

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 professional development hours 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 R033-22I up to February 8, 2022. The Division received four written comments concerning R033-22I (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
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9545

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.

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

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:

Adverse: The regulation amendment will cost an individual an additional \$50 for the initial certification application (a total of \$150) and an additional \$50 to take the certification exam (a total of \$200). Long term, an additional \$50 for certification renewal every other year (a total of \$150) is required. Please reference the table below for the fee changes:

Proposed Changes:	Current	Proposed
UTH Certification and Recertification	\$100	\$150
UTT Certification and Recertification	\$100	\$150
CEM Certification and Recertification	\$100	\$150
CEM exam fee	\$150	\$200

The new requirement for professional development hours (24 hours over a two-year period) are equivalent to hours of work; therefore, the cost to an individual is 12 hours/year of their time.

Beneficial: The fees have remained the same since their adoption in 1991. The proposed increase is 75% or less of the National Consumer Price Index estimated change over the past 31 years. Additionally, there are qualifying classes offered at no cost. These classes contain up-to-date content on hazardous material removal and remediation technologies. Completion of these classes and continued certification will increase the marketability of the business.

Public:

Adverse: The regulatory amendments in R033-22P are expected to have no economic impact to the public, initially or long term.

Beneficial: Initial and long-term beneficial effects would be the strengthening of certification requirements to better ensure the public is hiring an individual who is effective in managing hazardous waste.

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.

February 14, 2022

Nevada Division of Environmental Protection
901 South Stewart Street
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Carson City, Nevada 89701

RE: COMMENT: PROPOSED REGULATION AMENDMENTS
NEVADA ADMINISTRATIVE CODE 459: CERTIFICATION PROGRAM

To Whom It May Concern:

Assembly Bill 196 introduced the initial version of Nevada Revised Statute (NRS) 459.500 in 1981, and in 1989 this statute was amended to involve certification of consultants in the environmental industry. Nevada Administrative Code (NAC) 459.972, et seq., enacting these certification provisions was added to code effective 1991. I have been certified by the State of Nevada as an Environmental Manager since 1996.

Upon review of current Certified Environmental Manager (CEM) Exam Topics, I wonder what exactly has changed about the exam since I took it, and what is reasonably necessary for an individual to know and understand in order for the Commission, i.e. the State Environmental Commission, to affirm an individual can or should be,

“[certified as] consultants involved in consultation regarding the response to and the clean up of leaks of hazardous waste, hazardous material or a regulated substance from underground storage tanks, the clean up of spills of or accidents or motor vehicle crashes involving hazardous waste, hazardous material or a regulated substance, or the management of hazardous waste;” [NRS 459.500(2)].

What competencies does the Division of Environmental Protection (NDEP) expect Continuing Education Units (CEUs) to expand or reinforce relative to those topics tested by the CEM Exam? [Revised 5/2018]. In 1996, there were 200 questions and the last 10 or so included a demonstration of understanding of: asymptotic decline, proper well construction (which mingles with regulations under Division of Water Resources), concentration calculations, etc. But even these technical derivations, in conjunction with the balance of the questions, focused the exam to prove an understanding of the structure, framework, and critical content of regulation, and the proper application of such. That aspect of ‘knowing the rules’ is the key to functional consulting, and combined with a minimum level of education and demonstrated experience, there is no more the state should reasonably require to meet statutory demands.

Remaining technical aspects of competence in the environmental space are industry-driven. Academics and innovation advancing design and strategy largely depend on economics, and consequently, lack of technologic ability is vetted and eliminated by market forces.

The proposed requirement to insist CEMs offer NDEP 24 CEUs biennially is unjustified by the needs of the environmental space. The notion narrowly forwards the commercial interests of

professional conferences, professional organizations, regional economic development initiatives, and/or commercial 'training' agencies, etc., without clear or substantiable return.

The proposed language modifying NAC 459.9728 does not even describe the kind or classification of CEUs which might be "deemed acceptable by the Division." Such ambiguity does not belong in codified regulation, and frankly, arbitrary mandate is unworthy of Nevada code or statute. For instance, are CEUs within the scope of financial project controls acceptable since this is a paramount aspect of large-scale environmental remediation? Are CEUs exploring the tidal influences on perched aquifer plume migration acceptable even if inapplicable in Nevada? Are CEUs in the field of operation of environmental laboratory instrumentation acceptable?

If proof of 24 professional development hours are accepted by NDEP for re-certification of an individual, is the State thereby certifying the individual is competent to perform services requisite to the CEU topics submitted since these CEUs would be considered 'satisfactory evidence of the necessary qualifications as required by Nevada Revised Statute 459.400 to 459.600?' Consequently, if a private or public entity is damaged by services provided by a CEM evidently trained through CEUs and thus certified by the State of Nevada, might the State of Nevada assume some degree of responsibility?

The CEM exam establishes a credible demonstration of individual exposure to and knowledge of the regulatory framework encompassing and supporting the broad spectrum of environmental consulting. Hence, the State of Nevada has reasonably ensured CEMs can recognize and functionally apply state and federal laws (many incorporated by reference) prior to solicitation of services. That fundamental competency can be demonstrated and defended, but requiring CEUs for renewal, particularly given the scope of unqualified, undefined, and widely variable CEUs that may be "deemed acceptable" - or not - by any particular reviewer is nothing less than hazardous.

