

Filing Statement
Nevada Division of Environmental Protection
Bureau of Safe Drinking Water

Nevada's Operator Certification Program for Small Water Systems

Legislative Review Of Adopted Regulations As Required
By Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC)
Petition 2005-07 – LCB File R129-05

The regulation addressed in this filing statement was drafted in response to Senate Bill 395 (SB 395), which was passed during the 2005 Legislative Session. SB 395 allowed the transfer of responsibilities for certain drinking water programs, including “Operator Certification” from the State Health Division to the Nevada Division of Environmental Protection (NDEP).

This regulation amends NAC 445A.617 through 445A.652. Drafting of the amendments represented a significant effort by the Operator Certification Advisory Board, a group that was appointed by the State Board of Health pursuant to NRS 445A.870.

The amended regulation makes changes to Nevada's Operator Certification Program for small water systems. The regulation requires increased skills and knowledge to operate public water systems for individuals certified through the Operator Certification Program. The Division of Environmental Protection - Bureau of Safe Drinking Water, is now managing the program. The regulation is needed in light of more stringent water quality requirements. Ultimately, the goal of the Operator Certification Program is the protection of public health.

As way of background, the State of Nevada has, under an agreement with the United States Environmental Protection Agency (US EPA), primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act (Act). The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Accordingly, this amended regulation will have a beneficial economic effect by increasing the knowledge base of operators of small water systems; such increased knowledge of water system operations will result in both immediate and long-term protection of public health.

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.

To solicit public comments on the first version of this regulation, the State Health Division conducted a public workshop on November 12, 2004. A public hearing was then held on February 18, 2005 by the State Health Board. At that hearing the regulation was adopted as a temporary regulation and subsequently filed with the Legislative Counsel Bureau on March 28, 2005. (See: LCB temporary regulations #T032-05)

The drinking water program was then transitioned to NDEP (by SB 395) and the regulation (which is now proposed as a permanent regulation) was slightly altered by NDEP to reflect changes in authority from the State Board of Health to the State Environmental Commission. NDEP conducted another workshop to solicit public comments on the revised permanent regulation; the workshop was held at the following locations:

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| Thursday September 22, 2005 at 9:00 AM 401 S. Carson Street St. Legislative Building, Room 2134 Carson City, Nevada | Video conference in Las Vegas at the following location: Grant Sawyer Building, Room 4406 555 E Washington St Las Vegas, Nevada |
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Comments received at the workshop held by NDEP were generally supportive of the revised regulation.

A public hearing was then held by the State Environmental Commission (SEC) to consider the regulation. The SEC hearing was noticed in the Las Vegas Review Journal and the Reno Gazette Journal newspapers on the following dates: September 05, 19, 26, 2005. Members of the public subscribing to the SEC electronic and ground-based mailing lists were subsequently mailed a public notice and meeting agenda for the SEC hearing; the hearing was held in Reno on October 04, 2005.

The public notice for the referenced SEC hearing was also sent to county libraries throughout the state and the regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas.

The workshop notice, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at:
<http://www.sec.nv.gov/main/hearing1005.htm>

At the SEC hearing, there were three (3) oral comments presented to the Commission during the adoption of the regulation. The comments were all positive. One written "positive" comment (from the Incline Village Public Works Department) was also presented to the commission; the comment is attached.

2. The number of persons who attended the SEC hearing:

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 3
- (c) Submitted to the agency written comments: 1

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

With regard to business that could be affected by the regulation, a comment response document was prepared following the public workshop on the original temporary regulation that was managed by the State Health Division. That comment response document is attached.

As noted above, comments received at the workshop held by NDEP were generally supportive of the revised regulation along with comments received at the SEC hearing held on October 4, 2005.

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 State Environmental Commission adopted the regulation on October 04, 2005. Two technical corrections were made to the regulation. These corrections are noted below as well as in the cover letter to this document.

Page 14, Section 16. Change the Total Points for: Distribution-3 from ~~31-40~~ to **31- 41**. Change the Total Points for: Distribution-4 from ~~41 or more~~ to **42 or more**.

Page 15, section 16. Add a new line after "Ultraviolet light.....8"
Combination of ozone and ultraviolet light.....10

5. The estimated economic effect of the adopted regulation on the business that it is to regulate, and on the public.

The estimated economic effect of the proposed revisions on the small businesses would apply to public water systems that require Grade III or Grade IV Certified Operators. This indirect economic effect would be from new, higher requirements for post-secondary education required to qualify for new Grade III and Grade IV certifications.

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

There will be no additional cost to the agency for enforcement of the proposed 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, indicate the name of the regulating federal agency.

