

**NEVADA DIVISION OF ENVIRONMENTAL PROTECTION**  
**Workshop to Solicit Comments on Proposed Amendments to**  
**NAC 445A and NAC 459**

NDEP Petition P2020-02 ~ LCB File #R126-19

Tuesday, February 4, 2020 1:00 – 2:00 PM Elko City Council Chambers 1751 College Ave Elko, NV	Friday, February 7, 2020 10:00 – 11:00 AM Bryan Building, Tahoe Rm. 901 S. Stewart St Carson City, NV	Monday, February 10, 2020 1:30 – 2:30 PM Grant Sawyer Building 555 E. Washington St. Las Vegas, NV
---	---	--

**MEETING NOTES**

**ATTENDEES:**

NDEP Attendees: Jennifer Carr, NDEP Deputy Administrator – Presenter Elko & Carson City  
Elizabeth Kingsland, Chief, BWPC – Presenter Elko, Carson City & Las Vegas  
Katrina Pascual, Supervisor, NDEP BWPC – Presenter Las Vegas

Public Attendees: Elko - 15 Certified Water and/or Wastewater Operators  
Carson City – 5 Certified Water and/or Wastewater Operators; 1 Certified Environmental Manager (CEM); 1 Underground Tank Tester; and 1 “Water Sector” representative.  
Las Vegas - 1 Certified Water and/or Wastewater Operator; 3 CEMs; 1 Local Government; 2 unstated affiliation

**CALL TO ORDER:**

Ms. Katrina Pascual called each meeting to order. NDEP staff introductions were made.

**PUBLIC COMMENT:**

Open public comment opportunity was provided, noting that there will be an opportunity for discussion on each of the agenda items as they occur. No public comments made at any location.

**OVERVIEW OF STATE RULEMAKING PROCESS:**

Ms. Pascual 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 AGENCY PROPOSED REGULATION P2020-02:**

Ms. Jennifer Carr presented the material prepared in the PowerPoint presentation slides (Attachment 1) at the Elko and Carson City workshops. Ms. Elizabeth Kingsland presented the material at the Las Vegas workshop.

Handouts of Grounds for Disciplinary Action for each of the three main programmatic areas were used in the discussion (Attachment 2)

## **DISCUSSION ON AGENCY PROPOSED REGULATION P2020-02:**

### Elko Question/Answer:

**Q1:** In the Wastewater Operator Handout, why does #11 have green?

**A1:** When originally sent to the Legislative Council Bureau (LCB) for review, NDEP missed changing that one to be consistent with the fact that merely failing to renew a certificate should not be grounds for discipline. Someone may choose not to renew (i.e. retire or leave the profession) and discipline would not be take for that. What is critical is that an operator who has not renewed must not act in responsible charge if their certificate is expired.

Follow up Q: So the, #11 and #7 would be the same so #11 can be deleted?

A: Good catch! Yes, #11 will be proposed for deletion.

**Q2:** For Summary suspension-what goes into NDEP concluding to do a summary suspension? The operator has a lot to lose.

**A2:** All disciplinary action is taken seriously and NDEP doesn't take it lightly, it is never easy. NDEP knows that such an action would affect an individual's ability to earn a living. Summary Suspension would be related to something really serious. Putting public health at imminent risk would get you a summary suspension. However, NDEP would gather evidence and investigate the situation and Summary Suspension would only be used if we believe that something really bad would happen if we continued to let someone operate. We do recognize that there is potential for false reporting (i.e. your former buddy is angry with you), so we would not suspend a certificate without careful consideration.

**Q3:** For the non-disciplinary grievance process - On the Wastewater side, if we disagreed with Ashley [the NWEA contractor], who would would be involved?

**A3:** NWEA is a contractor to NDEP. Katrina Pascual would be the Supervisor and we would likely also involve Adrian Edwards, or the current Chair of NWEA.

**Q4:** If a certified operator is a contract operator who has a violation and is disciplined for one system (and also works on several systems), if they lose their certification, do the other systems also lose their operator? Does NDEP give the system some time to work it out?

