

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND RECREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal and recreate subch. II of NR 114 relating to septage operator certification

WT-30-04

Analysis Prepared by the Department of Natural Resources

Statutory Authority: ss. 227.11(2)(a) and 281.17(3), Stats. Section 281.17(3) requires the department to promulgate rules for septage operator certification. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted: Section 281.17(3), Stats., has been interpreted as allowing the Department the authority to promulgate regulations requiring septage operator certification and to set associated fees.

Plain Language Rule Analysis: All proposed revisions are to Subchapter II and apply only to the septage operator certification program. Proposed revisions will achieve the following:

Remove the lifetime certification status and create a more practical certification grading system. Those certified operators who are currently designated as an Operator-In-Charge will automatically be classified as an operator-in-charge in the new certification system. Experience requirements are established along with a mandatory class and examination in order to become an operator-in-charge in the future. However, current Grade 2 operators and those Grade 1 and Grade 1R operators who would have qualified for the lifetime certification status within three years of the effective date of the rule will be exempt from those requirements. Fees for examinations, certificate renewals, late fee penalties, and Operator-in-Training registrations are increased. In turn the department will use fees generated under this Subchapter for the purposes of implementing this program and Chapter NR 113. Specifically the proposed revisions achieve the following objectives:

- a. Eliminates the lifetime certification classification.
- b. Increases fees for examinations, certification renewals, late renewal penalties, and operator-in-training registrations.
- c. It is clearly stated that the department is to use fees generated by this program and from septage business licensing only for the purposes of implementing this subchapter and chapter NR 113.
- d. Condense certification grades from 3 to 2. The distinction is based on whether any septage is land applied (Grade L) or if it is all hauled to a wastewater treatment plant (Grade T).
- e. Automatically extends Operator-in-Charge status in the new grading system to those designated as operator-in-charge in the current system.
- f. Establishes minimum experience requirements, a mandatory class, and a mandatory examination in order to be designated as an operator-in-charge in the future. However, Grade 2 operators and those Grade 1 and Grade 1R operators who would have been eligible for the lifetime certification within 3 years of the effective date of this rule are exempt from such requirements.
- g. Establishes a variance procedure to allow flexibility in implementing this subchapter for non-statutory sections. This would include situations that may arise and leave a part of the state in jeopardy of having no one to service systems, which could pose a public health threat, such as on large islands. Another example would be for situations that may jeopardize the viability of a family business such as debilitating illness or death.

Federal Regulatory Analysis: There is no existing or proposed federal regulation requiring septage operator certification.

State Regulatory Analysis: Septage operator certification is required by states on a case-by-case basis since there is no federal requirement for it. The following is a summary of the rules related to septage operator certification in states adjacent to Wisconsin.

Illinois: An examination must be passed in order for an individual to dispose of septage. Such authority is granted by the Department of Health. A \$50 renewal fee is charged each year. There is no provision for a lifetime certification.

Michigan: Currently has no requirement for septage operator certification. A statutory revision proposal is currently before the legislature. The proposed changes would require 30 hours of continuing education every 5 years. No fees are proposed for the certification program, but significant increases are proposed for the business licensing as follow: Septage licensing fee - \$200; Vehicle license fee that only discharges at wastewater treatment plants - \$350; vehicle licensing fees when land application occurs - \$480; land application site fee - \$500. No provision for lifetime certification is proposed.

Minnesota: Any business must have a registered individual who has completed training, successfully passed an examination, and met experience requirements prior to being able to dispose of septage. The registration process does not require a fee, but there is a \$100 annual fee, a \$10,000 bond, and proof of insurance required in order to obtain a license. There is no provision for lifetime certification.

Iowa: There is no operator certification program in place. There is a business license requirement with a \$25 annual fee.

Summary of Factual Data: There are approximately 500 licensed septage businesses operating in Wisconsin which currently employ 1065 certified septage operators. There are approximately 175 exams taken annually, 323 annual certification renewals, 194 late certification renewals assessed a penalty fee, and 60 individuals registered as operators-in-training annually.

