

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Workshop to Solicit Comments on Proposed Amendments to
NAC 445A, NAC 445B and NAC 459
LCB File #R126-19

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| Tuesday, December 1, 2020 2:00 – 3:00 PM Online via Lifesize and by Phone |
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Pursuant to the Governor's Emergency Directive 006, this meeting was conducted virtually with no physical location.

MEETING NOTES

ATTENDEES:

NDEP Attendees: Jennifer Carr, NDEP Deputy Administrator – Presenter
Danyel Soulier, Administrative Assistant, Bureau of Corrective Actions (BCA)
Jeff Collins, Chief, BCA
Rebecca Bodnar, Supervisor, BCA

Public Attendees: Phone – 2 Attendees
Virtual via Lifesize – 7 attendees

CALL TO ORDER:

Jennifer Carr called the workshop to order at 2:06. NDEP staff introductions were made.

OVERVIEW OF STATE RULEMAKING PROCESS:

Ms. Carr summarized the process of NDEP regulation development and adoption by the State Environmental Commission, timelines, purpose of workshops and opportunity for public comment.

PRESENTATION OF PROPOSED REGULATION R126-19:

Ms. Carr presented the material prepared in the PowerPoint presentation slides (Attachment 1).

- Initial slide covered the state rulemaking process and timeline for progression through the State Environmental Commission (SEC), the Legislature and the Secretary of State for adoption and filing before they would become effective.
- Slides 3-13 covered the proposed amendments also covered during the February, 2020 workshop.
- Slides 14-17 covered the potential substantive changes affecting the language proposed for NAC 459.
- Slide 18 discussed the small business impact statement assumptions.
- Slide 19 provided contact information and the opportunity for open comment/Q&A time.

Handouts of Grounds for Disciplinary Action for each of the three main programmatic areas were noted in the discussion as available for further virtual discussion, and the attendees were also directed to their posted location on sec.nv.gov.

Ms. Carr noted that the slides could be sent to any participants upon request, particularly the two participants on the phone.

DISCUSSION ON AGENCY PROPOSED REGULATION R126-19:

Question/Answer: None

Mr. Jeff Collins noted the good character of the workshop participants and, along with Ms. Carr, noted some of the positive feedback that was received during the February workshops in Carson City and Las Vegas.

Mr. Kurt Goebel, Converse Consultants, appreciated the work and noted that it increases the professional stature of the certification programs. NDEP encouraged him to attend the SEC hearing on the 9th if he wished to convey those sentiments directly to the SEC.

WRITTEN COMMENT RECEIVED:

Written comment was requested by 5 pm, December 2nd if the commenter would like them to be considered prior to the SEC hearing by NDEP.

Shortly after concluding the workshop, one e-mail was received from a phone participant requesting a copy of the slides, including a comment of support:

Sent: Tuesday, December 1, 2020 3:08 PM
To: Rebecca Bodnar <rebecca.bodnar@ndep.nv.gov>
Subject: Proposed Reg R126-19 ... Slide Request

Thank you for the on-line presentation....I thought it went smoothly.

Am also glad I maintain the highest Standard of Performance as a CEM.

Well Done.....Keep up the great work.

Happy Holidays

Alan J. Gaddy
CEM #1102

OPEN PUBLIC COMMENT RECEIVED:

John offered suggestions to BCA for two program areas: (1) suggested the Underground Tank Handler/Tester certification should be every 5 years instead of every 2 because the program doesn't change that often; and (2) consider including line testing in the Tank Handler certification program instead of the Tank Tester program. Ms. Rebecca Bodnar stated that she would coordinate with the Underground Storage Tank program supervisor in BCA to follow up with on these suggestions.

ATTACHMENT 1

PowerPoint Presentation for R126-19






2nd Workshop for Proposed Regulation


*Jennifer Carr, Deputy Administrator
December 1, 2020*

Statewide ~ Virtual

LCB File #R126-19 Certification Disciplinary Procedures

ndep.nv.gov

1



Greg Lovato
Administrator

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Rick Perdomo
Deputy Administrator

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Regulation Adoption Process

Process and Timeline for Adoption

December 1, 2020 ~ Workshop #2, NAC 459 Focused

Written comments by 5 pm, December 2, 2020 for NDEP consideration prior to Hearing

December 9, 2020 SEC Hearing (sec.nv.gov)



2


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Administrator

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Scope of Proposal ~ Affected Individuals

- Wastewater Treatment Operators
- Drinking Water Distribution and Treatment Operators
- Certified Environmental Managers
- Underground Tank Handlers
- Underground Tank Testers



3

3


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Why is NDEP Doing a 2nd Workshop?