**A4:** As is practice now, if the water system loses their operator, NDEP sends a letter giving 2 weeks to 30 days to get a new operator. That practice would continue. In the past, NDEP has also asked NV Rural Water to help a system through the process and sometimes will help as a contract operator to bridge the gap.

**Q5:** What liability does an operator have if they can't get someone who holds the purse strings to do improvements that need to be done?

**A5:** Likely, that would be a finding of violation against the company or the utility, not the individual operator. If the operator is doing his best, NDEP would consider that as part of final decision. Of course, keeping good records would be important in such a case so that the facts are clear.

### Carson City Question/Answer:

**Q1:** If an operator takes a contact hour class that it turns out is not approved, and therefore has failed to properly renew the certification, but the individual is not working in the field, is it grounds for discipline?

**A1:** No, it is not grounds for discipline if the operator is not practicing with an expired certificate. The grace period for reinstatement does not permit someone to operate under their certificate. The person could still go to work (work on vehicles, etc) but cannot be in responsible charge or make decisions under the value that the certification holds.

**Q2:** For CEMs, if someone is doing work in Nevada who has *never* been certified and they are doing Phase I site assessment work, does NDEP have a protocol for dealing with these individuals? If they do not have a certification to begin with, what disciplinary action can be taken?

**A2:** That is something that we could refer to the Attorney General's Office. Oftentimes, the out-of-state entity does not know about the CEM program and outreach is done first.

**Q3:** How can someone raise concerns to NDEP about an uncertified individual?

**A3:** We learn about that sort of thing in many different ways, both internally or externally. If NDEP receives such a report, it will be investigated before action is taken. For the CEM program, it can be reported to staff in the appropriate program.

**Q4:** In the non-disciplinary grievance process, the Administrator's final decision is not appealable, so it cannot go to the SEC if someone does not agree with the Administrator's decision?

**A4:** No, because that is the way it is written in the drinking water regulation or will be written (as proposed) in the wastewater and CEM regulations. These non-disciplinary grievances do not affect the ability for someone to do their job. For that type of discipline, the other process is proposed.

Las Vegas Question/Answer:

**Q1:** For CEMs, there is a 10-day period for the individual to respond, and another 10 days for NDEP in the process, is that one 10-day period or two?

**A1:** Those are two different 10-day periods.

**Q2:** For the slide that says a response from the individual is not required, what does that mean?

**A2:** It is an opportunity for the individual to provide more information that they think NDEP did not have or did not consider, for example. But it is not required. If the individual does not respond, the process would move to a hearing.

**WRITTEN COMMENT RECEIVED:**

None.

**ATTACHMENT 1**

**PowerPoint Presentation for P2020-02**





## Workshop for Proposed Regulation

*Jennifer Carr, Deputy Administrator  
February, 2020*

Elko, Carson City, Las Vegas


---

### P2020-02 / LCB File #R126-19

### Certification Disciplinary Procedures


*ndep.nv.gov*

1



## Regulation Adoption Process

The process and timelines for adoption of this regulation are the same as those described today for P2020-01 / LCB File #R121-19  
**(We have NOT received the LCB version yet)**




