

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R123-16

Petition Number: P2016-10

June 27, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~fomitted material~~ is material to be omitted.

AUTHORITY: NRS 459.485; NRS 459.500; NRS 459.826; NRS 459.830; and NRS 459.832.

CERTIFICATION OF CERTAIN CONSULTANTS AND CONTRACTORS

NAC 459.970 Definitions. (NRS 459.485, 459.500, 459.826, 459.830, 459.832) As used in NAC 459.970 to 459.9729, inclusive, unless the context otherwise requires, the words and terms defined in NAC 459.9701 to 459.9716, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Environmental Comm'n, eff. 3-6-91)

NAC 459.97005 “Class A Operator” defined (40 CFR 280.242) “Class A Operator” means a person who must be trained or pass a comparable examination that provides general knowledge of the following requirements: Spill and overflow prevention; release detection; corrosion protection; emergency response; product and equipment compatibility and demonstration; financial responsibility; notification and storage tank registration; temporary and permanent closure; related reporting, recordkeeping, testing, and inspections; environmental and regulatory consequences of releases; and training requirements for Class B and Class C operators.

NAC 459.97006 “Class B Operator” defined (40 CFR 280.242) “Class B Operator” means a person who must either be trained or pass an examination about the regulatory requirements and typical equipment used at UST facilities; or site-specific requirements which address only the regulatory requirements and equipment specific to the facility: Operation and maintenance; spill and overflow prevention; release detection and related reporting; corrosion protection; emergency response; product and equipment compatibility and demonstration; reporting, recordkeeping, testing, and inspections; environmental and regulatory consequences of releases; and training requirements for Class C operators.

NAC 459.97007 “Class C Operator” defined (40 CFR 280.242) “Class C Operator” means a person who must either: be trained by a Class A or Class B operator; complete a training program; or pass a comparable examination. The training option chosen must teach or evaluate the Class C operator's knowledge to take appropriate actions (including notifying

appropriate authorities) in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.

NAC 459.9701 “Consultant” defined. ([NRS 459.485](#), [459.500](#)) “Consultant” means a person who provides information, opinion or advice for a fee or in conjunction with other services for which a fee is charged.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9702 “Division” defined. ([NRS 459.485](#), [459.500](#)) “Division” means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9703 “Employee” defined. ([NRS 459.485](#), [459.500](#)) “Employee” includes:

1. Any officer of a corporation;
2. Any natural person whose activities are subject to a right of control by the person paying for his or her services; and
3. Any other natural person who would be considered an employee under any common-law definition of employee.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9704 “Environmental manager” defined. ([NRS 459.485](#), [459.500](#)) “Environmental manager” means a natural person who is certified by the Division pursuant to [NAC 459.972](#) or ~~[459.9724](#)~~ to act as a consultant relating to:

1. The management of hazardous waste;
2. The investigation of a site to determine the release or potential release of a hazardous substance;
3. The sampling of air, soil, surface water or groundwater to determine the release of a hazardous substance;
4. The response to a release of a hazardous substance;
5. The cleanup of a release of a hazardous substance; or
6. The remediation of water or soil contaminated by a hazardous substance.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9705 “Handler of underground storage tanks” defined. ([NRS 459.485](#), [459.500](#)) “Handler of underground storage tanks” means a natural person who is certified by the Division pursuant to [NAC 459.9722](#) or ~~[459.9724](#)~~ to install, repair, upgrade or close underground storage tanks pursuant to 40 C.F.R. Part 280, as that part existed on June 12, 1990.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9706 “Hazardous material” defined. ([NRS 459.485](#), [459.500](#)) “Hazardous material” has the meaning ascribed to it in [NRS 459.428](#).

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9707 “Hazardous substance” defined. ([NRS 459.485](#), [459.500](#)) “Hazardous substance” means:

1. Any hazardous material;
2. Any hazardous waste; or
3. Any regulated substance.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9708 “Hazardous waste” defined. ([NRS 459.485](#), [459.500](#)) “Hazardous waste” has the meaning ascribed to it in [NRS 459.430](#) and [NAC 444.843](#).

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9709 “Management of hazardous waste” defined. ([NRS 459.485](#), [459.500](#)) “Management of hazardous waste” means services relating to the identification, sampling, handling, packaging, storage, labeling, treatment, reduction, recycling, permitting, recordkeeping, manifesting, transportation or disposal of hazardous waste.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.971 “Person” defined. ([NRS 459.485](#), [459.500](#)) “Person” has the meaning ascribed to it in [NRS 0.039](#).