The State of Nevada has, under an agreement with the United States Environmental Protection Agency, primary enforcement responsibility (primacy) for the primary drinking water regulations promulgated pursuant to the federal Safe Drinking Water Act. The State of Nevada must adopt regulations as stringent as the federal regulations to retain primacy, and must remain current with new regulations necessitated by amendments to the Act. Other than adopting such primary drinking water regulations, there is no duplication or overlap of these regulations with other state or government agencies.

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

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

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 regulation does not address fees.

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**Summary of Comments Received and Responses
for the
Public Workshop held November 12, 2004
on the subject of
Temporary Revisions to the Regulations
Regarding Certification of Operators for Public Water Systems**

Notes: The subject workshop was held to simultaneously receive comments on proposed temporary revisions to the Nevada Administrative Code (NAC) regulating Public Water Systems, including: (1) Water Quality and Treatment of Water; and (2) Certification of Operators. The workshop transcript includes the comments and responses for both categories. In the numbered list below, the second number, which appears in parentheses, is the number which corresponds to the comment number in the transcript of the workshop. This is provided to assist the reader in finding the full comment and response given at the time of the workshop. The numbering of the comments was added to the transcript for this purpose.

The summarizing and paraphrasing of the comments, and responses to the extent they were provided at the time of the workshop, were done by Bureau of Health Protection Services staff. The responses are not strictly limited to the response given at the workshop, but also include considerations made afterward. The actual transcript of the workshop will be made available upon request.

1. (7.) Clarification is needed regarding operator certification requirements of person in responsible charge, particularly for distribution systems.
Response: The certification requirements for person in responsible charge, supervisor, and shift operator, as presented in the table in Section 6, was explained. A shift operator with appropriate certification can perform operational duties, including repair of a water main break and putting it back into service, without the person in responsible charge being physically present.

2. (8.) Concern was expressed that on-call personnel, responding to a distribution system incident which might or might not be found to be an emergency, would have to be a certified shift operator per the requirements of Section 6, specifically subsection 3.e.
Response: It is not the intent nor a requirement that a certified operator must respond to all distribution system incidents requiring investigation and action. However, if a system integrity decision about water quality or quantity must be made, a certified operator must make that decision. A certified operator must be available 24/7 to be contacted by uncertified staff who make initial responses, if integrity decisions and/or actions are required. It is not the intent of this provision to establish specific operational procedures and staffing requirements for each system in the state, but to assure that decisions which could affect public health are made by properly qualified persons. Recommendations to

improve the clarity of the intent of this subsection will be considered when permanent revisions are proposed for adoption.

3. (9.) Is a small system with only one certified distribution operator required to have another certified operator present if a main break requires repair in his absence?
Response: The repair is required to be made in accordance with procedures that have been outlined by the person in responsible charge, in this case the certified operator, in the event that he is not present. The certified operator, even if not present, must make the determination of when the repaired main can be put back into service, and therefore must be available to be contacted when not physically present.
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4. (11.) Since the Public Water Supply (PWS) program is to transfer to NDEP in July 2005, can't the Operator Certification regulation revisions wait until then. That would give NDEP an opportunity to coordinate them with the Wastewater Operator Certification regulations.
Response: These revisions are being presented to the Board of Health for adoption at the first opportunity where all logistical requirements could be met, following completion of work by the Operator Certification Advisory Board and BHPS staff review. The advisory board provided the primary input for almost all of these revisions, beginning work in January 2003. Up to this time, coordination of public water system operator certification and wastewater operator certification has not been discussed. The Advisory Board meetings were legally advertised public meetings, and no suggestions from outside parties were presented.
5. (12.) The proposed classification system for water distribution systems would classify Incline Village as a Class 4 distribution system if they were to serve over a population of 10,000. This is the same as Las Vegas (since Class 4 is the highest class). Is that the intent, to classify a small mountain village a Class 4?
Response: The classification system is an attempt at an objective method to give an overall rating to a water distribution system in terms of the skill, knowledge, and competence needed to properly operate that system. There are eight categories regarding system size and complexity, each with criteria for assigning points for that category. When the points for all categories are totaled, that total is intended to be an objective rating used to determine the competence level of a person needed to operate that water system, based not only on the overall size of the system, but also its complexity. Small systems with multiple pressure zones and booster chlorination stations would be more complex than systems without these features, and require a higher level of skills even if population is not larger.
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6. (13.) The distribution system classification system "double counts" by having categories for reservoirs and pressure zones. If you have a reservoir, you have a pressure zone. Maximum points for these categories could at least be reduced from 5 to 3; it appears they are disproportionately weighted. Also, one pressure

level might have several unconnected areas served through separate pressure reducing valves – would these be counted as separate pressure zones?