**Greg Lovato**  
*Administrator*

**Jennifer Carr**  
*Deputy Administrator*

**Jeffrey Kinder**  
*Deputy Administrator*

**Rick Perdomo**  
*Deputy Administrator*

**Bradley Crowell**  
*Director*



2



Greg Lovato  
Administrator

Jennifer Carr  
Deputy  
Administrator

Jeffrey Kinder  
Deputy  
Administrator

Rick Perdomo  
Deputy  
Administrator

Bradley Crowell  
Director



### 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



Greg Lovato  
Administrator

Jennifer Carr  
Deputy  
Administrator

Jeffrey Kinder  
Deputy  
Administrator

Rick Perdomo  
Deputy  
Administrator

Bradley Crowell  
Director



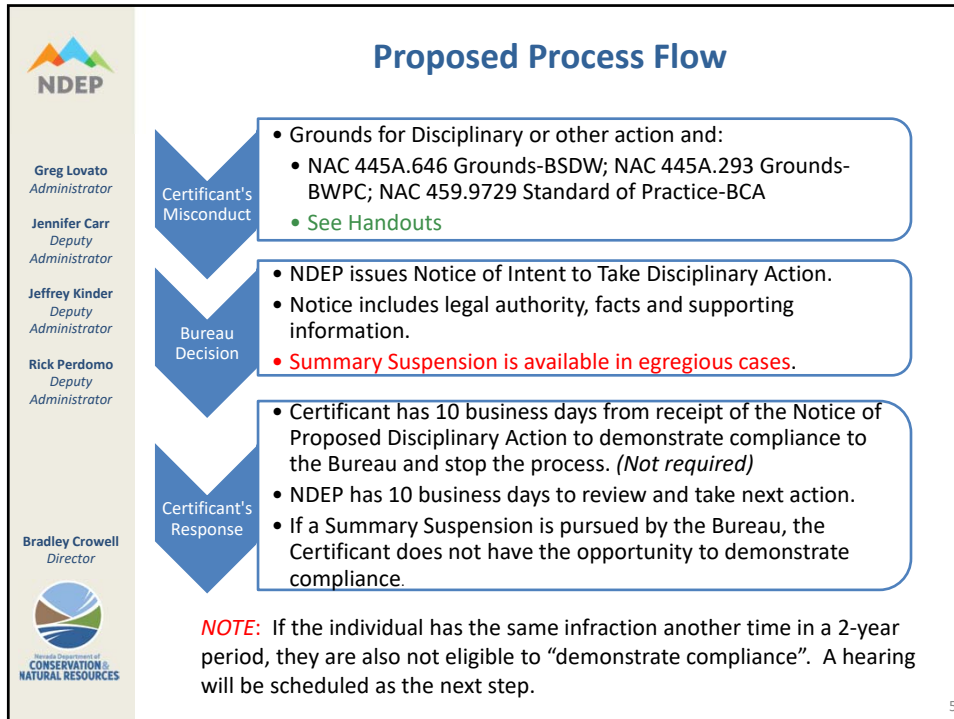
### Need For Regulation Amendments & Additions