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9711 “Regulated substance” defined. ([NRS 459.485](#), [459.500](#)) “Regulated substance” has the meaning ascribed to it in [NRS 459.448](#).

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9712 “Release of a hazardous substance” defined. ([NRS 459.485](#), [459.500](#))
“Release of a hazardous substance” means the discharge, deposit, injection, dumping, spilling, emitting, leaking, escaping, leaching, pumping, pouring, emptying, disposing or placing of a hazardous substance into the air or on land or the waters of the State. The term does not include a release of a hazardous substance:

1. Specifically allowed by a permit issued pursuant to state or federal law; or
2. For which a permit is not required by state or federal law.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9713 “Response” defined. ([NRS 459.485](#), [459.500](#)) “Response” means the provision of remedial services to protect the public health, safety, welfare or environment from a release of a hazardous substance, including, but not limited to, the digging, cleanup, removal, abatement, containment, control, absorbance, treatment or remediation of soil or water contaminated with a hazardous substance.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

~~† NAC 459.9714 “Specialist in the management of hazardous waste” defined. (NRS 459.485, 459.500) “Specialist in the management of hazardous waste” means a natural person who is certified by the Division pursuant to NAC 459.9721 or 459.9724 to act as a consultant relating to the management of hazardous waste.~~

~~—(Added to NAC by Environmental Comm’n, eff. 3-6-91)†~~

NAC 459.9715 “Tester of underground storage tanks” defined. ([NRS 459.485](#), [459.500](#))
“Tester of underground storage tanks” means a natural person who is certified by the Division pursuant to [NAC 459.9723](#) or ~~[459.9724]~~ to test the tightness of underground storage tanks pursuant to 40 C.F.R. Section 280.43(c), as that section existed on June 12, 1990.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.97155 “Provider of an approved UST training program” defined. (NRS 459.826, 459.830, 459.832) A natural person who is certified by the division pursuant to NAC 459.97235 that provides information to and evaluates the knowledge of a Class A and Class B operator of underground storage tanks as part of an approved training program in accordance with 40 CFR 280.12.

NAC 459.9716 “Underground storage tank (*UST*)” defined. ([NRS 459.485](#), [459.500](#))
“Underground storage tank” has the meaning ascribed to it in 40 C.F.R. Section 280.12, as that section existed on June 12, 1990.

(Added to NAC by Environmental Comm’n, eff. 3-6-91)

NAC 459.9717 Intent of provisions. ([NRS 459.485](#), [459.500](#)) The intent of [NAC 459.970](#) to [459.9729](#), inclusive, is to carry out the provisions of [NRS 459.500](#) to protect persons who employ consultants concerning hazardous materials and wastes.

(Added to NAC by Environmental Comm'n, eff. 3-6-91; A 5-3-96)

NAC 459.9718 Applicability of provisions. ([NRS 459.485](#), [459.500](#), [459.826](#), [459.830](#), [459.832](#)) The provisions of [NAC 459.970](#) to [459.9729](#), *excluding provisions for a provider of an approved UST training program (NAC 459.9719(d), 459.97235)*, do not apply to:

1. Services provided by an employee of a business or public agency relative to the hazardous waste management, release investigation or response or underground storage tank management responsibilities of his or her employer, exclusively, while acting in the course of that employment.

2. Services provided by an employee of a public agency with the responsibility of regulatory enforcement, emergency response, or protection of public health, welfare or the environment, while acting in the course of that employment.

3. Services provided by a person who is a transporter of hazardous waste that are:

(a) Designated as the specific responsibility of the transporter of hazardous waste under the applicable state or federal regulations; and

(b) Necessary to perform the service of transportation of hazardous waste in accordance with the applicable state or federal regulations.

4. Services provided by a person under contract at a federal facility, while acting within the scope of that contract.

5. Services provided by a person that are requested by a state agency or political subdivision of the State if fees are not charged for those services.

6. Services provided by a public utility to its customers if incidental to the services ordinarily provided by the utility.