- February Workshops used the Agency Draft (P2020-02)
- LCB Version (R126-19) contained some *additional detail* and *potentially* substantive changes affecting:
 - Certified Environmental Managers
 - Underground Storage Tank Handlers
 - Underground Storage Tank Testers
- Water and Wastewater Operators were not affected



4

4



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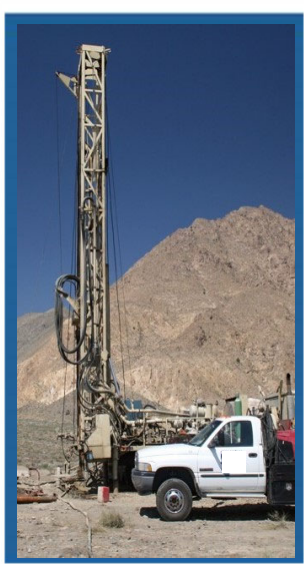
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Administrator

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Deputy
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Need For Regulation Amendments & Additions




- **Operator Misconduct Experiences**
 - Actions taken by NDEP
 - Fractured regulations
 - “Due Process” difficulties

- **Both certificants and NDEP need predictable processes**

- **Regulations include independent evaluation of NDEP action**
 - Hearing Officer
 - Appeal to the State Environmental Commission

5




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Proposed Process Flow

Certificant's Misconduct

- Grounds for Disciplinary or other action and:
 - NAC 445A.646 Grounds-BSDW; NAC 445A.293 Grounds-BWPC; NAC 459.9729 Standard of Practice-BCA
 - See Handouts (posted to www.sec.nv.gov for Dec 9)

Bureau Decision


- NDEP issues Notice of Intent to Take Disciplinary Action.
- Notice includes legal authority, facts and supporting information.
- **Summary Suspension is available in egregious cases.**

Certificant's Response

- Certificant has 10 business days from receipt of the Notice of Proposed Disciplinary Action to demonstrate compliance to the Bureau and stop the process. *(Not required)*
- NDEP has 10 business days to review and take next action.
- If a Summary Suspension is pursued by the Bureau, the Certificant does not have the opportunity to demonstrate compliance.

NOTE: If the individual has the same infraction another time in a 2-year period, they are also not eligible to “demonstrate compliance”. A hearing will be scheduled as the next step.

6




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Proposed Process Flow

If the individual contests the Notice and provides additional information:



Adequate Response

- If NDEP determines the response from the certificant is adequate, **a letter is issued within 10 business days closing out the disciplinary action.**




Inadequate Response

- Progress to a Hearing

Regarding Summary Suspension: The NDEP may suspend a certificate without a hearing if the NDEP finds, based on evidence in its possession, that the public health, safety or welfare imperatively requires suspension of the certificate. A hearing must be held within ~~60~~ **45** days after the suspension.

7

7




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Proposed Process Flow


Progression to a Hearing

If the certificant's response does not resolve the issues (or the certificant is not entitled to a response period) then a Notice of Hearing is issued by the NDEP



Hearing Notice

- Notice includes the hearing date, time, location and other required information.