- 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

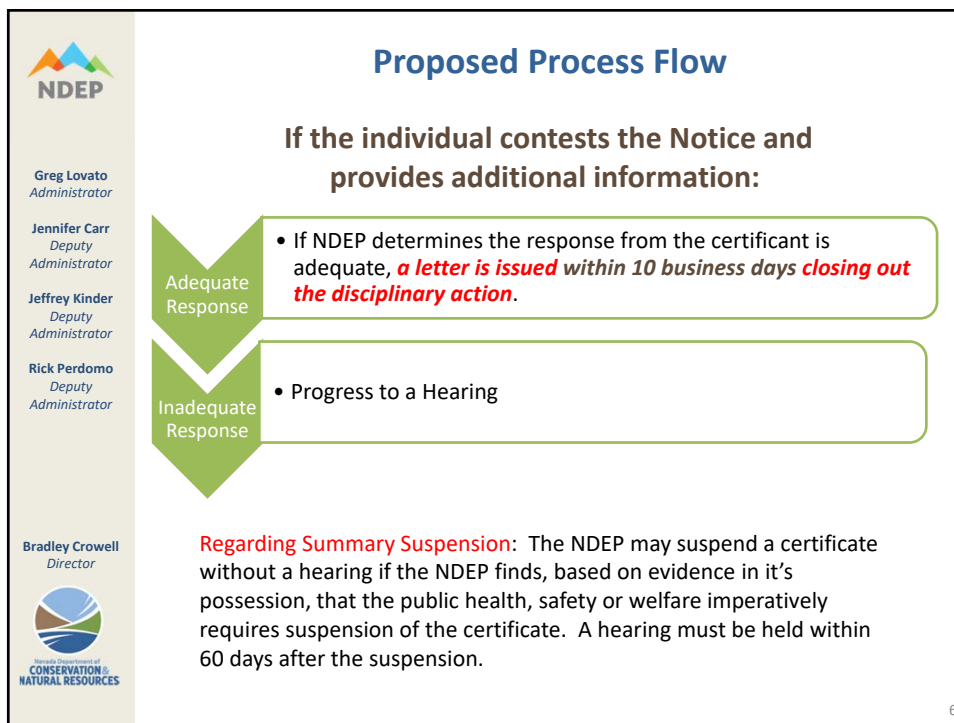


4


4



5



6



**Greg Lovato**  
Administrator


**Jennifer Carr**  
Deputy  
Administrator

**Jeffrey Kinder**  
Deputy  
Administrator

**Rick Perdomo**  
Deputy  
Administrator

**Bradley Crowell**  
Director



## 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:

7

7



**Greg Lovato**  
Administrator


**Jennifer Carr**  
Deputy  
Administrator

**Jeffrey Kinder**  
Deputy  
Administrator

**Rick Perdomo**  
Deputy  
Administrator

**Bradley Crowell**  
Director



## Proposed Process Flow

### Hearing Flow and Timelines

Hearing Officer

- The Administrator of NDEP appoints a hearing officer for the proceeding.
- The hearing officer is preferably outside NDEP but within DCNR.

NDEP Exhibits & Witnesses

- NDEP states authority and facts, sends exhibits and a list of witnesses with the Hearing Notice .
- Copies of documents listed as exhibits are attached to the Notice.


Certificant Exhibits & Witnesses

- The certificant shall provide NDEP with witnesses and exhibits at least 5 days before the hearing.
- The hearing officer can exclude any untimely information

8

8





## Proposed Process Flow

### Hearing Flow and Timelines (cont'd)

Greg Lovato  
Administrator


Jennifer Carr  
Deputy  
Administrator

Jeffrey Kinder  
Deputy  
Administrator

Rick Perdomo  
Deputy  
Administrator

Bradley Crowell  
Director



Motions

- All pre-hearing motions shall be filed with the hearing officer at least 10 business days prior to the hearing
- Responses to pre-hearing motions shall be filed with the hearing officer within 7 business days after receipt of the motion. (i.e. by 3 days before the hearing)


Briefs

- The hearing officer has the authority to order the parties to file briefs.

Order of Proceedings

- The noticed hearing shall proceed as detailed in this section
  - i.e. order of testimony, cross-examination, rebuttal, etc.
- Hearing Officer prepares a written recommendation for the NDEP Administrator within 30 days.**

9



## Proposed Process Flow

Greg Lovato  
Administrator


Jennifer Carr  
Deputy  
Administrator

Jeffrey Kinder  
Deputy  
Administrator

Rick Perdomo  
Deputy  
Administrator

Bradley Crowell  
Director



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.*

10

5



**Greg Lovato**  
Administrator


**Jennifer Carr**  
Deputy  
Administrator

**Jeffrey Kinder**  
Deputy  
Administrator

**Rick Perdomo**  
Deputy  
Administrator

**Bradley Crowell**  
Director



## Proposed Process Flow

### Appeal to the State Environmental Commission

The decision of the NDEP Administrator is an appealable decision

SEC Appeal

SEC Hearing

After...


- 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

- 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

- 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.

11

11



**Greg Lovato**  
Administrator


**Jennifer Carr**  
Deputy  
Administrator

**Jeffrey Kinder**  
Deputy  
Administrator

**Rick Perdomo**  
Deputy  
Administrator

**Bradley Crowell**  
Director



## Non-Disciplinary Grievance Process

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

12

12



Greg Lovato  
Administrator

Jennifer Carr  
Deputy  
Administrator

Jeffrey Kinder  
Deputy  
Administrator

Rick Perdomo  
Deputy  
Administrator

Bradley Crowell  
Director



## 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.



13

13



Greg Lovato  
Administrator

Jennifer Carr  
Deputy  
Administrator

Jeffrey Kinder  
Deputy  
Administrator

Rick Perdomo  
Deputy  
Administrator

Bradley Crowell  
Director



## Questions?

The Agency Version has been available on our Notices page at <https://ndep.nv.gov/>  
*Posted January 13, 2020*