Rules Effect on Small Businesses under s. 227.114, Stats: All 500 licensed septage businesses are currently small businesses as defined in s. 227.114 Stats., and affected by this rule. No septage business in the state currently employs 25 or more certified operators. There will be a fiscal impact to the certified operators in the form of increased examination and renewal fees. There will be a fiscal impact to businesses in the form of increased operator-in-training fees. Another impact to operators is in the fact that they will not be eligible for a lifetime certification as they believed they would be and thus will continue to pay the renewal fees.

SECTION 1. Subch. II of ch. NR 114 is repealed and recreated to read:

Chapter NR 114

CERTIFICATION REQUIREMENTS FOR WATERWORKS, WASTEWATER TREATMENT PLANT, SEPTAGE SERVICING AND WATER SYSTEM OPERATORS.

Subchapter II — Certification of Septage Servicing Operators

NR 114.151 Purpose. The purpose of this subchapter is to establish rules for the certification of septage servicing operators pursuant to s. 281.17 (3), Stats.

NR 114.152 Applicability. The provisions of this subchapter are applicable to all owners of septage servicing businesses and all operators performing septage servicing.

NR 114.153 Definitions. In this subchapter:

- (1) "Business" means a business licensed under s. NR 113.05 that does septage servicing.
- (2) "Certificate" means a certificate issued under s. NR 114.21.
- (3) "Certified operator" means a person who has been issued a certificate by the department to do septage servicing.
- (4) "Grade" means the classification assigned to a person under s. NR 114.17.
- (5) "Operator-in-charge" means the certified operator who has been designated by the owner to be in direct responsible charge of the septage servicing business.
- (6) "Operator-in-training" means a person who has been properly registered as an operator-in-training with the department by the operator-in-charge.
- (7) "Owner" means the holder of a septage service business license issued under s. NR 113.05.

(8) "Portable restroom servicing assistant" means a person who maintains, services or transports portable restrooms under the supervision of an operator-in-charge.

(9) "Septage" means the wastewater or contents of septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies or portable restrooms.

(10) "Septage servicing" means removing septage from a system and disposing of or recycling the septage.

(11) "Service shop" means a shop from which work is dispatched.

NR 114.16 General requirements. (1) Only a certified operator, operator-in-training or a portable restroom servicing assistant, may engage in septage servicing.

(2) An operator-in-training may engage in septage servicing for up to 12 months without being certified. The operator-in-training shall be considered to be doing septage servicing under the certificate of the designated operator-in-charge. The operator-in-charge shall notify the department, in writing, of the starting date, name and address of the operator-in-training and pay the operator-in-training fee before the person begins septage servicing. The operator-in-charge is responsible for the actions of the operator-in-training.

(3) A portable restroom servicing assistant may service portable restrooms, including the maintenance of portable restrooms and the transportation of the restrooms and the septage from them without being certified. However, a portable restroom servicing assistant may not land apply any septage removed from portable restrooms. Portable restroom servicing assistants will be considered to be working under the certificate of the designated operator-in-charge and the operator-in-charge is responsible for their actions.

(4) Each owner shall have a unique business license issued under s. NR 113.05, for any service shop that is more than 25 miles from another service shop.

(5) A vehicle used by different businesses, under a single owner, or separate owners, shall be registered under each business license and each business license number shall be displayed on the vehicle.

(6) A business license is not transferable.

NR 114.17 Certification grades. (1) Two general certification grades of septage servicing operators are established.

(a) A grade T operator is certified to conduct all aspects of septage servicing except the land application of septage. To qualify for certification as a grade T operator, a person shall pass the grade T examination.

(b) A grade L operator is certified to conduct all aspects of septage servicing including the land application of septage. To qualify for certification as a grade L operator, a person shall pass the grade L examination.

(2) Any operator certified as a grade 1R on the effective date of this rule ... [revisor insert date] will automatically become certified as a grade T operator on that date.