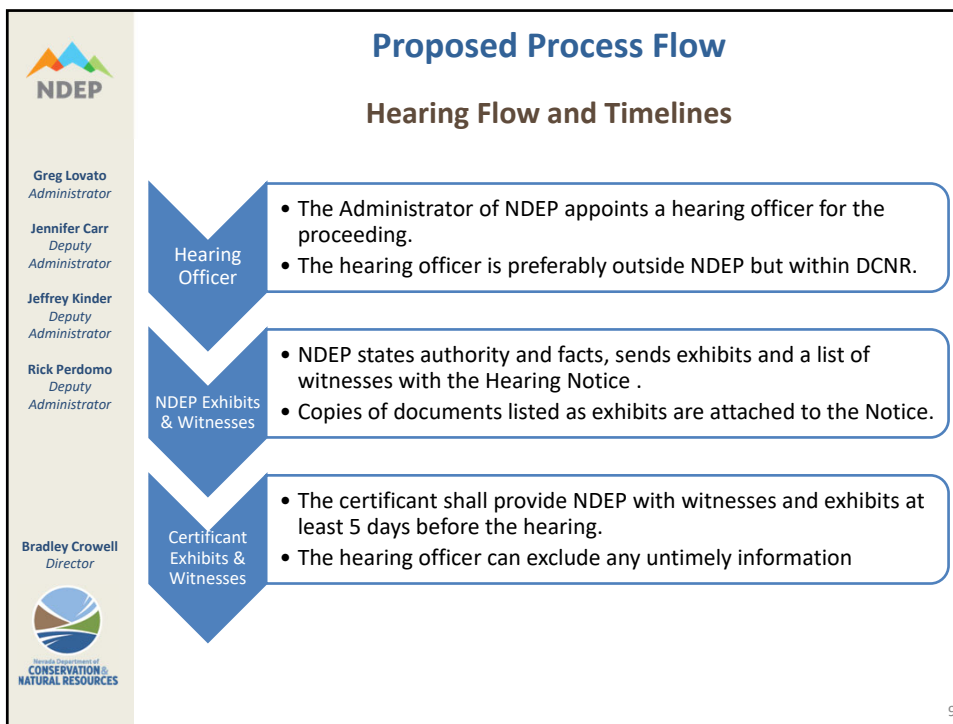


Hearing

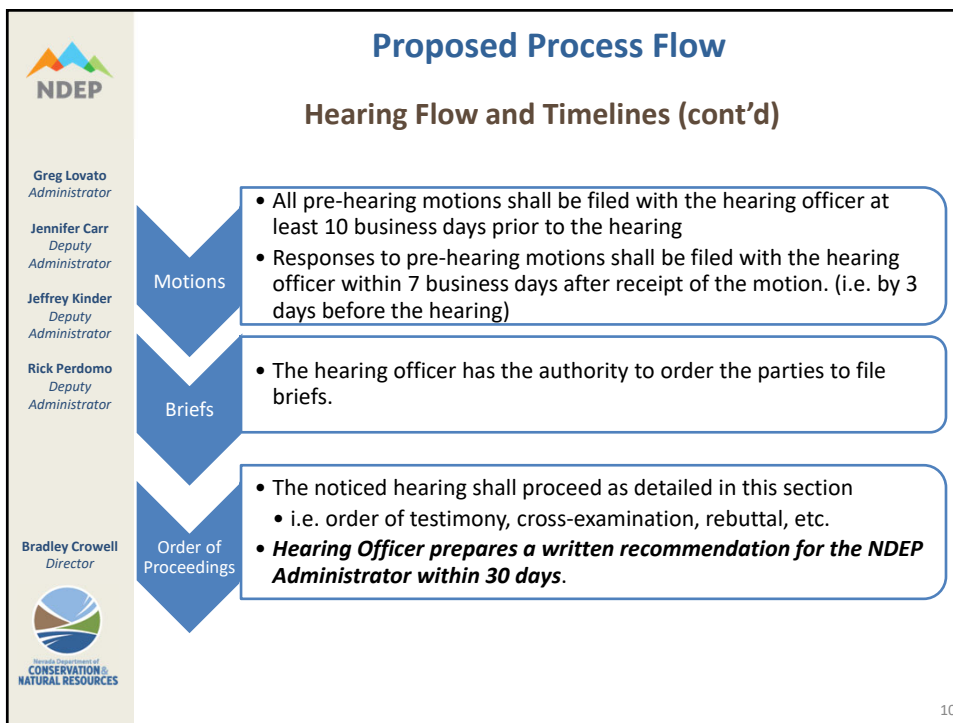
- Hearing is conducted by a Hearing Officer appointed by the NDEP Administrator
- Hearing Flow and Timelines:

8


8



9



10




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Proposed Process Flow

NDEP Decision

- The Administrator receives the Hearing Officer recommendation within 30 days, and issues a decision within 45 days, of the hearing date, including findings of fact and conclusions of law.
- The Administrator may: revoke, suspend, place on probation, or take other such action as appropriate**
- Decision is final 30 days after the date of service unless appealed.

Following the NDEP Administrator's Decision

After...


- If the decision of the Administrator results in suspension or revocation, the certificant shall provide notice to their employer of the revocation or suspension and the date it becomes effective. They may still lawfully practice until that date.

Also...

- Disciplinary action taken by the Administrator through this process is separate from, and potentially in addition to, civil or criminal formal enforcement proceedings provide by other statutes or regulations.

