year and rounded to the nearest \$1,000, if:

(1) The corrective action necessitated by a discharge from a storage tank is not an emergency pursuant to paragraph (c) of subsection 1 of NAC 590.710; and

(2) The operator is seeking reimbursement by the Fund for the costs of cleaning up the tank or of liability for damages.

Sec. 17. NAC 459.9714, 459.9721 and 459.9724 are hereby repealed.

TEXT OF REPEALED SECTIONS

459.9714 “Specialist in the management of hazardous waste” defined. (NRS 459.485, 459.500) “Specialist in the management of hazardous waste” means a natural person who is certified by the Division pursuant to NAC 459.9721 or 459.9724 to act as a consultant relating to the management of hazardous waste.

459.9721 Certification as specialist in the management of hazardous waste. (NRS 459.485, 459.500) An applicant for certification as a specialist in the management of hazardous waste must:

1. Be of good character and reputation as determined by the Division upon review of the applicant’s references, record of violations of environmental laws and regulations and such other considerations as the Division deems necessary and proper. Certification must be denied if such a review indicates that the applicant fails to meet the applicable standards.

2. Submit to the Division:

- (a) An application on a form provided by the Division;
- (b) A nonrefundable fee of \$100 for the review of the application;
- (c) A color photograph of the applicant which is approximately 2 inches by 2 inches;

(d) A statement signed by the applicant under penalty of perjury declaring the details of all pleas of guilty or nolo contendere in any criminal proceeding and all convictions of any crimes; and

(e) Three letters of reference from natural persons with experience in the services of that classification attesting to the applicant's moral character and competence in that classification.

3. Demonstrate to the Division that the applicant meets one of the following qualifications:

(a) A bachelor's or advanced degree from an accredited college or university in an area relating to the environment, including, but not limited to, environmental science, engineering, geology, hydrology, hydrogeology, biology, toxicology, environmental health, physics, or industrial hygiene or chemistry and at least 2 years of relevant hazardous waste experience within the 3 years immediately preceding the date of the application;

(b) A relevant professional registration or certification recognized by the Division and at least 2 years of relevant hazardous waste experience within the 3 years immediately preceding the date of the application;

(c) A high school diploma or general equivalency diploma and at least 6 years of relevant hazardous waste experience within the 8 years immediately preceding the date of the application; or

(d) An equivalent combination of appropriate education and experience as determined by the Division.

4. Pass an examination pursuant to NAC 459.9726.

**459.9724 Certification of person certified by another state or recognized organization.
(NRS 459.485, 459.500)**

1. Except as otherwise provided in this section, a natural person who is certified as:

- (a) An environmental manager;
- (b) A specialist in the management of hazardous waste;
- (c) A handler of underground storage tanks; or
- (d) A tester of underground storage tanks,

↳ by another state or an organization recognized by the Division, may be certified by the Division if he or she complies with the requirements set forth in subsection 2.

2. A natural person who applies for certification pursuant to this section must submit to the Division:

- (a) An application on a form provided by the Division;
- (b) A nonrefundable fee of \$100 for the review of the application;
- (c) A color photograph of the applicant which is approximately 2 inches by 2 inches; and
- (d) Proof of certification by another state or an organization recognized by the Division in the

classification for which he or she is applying for certification in this State.

3. The Division may not issue a certificate to a natural person who is certified by another state or organization if the requirements for certification by that state or organization are not substantially equivalent to the requirements for certification in this State.

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.