(3) Any operator certified as either a grade 1 or a grade 2 operator on the effective date of this rule ... [revisor insert date] will automatically become certified as a grade L operator on that date.

NR 114.18 Operator-in-charge. (1)(intro.) The owner of a licensed business shall designate to the department the operator-in-charge of the business based upon their type of business and method of septage disposal as follows:

(a) If a septage servicing business does not conduct any land application of septage, the operator-in charge shall be a grade T or a grade L operator.

(b) If a septage servicing business does conduct any land application, the operator-in-charge shall be a grade L operator.

(2) A person designated as an operator-in-charge on the effective date of this rule ... [revisor insert date] with a Grade 1R certification shall automatically become designated as a grade T operator-in-charge and a person designated as a grade 2 operator-in-charge shall automatically become designated as a grade L operator-in-charge.

(3) Any person not designated as an operator-in-charge in sub. (2) or not exempted in sub. (4) or (5) shall accrue at least 1600 hours of experience working in their designated grade over at least one calendar year, participate in a mandatory training class sponsored by the department and pass an

examination associated with that class in order to become designated an operator-in-charge in the future. The class and examination may be taken prior to obtaining the required experience. The time and experience requirements shall be documented by the applicant through submittal of a notarized certification statement. The department may verify information submitted on a case-by-case basis.

(4) Any person certified as a Grade 1R or a Grade 1, and not already designated as an operator-in-charge under sub. (2), who completes 9 years of continuous certification with no violations or citations within 3 years of the effective date of this rule ... [revisor insert date] is exempt from the training class, examination, and experience requirements in sub. (3).

(5) Any person certified as a Grade 2 is exempt from the training class, examination, and experience requirements in sub. (3).

(6) Owners shall notify the department of any change of the designated operator-in-charge within 15 days of the change.

NR 114.19 Examinations and applications. (1) The department shall use examinations to determine the knowledge and ability of an applicant to do septage servicing. A score of 75% or higher shall be a passing score on each written examination. The department may give oral examinations in lieu of the written examination upon a showing that the applicant has difficulty reading the written examination and if the applicant can demonstrate the ability to properly perform septage servicing without a better reading ability. A score of 75% or higher shall be a passing score on each oral examination. Electronic examinations will be acceptable as administered by the department should that technology become available at a future date.

(2) The department shall conduct written examinations on weekdays at least 2 times annually in all 5 department regions.

(3) A person desiring to be certified shall file an application with the department at least 28 days prior to the established date of a written examination on an application form provided by the department. Fees shall accompany the completed application.

(4) Written examinations may not be issued to applicants who have not properly registered 28 days prior to the examination date, or who fail to identify themselves on request.

(5) Examination papers may not be returned to an applicant. Examination results shall be mailed to the applicant within 30 days of the examination date.

(6) Applicants who fail to pass a written examination may apply to the department for reexamination at a subsequent scheduled examination.

(7) Notwithstanding subs. (2) to (4), the department may allow for the examinations to be given at more frequent intervals and at locations to be determined, in addition to the twice annual examinations specified in sub. (2), and may waive the 28 day application requirement specified in sub. (3). Fees shall be submitted no later than the date of the examination in those cases.

(8) The requirements of sub. (6) notwithstanding, applicants who fail the examination associated with the mandatory class required in s. NR 114.18(3) may retake the examination at a regional office whenever a mutually agreed time can be scheduled.

NR 114.20 Fees. (1) Fees for certification shall be as follows:

(a) Each written or oral examination -- \$100.00

(b) Certificate renewal -- \$65.00

(c) Late renewal penalty per certificate -- \$100.00

(d) Septage operator-in-training registration -- \$25.00

(2) The department may not refund fees to an applicant who fails to pass an examination, who fails to appear to take an examination, or who fails to identify themselves on request.

(3) All fees collected under this section shall be used by the department for the purposes of implementing this subchapter and ch. NR 113.

