

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

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

State Environmental Commission Permanent No: R033-22P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

The regulation amendment increases fees for the Division for certifying individuals as an environmental manager (NAC 459.972), a handler of underground storage tanks (NAC 459.9722), a tester of underground storage tanks (NAC 459.9723), or as a provider of approved underground storage tank training programs (NAC 459.97232). The biennial renewal fee is also increased (NAC 459.9728). The proposed fee increase is from the current fee of \$100 to \$150. These fees have not been increased since adoption of the regulation in 1991; and represent approximately 70% of the estimated increase per the National Consumer Price Index. Additionally, the regulation amendment increases the examination fee for certification from \$150 to \$200, this represents approximately 60% of the estimated increase per the National Consumer Price Index. Finally, the regulation amendment retains the qualification requirement in NAC 459.972.3.(a) that requires "A bachelor's or advanced degree from an accredited college or university ... "; but eliminates NAC 459.972.3 (b) "A relevant professional registration or certification recognized by the Division and at least 3 years of relevant environment experience within the 5 years immediately preceding the date of the application" and NAC 459.972.3(c) "An equivalent combination of appropriate education or experience, or both as determined by the Division". Also, NAC 459.9728 is amended to require holders of a certificate to complete 24 continuing education credits within two years before the renewal of their application.

The requested increase in fees will support the Division with implementation of this program. Additionally, NDEP underwent a program audit from July 2020 through November 2020 from the Governor's Finance Office, Division of Internal Audits (DIA). The recommendations from this audit were presented to the Executive Branch Audit Committee on January 28, 2021 in DIA Report No. 21-04. One of the recommendations was: "Strengthen Certified Environmental Manager Certification Requirements - Strengthening CEM certification requirements will ensure individuals hired to manage remediation projects have a strong working knowledge of geological and engineering principles needed to carryout remediation projects." The DIA also concluded that

certification standards in other states suggest that Nevada's certification and renewal requirements are not as robust with no retesting or continuing education requirements.

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.

The Division held a virtual public workshop (via the Teams software) for R033-22P on February 15, 2022 to present the substance of and receive public comment on the proposed regulation. Approximately fifty members of the public attended the virtual workshop.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website¹.

The Legislative Counsel Bureau published its draft, R033-22P, in the Nevada Register on April 6, 2022. The Division accepted written comments on R033-22P up to February 8, 2022. The Division received four written comments concerning R033-22P (one letter and three emails - see attached).

The SEC held a hybrid (in-person and virtual) regulatory hearing on June 15, 2022 to consider possible action on R033-22P. The SEC posted its public notice, which included a link¹ and instructions to access R033-22P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice 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.

The SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting.

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

- (a) Attended June 15, 2022 hearing: 60 (approximately)
- (b) Testified on this Petition at the hearing: 3

- 1. Rebecca Bodnar, on behalf of the Nevada Division of Environmental Protection
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¹ <https://sec.nv.gov/meetings/sec-regulatory-meeting-june-15-2022>

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2. Jeff Collins, on behalf of the Nevada Division of Environmental Protection
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3. Greg Lovato, on behalf of the Nevada Division of Environmental Protection
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(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 one public workshop and at the June 15, 2022 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 Commissioners unanimously adopted R033-22P with no proposed edits. The regulation was adopted without change because the public and the SEC were 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 regulatory amendments in R033-22P are expected to have some economic impact on the regulated community. The regulation amendment would cost an individual an additional \$50 for certification (a total of \$150) and an additional \$50 for biennial renewal (a total of \$150). CEU hours are equivalent to hours of work; and the cost to an individual would be 12 hours/year of their time. There are qualifying CEU classes offered at no cost.

Public. The regulatory amendments in R033-22P are expected to have no economic impact on the public.

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

Enforcing Agency. There is no additional cost to the Division for enforcement of the proposed regulation

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 proposed amendments in R033-22P do not overlap or duplicate any other regulations.

9. 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 authorized and required by NRS 459.500 and is not the subject of any federal regulation that regulates the same activity.

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.

This regulation amendment in R033-22P would increase the initial application and biennial renewal fee from \$100 to \$150 for all certified individuals. Currently, there are 568 certified individuals; with each individual renewing every two years, revenue will increase by \$28,400 over a two-year period for a total fee collection of \$85,200 over a two-year period. This does not include the additional \$50 (or a total of \$150) fee collected at the time of initial certification. Additional funding for NDEP staff and supplies is necessary for continued implementation of the program.