Response: The point assignments, and maximums, within each category are something that can be re-evaluated by the advisory board and BHPS staff before permanent revisions to these regulations are proposed. The timing of reclassifying systems and requiring system compliance is such that no systems would be impacted by reclassification before the permanent revisions would become effective (see Section 12, subsection 4 b. and c.). Regarding multiple pressure reduced zones in one pressure level, all served from the same higher pressure zone, and resulting from several pressure reducing valves serving unconnected areas, the unconnected areas would be considered as one pressure zone.

7. (15.) Regarding the treatment classification system in the Operator Certification revisions, the points assigned to ozone and ultraviolet light treatment are too high, and could result in a small system which uses both being classified as a Class 4, which is onerous. Also, hypochlorite should be fewer points than chlorine gas.

Response: The point assignments, and maximums, within each category are something that can be re-evaluated by the advisory board and BHPS staff before permanent revisions to these regulations are proposed. The timing of reclassifying systems and requiring system compliance is such that no systems would be impacted by reclassification before the permanent revisions would become effective (see Section 12, subsection 4 b. and c.).

8. (16.) The Operator Certification Advisory Board looked at the impact of the revised distribution system classification system using points to see if “backsliding” to lower levels would occur (the current regulations are based on population only). Only one such instance was found, which was due to population decline, and reclassification to a lower level would have occurred anyway. Several systems were also found which will be reclassified upward, and these were also found to be based on population change, i.e., growth. Impact on treatment plant classification hasn’t been comprehensively reviewed.

Response: Subsequent to this workshop, a review of all community public water systems in the state was conducted to determine impacts and try to assess “fairness” and objectivity of the proposed revisions to the distribution and treatment classification systems. Results were as follows:

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|---|------------|
| Distribution classification increased one grade | 13 systems |
| Distribution classification decreased one grade | 22 systems |
| Treatment classification increased one grade | 6 systems |
| Treatment classification decreased | 0 systems |

9. (17.) Regarding operator certification reciprocity with other states, the provision in Section 16, subsection 2.f., requiring a description of the examination taken for

a given state's certification, is difficult to comply with for operators who took exams 10 or 15 years ago.

Response: It may be onerous, but it is possible, and it should be the responsibility of the person seeking reciprocity, not health division staff.

10. (18.) The treatment plant classification system assigns too many points to "blending" as a treatment process. With the implementation of the new arsenic standard, the system cited would go from no requirement for treatment operator certification to a T-2, when they had anticipated a T-1 requirement.

Response: The subject system, under the proposed classification system, will in fact be a T-1.

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11. (19.) Provisions for certification through reciprocity, full certification, and reciprocity through AWWA were not understood.

Response: Certification through reciprocity will continue to be, as it always has been, full certification. The practice of noting "reciprocity" on an operator's full certificate, if they obtained certification through reciprocity with another state, has been discontinued. There is in fact no reciprocity with AWWA, only with other states. AWWA contracts with the health division to provide and administer certification examinations. The exams they provide are written specifically for Nevada.

12. (20.) How will the process of adopting the proposed revisions accommodate consideration of the comments received, particularly weighting criteria for classification of distribution systems and treatment plants, and the shift operator/emergency response issue previously raised? Since these are temporary revisions, could more study of these issues occur between adopting temporary revisions and permanent revisions?

Response: There is an opportunity to make changes to whatever temporary revisions are adopted at the time permanent revisions are proposed and adopted, including both changes and addition of clarifying language. Public workshops and public hearings will be required for the permanent revisions process. Since the Operator Certification revisions are largely the work product of the Advisory Board, the comments provided here will be considered jointly by that board and BHPS staff. The timing of reclassifying systems and requiring system compliance is such that no systems would be impacted by reclassification before the permanent revisions would become effective (see Section 12, subsection 4 b. and c.).

13. (24.) There is an inconsistency in the requirement for reviewing water system classifications every three years, and the requirement to conduct sanitary surveys on groundwater systems once every five years, since systems are reviewed as part of sanitary surveys.

Response: The five year frequency for conducting sanitary surveys of groundwater systems is the federal Safe Drinking Water Act (SDWA) requirement, and is adopted by Nevada as the minimum frequency. The

practice in Nevada has been, and will continue to be, conducting sanitary surveys of groundwater systems once every three years.

14. (25.) Post-secondary education requirements, provided through a university or college or IACET accredited organization, are now required. Are there any IACET accredited providers in Nevada? What is the rationale behind this requirement?