The CEM program is not equipped, nor should it be, to certify that level of technical competence. It strikes me as rather obvious it would be easier, and probably cheaper (excepting travel expenses), to simply re-take the CEM exam biennially to maintain certification, which is what the State relies on to comply with statutory mandate in the first place.

The Notice of Public Workshop communicates little about why NDEP seeks to amend the codified requirements for certification in such a way that complicates the program. Yet, it stands to reason there must be some causation justifying the vague and arbitrary requirement to force certified professionals to do more to satisfy NDEP "necessary qualifications" remain met, despite NRS and NAC changing little.

If the concern is incompetence leading to damages, as a former Class A General Engineering Contractor licensed by the State of Nevada, I suggest NRS and/or NAC necessitate a demonstration of requisite insurance coverage, i.e., errors and omissions which should already be held by commercial consulting entities, and/or bonding, as is already needed for environmental contracting services. The economic impacts would simply shift the boon from conferences and training centers to the insurance industry.

Further, while this particular section of code is under consideration for amendment, please allow me to point out the requirement that CEMs must continue to demonstrate “at least 3 years of *relevant* environmental experience within the 5 years immediately preceding the date of the application” is similarly ambiguous and functionally irrelevant. As used in regulation, “relevant” by whose standard? “Experience” in what setting? This point has been problematic in the past and it will remain subject to challenge in the future.

Personally, my environmental skill set is used constantly in all sorts of work environments. Who then is qualified to pass judgment about what 3 years, in units of days, hours, or minutes, of my experience is not “relevant” enough to justify recertification? There are no definitions to this criterion, and therefore, it is arbitrary and subjective.

In fact, please consider revising NAC 459.972(3) to read,

“...industrial hygiene or chemistry and at least 3 years of relevant environmental experience within the 5 years immediately preceding the date of *initial* application;”

In effect, it is a reasonable requirement for an initial applicant to demonstrate a term of practical experience. Yet, once practical experience is demonstrated, what is there to forget that cannot be reminded? Again, the critical issue is to know the structure and framework of the rules governing environmental action – not technical details, not academic advancement or industrial innovation, and certainly not ambiguous and undefined categories of CEUs purchased from someone that seems to think or somehow ‘knows’ they can offer a commodity “deemed acceptable.”

The State of Nevada certifies environmental consultants have given satisfactory evidence of ‘necessary qualifications as required by the NRS 459.970 to 459.9729’ when they meet the requirements of NAC 459.972(3) and pass the CEM exam. Until and unless substantive requirements of NRS and NAC change, there is nothing else for the State to reasonably or practically certify other than the passage of time and the intention of the certified to continue to work in the environmental space in any capacity, and of course – the assessment of fees.

For all practical purposes, the NDEP should consider increasing the renewal fees to \$150 biennially, and, in exchange, send out notifications (e-blasts, letters, post on the website, etc.) when such substantive aspects, language, or content of relevant NRS and NAC change. That would be helpful to the CEM to continue to provide services worthy of certification by the State of Nevada.

Thank you for your consideration of my testimony.

Sincerely,



Tamara Pelham
CEM 1537

Per NDEP request, here are some comments on the proposed amendments to NAC 459 pertaining to the Certification of Certain Consultants and Contractors. The proposed requirement for environmental managers to complete 24 professional development hours within two years before renewal of an application is onerous and currently not well defined. Recognizing that professional development is important and to address the concerns of the Internal Audit completed, we suggest including a requirement for completion of 8-12 professional development hours (instead of 24 hours) within two years before renewal of an application. Additionally, the currently proposed amendment to NAC 459 does not clearly define what will be deemed an acceptable professional development activity to the Division. We encourage the Division to publish guidelines for public review and comment in advance of amending the regulations to provide CEMs with a clearer understanding of acceptable professional development requirements.

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Regarding the proposed amendments requiring CEMs to complete continuing education credits, could you describe what failures in the current system, or perhaps what deteriorations with existing CEM performances, would be corrected by requiring CEUs? In addition, is there a justification as to why CEUs would be required at this time, as opposed to a couple decades ago?

Steven Garrahan, C.E.M.
Project Scientist

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NDEP Certification Program representative,

I may not be able to attend the subject Public Workshop, so I am submitting the following comments.

First, I want to convey that I am in favor of the proposed changes, including enacting a CEU system for recertification.

My comments/questions pertain to how the CEU requirements will be set up.

1. Will there be a requirement that a portion of the required 24 CEUs be *in ethics and law*, similar to what has been recently added to NV PE's PDH (CEU) requirements?
2. Will CEUs be required to be obtained from NDEP pre-approved course providers with pre-approved courses, *and/or* other options to obtain CEUs as long as they are applicable to the type of work CEMs are involved with (as CEMs), as long as participation can be documented?

Examples include

- a. Trainex.org
- b. McCoys RCRA Training
- c. 8-Hour HAZWoper Refreshers
- d. EPA's [//clu-in.org/training](http://clu-in.org/training)
- e. University courses (continuing education)
- f. Professional Society dinner/lunch meetings (such as AEG, ASCE, etc)

Regards,

Daniel C. Burns, PE, CEM, REHS

Environmental Health Engineer

Plan Review

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