(Added to NAC by Environmental Comm'n, eff. 3-6-91; A 10-29-93)

NAC 459.9719 Services for which certification is required. ([NRS 459.485](#), [459.500](#), [459.826](#), [459.830](#), [459.832](#))

1. A person shall not provide services as:

(a) An environmental manager;

~~(b) A specialist in the management of hazardous waste;~~

~~—(e) (b)~~ A handler of underground storage tanks; ~~for~~

~~—(d) (c)~~ A tester of underground storage tanks~~], for a fee or in conjunction with other services for which a fee is charged, unless those services are performed under the direction and responsible control of a natural person who has obtained certification from the Division]; or~~

(d) A provider of an approved UST training program.

↳ for a fee or in conjunction with other services for which a fee is charged, unless those services are performed under the direction and responsible control of a natural person who has obtained certification from the Division.

2. The provisions of this section do not prohibit the engagement of an apprentice or assistant if a natural person who is certified by the Division pursuant to the provisions of [NAC 459.970 to 459.9729](#), inclusive, supervises that apprentice or assistant and maintains responsibility for the work of that apprentice or assistant.

(Added to NAC by Environmental Comm'n, eff. 3-6-91)

NAC 459.972 Certification as environmental manager. ([NRS 459.485](#), [459.500](#)) An applicant for certification as an environmental manager must:

1. Be of good character and reputation as determined by the Division upon review of the applicant's references, record of violations of environmental laws and regulations and such other considerations as the Division deems necessary and proper. Certification must be denied if such a review indicates that the applicant fails to meet the applicable standards.

2. Submit to the Division:

(a) An application on a form provided by the Division;

(b) A nonrefundable fee of \$100 for the review of the application;

(c) A color photograph of the applicant which is approximately 2 inches by 2 inches;

(d) A statement signed by the applicant under penalty of perjury declaring the details of all pleas of guilty or nolo contendere in any criminal proceeding and all convictions of any crimes; and

(e) Three letters of reference from natural persons with experience in the services of that classification attesting to the applicant's moral character and competence in that classification.

3. Demonstrate to the Division that the applicant meets one of the following qualifications:

(a) A bachelor's or advanced degree from an accredited college or university in an area relating to the environment including, but not limited to, environmental science, engineering,

geology, hydrology, hydrogeology, biology, toxicology, environmental health, physics, industrial hygiene or chemistry and at least 3 years of relevant environmental experience within the 5 years immediately preceding the date of the application;

(b) A relevant professional registration or certification recognized by the Division and at least 3 years of relevant environmental experience within the 5 years immediately preceding the date of the application; or

(c) An equivalent combination of appropriate education or experience, or both, as determined by the Division.

4. Pass an examination pursuant to [NAC 459.9726](#).

(Added to NAC by Environmental Comm'n, eff. 3-6-91)

~~[— NAC 459.9721— Certification as specialist in the management of hazardous waste. (NRS 459.485, 459.500)— An applicant for certification as a specialist in the management of hazardous waste must:~~

~~—1.— Be of good character and reputation as determined by the Division upon review of the applicant's references, record of violations of environmental laws and regulations and such other considerations as the Division deems necessary and proper. Certification must be denied if such a review indicates that the applicant fails to meet the applicable standards.~~

~~—2.— Submit to the Division:~~

~~—(a) An application on a form provided by the Division;~~

~~—(b) A nonrefundable fee of \$100 for the review of the application;~~

~~—(c) A color photograph of the applicant which is approximately 2 inches by 2 inches;~~

~~—(d) A statement signed by the applicant under penalty of perjury declaring the details of all pleas of guilty or nolo contendere in any criminal proceeding and all convictions of any crimes; and~~

~~—(e) Three letters of reference from natural persons with experience in the services of that classification attesting to the applicant's moral character and competence in that classification.~~

~~—3.— Demonstrate to the Division that the applicant meets one of the following qualifications:~~

~~—(a) A bachelor's or advanced degree from an accredited college or university in an area relating to the environment, including, but not limited to, environmental science, engineering, geology, hydrology, hydrogeology, biology, toxicology, environmental health, physics, or industrial hygiene or chemistry and at least 2 years of relevant hazardous waste experience within the 3 years immediately preceding the date of the application;~~

~~—(b) A relevant professional registration or certification recognized by the Division and at least 2 years of relevant hazardous waste experience within the 3 years immediately preceding the date of the application;~~

~~—(c) A high school diploma or general equivalency diploma and at least 6 years of relevant hazardous waste experience within the 8 years immediately preceding the date of the application;~~
~~or~~

~~—(d) An equivalent combination of appropriate education and experience as determined by the Division.~~

~~—4. Pass an examination pursuant to NAC 459.9726.~~

~~—(Added to NAC by Environmental Comm'n, eff. 3-6-91)}~~

NAC 459.9722 Certification as handler of underground storage tanks. ([NRS 459.485](#), [459.500](#)) An applicant for certification as a handler of underground storage tanks must:

1. Be of good character and reputation as determined by the Division upon review of the applicant's references, record of violations of environmental laws and regulations and such other considerations as the Division deems necessary and proper. Certification must be denied if such a review indicates that the applicant fails to meet the applicable standards.