Note: It is the department's intent to work with the legislature to amend s. 281.48(4s), Stats., to allow an increase in vehicle licensing fees to further aid in implementing this subchapter and ch. NR 113.

NR 114.21 Issuance of certificates. Upon satisfactory fulfillment of the qualifications required by this subchapter and receipt of the certification fee, the department shall issue a certificate to an applicant indicating the operator grade for which the applicant has qualified.

NR 114.22 Certificate renewals. (1) All certificates shall expire 3 years from the date of issuance. The renewal fee is due on the expiration date of the certificate. Any renewal application postmarked after the expiration date shall also include the late renewal penalty fee.

(2) A person who desires to renew a certificate shall submit evidence of having met the continuing education requirements in s. NR 114.23 for approved training courses or other credit which they have successfully completed during the 3 year period. Failure to successfully complete and document the appropriate number of hours of approved training within the 3 year period shall result in rejection of a certificate renewal application.

(3) A person whose certificate has expired may within one year be reinstated by paying the renewal fee, the late penalty fee and fulfilling the continuing education requirements. Operators may not renew their certificates by taking certification examinations in lieu of obtaining continuing education credits unless their certificate has been expired for at least one year. Operators may not continue to work with an expired certificate.

NR 114.23 Continuing education and training requirements. (1) Grade T and grade L certified septage operators shall obtain 3 hours of continuing education credits every 3 years.

(2) All grade T and grade L operators-in-charge shall obtain 18 hours of continuing education every 3 years.

(3) The department shall develop or approve training relevant to the septage servicing profession sufficient to fulfill the continuing education requirements of this subchapter. The training shall be offered at frequencies and at diverse enough locations around the state so as to facilitate fulfillment of these requirements.

(4) The mandatory training class for designation as an operator-in charge shall be offered at least twice a year and will cover topics relevant to the septage servicing business and will cover both land application and disposition of septage at wastewater treatment facilities.

(5) Any certified operator may voluntarily participate in the mandatory training class required under s. NR 114.18(3), even if not required to, and may receive the associated continuing education credit.

NR 114.24 Sanctions. (1) The department shall revoke an operator's certification and may not issue or renew a certificate for septage servicing for a period of 2 years if an operator has accumulated 6 or more violations of ch. NR 113 or s. 29.601, Stats., in any 3 year certification period. Enforcement may be taken against the operator, the operator- in- charge responsible for the operator, or both. Each violation shall count against the business for purposes of license renewal as specified in s. NR 113.05(3).

(2) (intro.) The department may, on its own motion, make investigations and conduct hearings and may, on its own motion or on a signed and verified written complaint, revoke, suspend, refuse to issue, or refuse to renew any operator's certificate if the department finds that the holder of or applicant for a certificate does any of the following:

(a) Uses deception or any form of dishonesty when writing examinations, or removes examination material from an examination site.

(b) Demonstrates incompetence to perform septage servicing as required by this chapter.

(c) Falsifies any required applications, operating records or any other records submitted to the department.

NR 114.25 Variances. (1) GENERAL. A certified septage operator may request a variance from any non-statutory requirement of this chapter. The department may approve a variance from requirements of this chapter when special circumstances show that a variance will not negatively impact the environment or pose a threat to public health.

(2) REQUEST FOR VARIANCE. An applicant for a variance shall submit a written request for a variance to the department, as far in advance as possible. Each request for a variance shall contain all of the following:

(a) The name, address, phone number and operator certification number of the applicant.

(b) The section or sections of this chapter from which a variance is sought and a statement explaining why it is requested.

(c) A full description of the variance and the circumstances in which it will be used, including any pertinent background information which is relevant to making a determination on the justification for granting the variance.

(d) A statement as to whether the same or similar variance has been requested previously, and if so, outcome of the previous request.

(3) APPROVAL OF VARIANCE. The department shall approve or deny the variance in writing. A copy of each variance request and the department's decision shall be retained by the operator.

SECTION 2. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2004.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN_____
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)