For the LCB Version of this petition, watch for it on the SEC webpage at <https://sec.nv.gov/>  
*Expected for the March hearing date*

*There will be changes to the Agency Draft*

**Contact:**

Jennifer Carr, NDEP Deputy Administrator  
775-687-9302 / [jcarr@ndep.nv.gov](mailto:jcarr@ndep.nv.gov)  
[ndep.nv.gov](http://ndep.nv.gov)

6

14

**ATTACHMENT 2**

**Handouts of Grounds for Disciplinary Action by Discipline for P2020-02**

## **Grounds for Disciplinary Action Wastewater Treatment Operators**

**Sec. 3.** NAC 445A.293 is hereby amended to read as follows:

The Division may deny an application for a certificate as an operator of a plant for sewage treatment, ~~or~~ suspend or revoke, *place on probation, or take other disciplinary action against an operator's* full certificate, provisional certificate or restricted certificate if the applicant or holder of the certificate:

1. In applying for or obtaining a certificate, has submitted to the Division any application, document, record, report or affidavit, or any information in support thereof, which is false or fraudulent;
2. Is grossly negligent, incompetent or has committed misconduct in the performance of his or her duties as an operator of a plant for sewage treatment;
3. Has demonstrated disregard for the health and safety of the public and the environment;
4. Has acted outside the rights and privileges of the grade for which he or she holds a certificate;
5. Has been convicted of a violation of any federal law or law of any state relating to water quality, including, without limitation, the Clean Water Act, 33 U.S.C. §§ 1251 et seq.;
6. Has been convicted of a felony or other crime involving moral turpitude, dishonesty or corruption;
7. Has willfully made to a governmental agency with regulatory authority any false statement which is material to the administration or enforcement of any provision of this chapter or [chapter 445A](#) of NRS;
8. *Continues to practice after his or her certificate has expired, or has been suspended or revoked* ~~[Has failed to renew his or her certification]~~; or
9. Has violated, attempted to violate, assisted or abetted in the violation of or conspired to violate any provision of this chapter or [chapter 445A](#) of NRS.

## Grounds for Disciplinary Action Wastewater Treatment Operators

**Sec. 15.** *“Grounds for disciplinary or other action”. In addition to any other grounds provided by statute or regulation, the Division may take disciplinary action against a holder of or an applicant for a certificate for:*

- 1. The practice of fraud or deceit in obtaining or attempting to obtain or renew a certificate or cheating on any examination required to obtain or renew a certificate;*
- 2. Any gross negligence, incompetency or misconduct in the performance of duties as the holder of a certificate;*
- 3. Aiding or abetting any person in the violation of any provision or regulation adopted by the Commission to which the certificate applies;*
- 4. Conviction of or entry of a plea of nolo contendere to any crime an essential element of which is dishonesty or which is directly related to any practice for which a certificate is required;*
- 5. A violation of any provision or regulation adopted by the Commission to which the certificate applies.*
- 6. Discipline by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those contained in this chapter;*
- 7. Practicing after the certificate has expired or has been suspended or revoked;*
- 8. Demonstrating disregard for the health and safety of the public and environment;*
- 9. Acting outside the rights and privileges of the grade of the certificate;*
- 10. Willfully making to a governmental agency with regulatory authority any false statement which is material to the administration or enforcement of any provision to which the certificate applies;*
- 11. Continues to practice after his or her certificate has expired, or has been suspended or revoked*~~*Failing to renew the certificate*~~*; or*
- 12. Failing to comply with an order issued by the Administrator.*

## Grounds for Disciplinary Action Drinking Water Distribution or Treatment Operators

**Sec. 4.** NAC 445A.646 is hereby amended to read as follows:

The Division may deny an application for a certificate, ~~or~~ suspend or revoke, *place on probation, or take other disciplinary action against* an operator's full certificate, provisional certificate or certificate as an operator-in-training if he or she:

1. In applying for or obtaining a certificate, has submitted to the Division any application, document, record, report or affidavit, or any information in support thereof, which is false or fraudulent;
2. Is grossly negligent, incompetent or has committed misconduct in the performance of his or her duties as an operator of a public water system;
3. Has demonstrated disregard for the health and safety of the public;
4. Has acted outside the rights and privileges of his or her classification for which he or she holds a certificate;
5. Has been convicted of a violation of any federal law or law of any state relating to water quality, including, but not limited to, the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.;
6. Has been convicted of a felony or other crime involving moral turpitude, dishonesty or corruption;
7. Has willfully made to an employee of the Division or any health authority any false statement which is material to the administration or enforcement of any provision of this chapter or [chapter 445A](#) of NRS;
8. *Continues to practice after his or her certificate has expired, or has been suspended or revoked* ~~[Has failed to renew his or her certification]~~; or
9. Has violated, attempted to violate, assisted or abetted in the violation of, or conspired to violate any provision of this chapter or [chapter 445A](#) of NRS.

**Sec. 15. “Grounds for disciplinary or other action”.** *In addition to any other grounds provided by statute or regulation, the Division may take disciplinary action against a holder of or an applicant for a certificate for:*

- 1. The practice of fraud or deceit in obtaining or attempting to obtain or renew a certificate or cheating on any examination required to obtain or renew a certificate;*
- 2. Any gross negligence, incompetency or misconduct in the performance of duties as the holder of a certificate;*
- 3. Aiding or abetting any person in the violation of any provision or regulation adopted by the Commission to which the certificate applies;*
- 4. Conviction of or entry of a plea of nolo contendere to any crime an essential element of which is dishonesty or which is directly related to any practice for which a certificate is required;*
- 5. A violation of any provision or regulation adopted by the Commission to which the certificate applies.*
- 6. Discipline by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those contained in this chapter;*
- 7. Practicing after the certificate has expired or has been suspended or revoked;*
- 8. Demonstrating disregard for the health and safety of the public and environment;*
- 9. Acting outside the rights and privileges of the grade of the certificate;*
- 10. Willfully making to a governmental agency with regulatory authority any false statement which is material to the administration or enforcement of any provision to which the certificate applies;*
- 11. Continues to practice after his or her certificate has expired, or has been suspended or revoked~~[Failing to renew the certificate]~~; or*
- 12. Failing to comply with an order issued by the Administrator.*



## Grounds for Disciplinary Action

### CEMs ~ UTHs ~ UTTs

**Sec. 9. “Standards of Practice”** Chapter 445A.9729 is hereby amended to read as follows:

1. Each holder of a certificate issued by the Division pursuant to the provisions of [NAC 459.970](#) to [459.9729](#), inclusive:

(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 *placed on probation*, suspended, revoked or denied for renewal, *or other disciplinary action may be taken*, if the Division determines that the certificate holder has not performed in accordance with the standards described in this section.

**Sec. 15. “Grounds for disciplinary or other action”.** *In addition to any other grounds provided by statute or regulation, the Division may take disciplinary action against a holder of or an applicant for a certificate for:*

- 1. The practice of fraud or deceit in obtaining or attempting to obtain or renew a certificate or cheating on any examination required to obtain or renew a certificate;*
- 2. Any gross negligence, incompetency or misconduct in the performance of duties as the holder of a certificate;*
- 3. Aiding or abetting any person in the violation of any provision or regulation adopted by the Commission to which the certificate applies;*
- 4. Conviction of or entry of a plea of nolo contendere to any crime an essential element of which is dishonesty or which is directly related to any practice for which a certificate is required;*
- 5. A violation of any provision or regulation adopted by the Commission to which the certificate applies.*
- 6. Discipline by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those contained in this chapter;*
- 7. Practicing after the certificate has expired or has been suspended or revoked;*
- 8. Demonstrating disregard for the health and safety of the public and environment;*
- 9. Acting outside the rights and privileges of the grade of the certificate;*
- 10. Willfully making to a governmental agency with regulatory authority any false statement which is material to the administration or enforcement of any provision to which the certificate applies;*
- 11. Continues to practice after his or her certificate has expired, or has been suspended or revoked*~~*[Failing to renew the certificate]*~~*; or*
- 12. Failing to comply with an order issued by the Administrator.*