Response: The California-Nevada Section of AWWA is IACET accredited, and provides training at the Las Vegas Valley Water District and at Truckee Meadows Water Authority. The Ken Kerry correspondence courses provided by CSU-Sacramento are IACET accredited. Additionally, courses in related sciences such as biology, chemistry, and microbiology offered at community colleges are acceptable. This requirement is applicable only for treatment operator certification, and only at the Grade 3 and Grade 4 levels, requiring only one course for Grade 3 and two courses for Grade 4 certification. The rationale is that, for Grade 3 and Grade 4 treatment operators, the required minimal post-secondary education will enhance protection of public health. These operators could be the persons in responsible charge for treating water supplied to tens of thousands of people. See also comment 15.

15. (26.) Referring back to the last comment, is there some statistical study that demonstrates that the type of education that you are requiring is going to have a significant positive impact on public health? Being able to pass the appropriate certification examination is really the measure of being able to take care of the public health.

Response: Being able to pass the appropriate examination is a demonstration of the minimum required level of competency. Experience is also required for certification. Every other state west of the Mississippi River was surveyed, and all required some post-secondary education in their certification programs – we are only proposing a minimal requirement for Grade 3 and 4 treatment operators.

When Nevada certification examinations were first changed to examinations specifically written for Nevada, the pass rate was nil; for those with post-secondary education, the pass rate is above 70 percent. (No statistical study answering the specific question is cited).

16. (27) The university system is not available in rural Nevada.

Response: Correspondence courses such as the Ken Kerry courses are available everywhere. Also, courses can be basic biology, or basic chemistry, as well as specific water supply professional courses.

17. (28) There are post-secondary outreach courses available in chemistry and biology, and courses available through the internet.

Response: None.

18. (29) Does the criteria for on-going validity of provisional operator certification, that you remain employed at the system where you were employed on January 1, 2000, apply to full certification? If you have a full certificate and are laid off, is your certificate still good if you keep up CEU's and fees?

Response: The employment criteria for maintaining provisional certification does not apply to full certification. You can retain your full certificate even if you are laid off.

19. (30.) Are CEU's earned in the first year of the biennial certification period applicable for renewal requirements?

Response: Yes.

20. (31.) The new provisions will require the health division to issue certificates to passing examinees within 45 days of the examination date. Certificates have not been issued yet for those passing the September 15, 2004, examination (the date of the workshop was November 12, 2004).

Response: These regulation revisions are proposed and are not in effect.

21. (32.) The new requirement for an application for examination to be received 45 days before the examination date will mean you can only take the examination twice in one year.

Response: The time frames will still allow an applicant to test up to four times per year. The results are provided within thirty days after the test date. Applications for the next quarterly examination can still be submitted 45 days prior to that examination date.

22. (34.) In Section 9, subsection 2, is it intended that both requirements a. and b. must be fulfilled, or just that either a. or b. be fulfilled?

Response: The requirement is that either a. or b. must be fulfilled. The "or" following b. implies an "or" following a. in the list.

23. (35.) In Section 6, subsection 5, there appears to be a typographical error (location of the word "of").

Response: The phrase "investigation water of quality" should read "investigation of water quality."



October 4, 2005

Mr. Melvin D. Close, Chairman
State Environmental Commission
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

**RE: Public Water System and Certification of Operators
NAC 445A.450 – 445A.540, and NAC 445A.617 – 445A.652**

Dear Chairman and Commission Members:

On behalf of the Incline Village General Improvement District, and as Chairman of the Nevada Tahoe Water Supplier Association, I would like to acknowledge the tenacity and dedication of the members of the working group, Darcy Burke, Debbie Kaye, Phil Walsack, Tom Hoffert, Steve Brockway and Bob Forrester, for four long years of professional service as these proposed regulations came together, and for their willingness to listen to concerns and proposed language changes in the 11th hour. We also wish to recognize the efforts of the Advisory Board members and the leadership staff of the Nevada Division of Environmental Protection, who, having just recently "inherited" the program, have kept this process on schedule with obvious concerns to all who would be impacted by the proposed rule changes.

We support the proposed rules with the minor change to the distribution and treatment point systems. We believe the minor "tweaks" better address specific circumstances of systems which rely on an exemption to filtration of surface water as we do at Lake Tahoe. These systems are looking at combined ozone and UV disinfection in the future. The changes also address mountainous distribution systems.

Overall, we applaud your efforts to strengthen the NAC and provide a more logical nexus between the technical challenges presented by a water system, and the level of technical competency and experience needed to operate it responsibly and safely.

Sincerely,

Daniel M. St. John, P. E.
Director of Public Works, IVGID
Chairman, NTWSA

C: Tom Porta, Deputy Administrator, NDEP
Doug Zimmerman, Bureau Chief, NDEP
Working Group Members
Harvey Johnson, IVGID
Joe Pomroy, P. E., IVGID
Bill Horn, GM, IVGID
NAC 445A File
Reading