2. Submit to the Division:

(a) An application on a form provided by the Division;

(b) A nonrefundable fee of \$100 for the review of the application;

(c) A color photograph of the applicant which is approximately 2 inches by 2 inches;

(d) A specific record of at least 2 years' experience and the direct participation in at least 10 projects relating to the handling of underground storage tanks;

(e) A copy of an appropriate license issued by the State Contractors' Board pursuant to [chapter 624](#) of NRS;

(f) Proof of completion of a course approved by the Division concerning the safe handling of underground storage tanks;

(g) A statement signed by the applicant under penalty of perjury declaring the details of all pleas of guilty or nolo contendere in any criminal proceeding and all convictions of any crimes; and

(h) Three letters of reference from natural persons with experience in the services of that classification attesting to the applicant's moral character and competence in that classification.

3. Pass an examination pursuant to [NAC 459.9726](#).

(Added to NAC by Environmental Comm'n, eff. 3-6-91)

NAC 459.9723 Certification as tester of underground storage tanks. ([NRS 459.485](#), [459.500](#)) An applicant for certification as a tester of underground storage tanks must:

1. Be of good character and reputation as determined by the Division upon review of the applicant's references, record of violations of environmental laws and regulations and such other considerations as the Division deems necessary and proper. Certification must be denied if such a review indicates that the applicant fails to meet the applicable standards.

2. Submit to the Division:

- (a) An application on a form provided by the Division;
- (b) A nonrefundable fee of \$100 for the review of the application;
- (c) A color photograph of the applicant which is approximately 2 inches by 2 inches;
- (d) A specific record of direct participation in at least 50 tests of underground storage tanks;
- (e) A specific record of at least 1 year of experience in the testing of underground storage tanks;
- (f) Proof of training provided by the manufacturer of the equipment which is used for testing;
- (g) Proof of completion of a course approved by the Division concerning the safe handling of underground storage tanks;
- (h) A statement signed by the applicant under penalty of perjury declaring the details of all pleas of guilty or nolo contendere in any criminal proceeding and all convictions of any crimes; and
- (i) Three letters of reference from natural persons with experience in the services of that classification attesting to the applicant's moral character and competence in that classification.

3. Pass an examination pursuant to [NAC 459.9726](#).

(Added to NAC by Environmental Comm'n, eff. 3-6-91)

~~[NAC 459.9724 Certification of person certified by another state or recognized organization. (NRS 459.485, 459.500)~~

~~—1.— Except as otherwise provided in this section, a natural person who is certified as:~~

- ~~—(a) An environmental manager;~~
 - ~~—(b) A specialist in the management of hazardous waste;~~
 - ~~—(c) A handler of underground storage tanks; or~~
 - ~~—(d) A tester of underground storage tanks;~~
- ~~☐ by another state or an organization recognized by the Division, may be certified by the Division if he or she complies with the requirements set forth in subsection 2.~~
- ~~—2. A natural person who applies for certification pursuant to this section must submit to the Division:~~
- ~~—(a) An application on a form provided by the Division;~~
 - ~~—(b) A nonrefundable fee of \$100 for the review of the application;~~
 - ~~—(c) A color photograph of the applicant which is approximately 2 inches by 2 inches; and~~
 - ~~—(d) Proof of certification by another state or an organization recognized by the Division in the classification for which he or she is applying for certification in this State.~~
- ~~—3. The Division may not issue a certificate to a natural person who is certified by another state or organization if the requirements for certification by that state or organization are not substantially equivalent to the requirements for certification in this State.~~
- ~~—(Added to NAC by Environmental Comm'n, eff. 3-6-91)}~~

NAC459.97235 Certification of a provider of an approved UST training program. (NRS 459.826, 459.830, 459.832) An applicant for certification as a trainer that establishes an approved training program for operators of USTs must:

- 1. Be of good reputation as determined by the Division upon review of the training program's application and such other considerations as the Division deems necessary and proper. Certification must be denied if such a review indicates that the applicant fails to meet the applicable standards.*
- 2. Submit to the Division:*
 - (a) An application on a form provided by the Division;*
 - (b) A nonrefundable fee of \$100 for the review of the application; and*
 - (c) Documentation the training program contains the required elements in accordance with 40 CFR 280.12 and to the satisfaction of the Division.*

NAC 459.9725 Waiver of requirements for training. ([NRS 459.485](#), [459.500](#), [459.826](#), [459.830](#), [459.832](#)) The Division may waive any requirements for training for a certificate if that training is not available.

(Added to NAC by Environmental Comm'n, eff. 3-6-91)

NAC 459.9726 Action on applications; examinations for certification. ([NRS 459.485](#), [459.500](#), [459.826](#), [459.830](#), [459.832](#))

1. The Division will review each application and send each applicant written notice within 6 weeks of receipt of all required materials whether his or her application has been approved or rejected.
2. An applicant whose application is approved by the Division and who wishes to take the examination must submit to the Division a nonrefundable examination fee set by the Division, not to exceed \$150, at least 30 days before the examination is given.
3. The Division shall determine the content of the examinations.
4. A score of 70 is a passing score on an examination for certification.
5. An examination for each classification will be given at least once each year.
6. The examinations are the property of the Division and must remain confidential.
7. An applicant who fails the examination may apply for a reexamination. The nonrefundable fee for reexamination must be set by the Division not to exceed \$150.
8. Each application for certification will remain on file with the Division for 2 years after the date that all required materials are received by the Division. If the applicant does not pass an examination for certification or request reexamination within the 2-year period, the applicant must file with the Division a new application for certification.

(Added to NAC by Environmental Comm'n, eff. 3-6-91; A 1-24-92)

NAC 459.9727 Contents and duration of certificate. ([NRS 459.485](#), [459.500](#), [459.826](#), [459.830](#), [459.832](#))

1. Each certificate issued by the Division to an applicant must bear:
 - (a) The name of the applicant;
 - (b) The number of the certificate;
 - (c) The date of expiration of the certificate; and

(d) The specific classification of certification.

2. Each certificate is valid for 2 years after the date the Division issues the certificate.

(Added to NAC by Environmental Comm'n, eff. 3-6-91)

NAC 459.9728 Renewal of certificate. ([NRS 459.485](#), [459.500](#), [459.826](#), [459.830](#), [459.832](#)) A holder of a certificate who wishes to renew his or her certificate must:

1. Demonstrate to the Division that he or she continues to meet all qualifications and performance requirements of [NAC 459.970](#) to [459.9729](#), inclusive;

2. Submit an application for renewal of the certificate to the Division on a form provided by the Division *not more than one (1) year after the certificate date of expiration*.

3. Submit a nonrefundable fee set by the Division not to exceed \$100; and

4. Complete an examination for renewal if the Division has determined that such a renewal examination is appropriate.

(Added to NAC by Environmental Comm'n, eff. 3-6-91)

NAC 459.97285 Contents of document relating to service for which certification is required. ([NRS 459.485](#), [459.500](#), [459.826](#), [459.830](#), [459.832](#)) A holder of a certificate who is responsible for a service requiring certification shall ensure that each document relating to the service includes:

1. The following language:

I hereby certify that I am responsible for the services described in this document and for the preparation of this document. The services described in this document have been provided in a manner consistent with the current standards of the profession and to the best of my knowledge comply with all applicable federal, state and local statutes, regulations and ordinances.

2. A description of the services provided.

3. The signature of the holder of the certificate and the date on which the document was signed.

4. The number of the certificate.

5. The date of expiration of the certificate.

(Added to NAC by Environmental Comm'n, eff. 5-3-96)

NAC 459.9729 Standards of practice. ([NRS 459.485](#), [459.500](#))

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.

(j) For a provider of an approved UST training program, shall also provide in addition to (a) through (i) above, a record to the Class A and B operator upon completion of the approved training program in paper or electronic format that includes the information specified in 40 C.F.R. §280.245(b).

2. Certification may be suspended, revoked or denied for renewal if the Division determines that the certificate holder has not performed in accordance with these standards.

(Added to NAC by Environmental Comm'n, eff. 3-6-91; A by R021-99, 9-27-99)