11

11




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Proposed Process Flow

Appeal to the State Environmental Commission

The decision of the NDEP Administrator is an appealable decision

SEC Appeal

- The Notice of Appeal and request for hearing must be filed within 10 business days and include particularity on each point of law or fact in question.
- The appellant shall identify the parts of the record before the hearing officer that are relevant and state arguments in support of appeal intending to be presented to the commission.
- The opposing party may file a response within 15 days

SEC Hearing


- Oral argument before the SEC will be scheduled within 60 days of receipt of the request for appeal
- Oral arguments are limited to 15 minutes.
- The SEC can affirm, reverse or modify the decision of the Administrator
- The decision of the SEC is eligible for Judicial Review

After...

- If the decision of the SEC results in suspension or revocation, the certificant shall provide notice to their employer of the revocation or suspension and the date it becomes effective. They may still lawfully practice until that date.

12

12




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Non-Disciplinary Grievance Process

- **Drinking Water has it (NAC 445A.652)**
 - Adding to Wastewater Treatment (Sec 2) & Corrective Actions' 3 Programs (Sec 33)
- **Process to escalate disagreement with NDEP staff on certification program decisions**

Belief that NDEP decision is incorrect or based on inadequate knowledge

within
10 days


Request an informal discussion with responsible employee and their Supervisor. If not resolved:

within
10 days

Submit written request to the Administrator for informal conference.
 Administrator's decision is final (no appeal).

13

13




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What May Have Changed for CEMs, UTHs, UTTs?

Certificat's Misconduct

- Grounds for Disciplinary or other action and:
 - NAC 445A.646 Grounds-BSDW; NAC 445A.293 Grounds-BWPC; NAC 459.9729 Standard of Practice-BCA
 - See Handouts (posted to www.sec.nv.gov for Dec 9)


Scope of Potential Discipline – P2020-02 Phrasing: Section 15:

*“In addition to any other grounds provided by statute or regulation, the Division may take disciplinary action...for: ...3. **Aiding or abetting any person in the violation of any provision or regulation adopted by the Commission to which the certificate applies.**”*

Some may view the clarifying language as a “substantive change” to the proposal, so this additional Workshop is being conducted for review and comment.

14

14




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What May Have Changed for CEMs, UTHs, UTTs?


**Scope of Potential Discipline – R126-19 Phrasing:
Section 39 (paraphrased):**
*In addition to any other grounds provided by statute or regulation, **(for services performed under the direction or control of the holder of a certificate)** the Division may take disciplinary action ... if the holder has: ...*

*4. Violated any requirement ... or aided or abetted any person in the violation of any requirement... set forth in **459.970 to 459.9729, inclusive**”*

(Certification Program Requirements)

15

15




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What May Have Changed for CEMs, UTHs, UTTs?

**Scope of Potential Discipline – R126-19 Phrasing:
Section 39 (cont'd): **(for services performed under the direction or control of the holder of a certificate)****


*5. Violated any requirement ... or aided or abetted any person in the violation of any requirement... of **445A.226 to 445A.22725***
(Action Levels for Contaminated Sites)

445C.010 to 445C.390
(Environmental Audit & Cleanup of Discharged Petroleum)

459.9921 to 459.99938
(Storage Tanks, Fund for Brownfields Projects)

16

16




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Deputy
Administrator

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Administrator

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What Else Changed?

Scope of Potential Discipline – P2020-02 Phrasing:


Section 15:
“In addition to any other grounds provided by statute or regulation, the Division may take disciplinary action...for: ...
10. Willfully making ... any false statement which is material to the administration or enforcement of any provision to which the certificate applies;”

R126-19 Changed to:

Section 39, Subsection 11:
“Willfully made any false statement... or failed to correct a false statement previously made, that is material to the administration or enforcement of [all the specific citations reviewed above];”

Improvement also made in Section 8 for 445A certificants.

17




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Small Business Impact Analysis

- **No impact to small business is anticipated**
- **Small Business Impact Assumptions:**
 - The proposed regulation pertains to disciplinary actions on *individuals* certified by NDEP
 - The proposed regulation does not impose a direct regulation on any business.

18




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Questions?

For the LCB Version of this petition, and all related documents, see the SEC webpage at <https://sec.nv.gov/>

Contact:
Jennifer Carr, NDEP Deputy Administrator
775-687-9302 / jcarr@ndep.nv.gov
ndep.nv.gov
(e-mail is preferred while NDEP offices are on minimal staffing)

6