

The statement of scope for this rule, SS 163-20, was approved by the Governor on December 18, 2020, published in Register No. 780B on December 28, 2020, and approved by the Natural Resources Board on February 24, 2021. This rule was approved by the Governor on August 13, 2021.

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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 114.05 (3) and (4), 114.19 (4) and (7), 114.54 (4), 146.09 (3) (c) (Note) and 524.08 (3) (c); to **amend** NR 114.05 (1), (2), (5) and (6), 114.06 (1) (a) and (4), 114.11 (1) (a) and (i), 114.19 (1), (3), (5), (6) and (8), 114.20 (1) (a), 114.24 (2) (a), 114.33 (1), (2), (3), (5), and (6), 114.34 (1) (a) and (4), 114.37 (1) (g), 114.54 (1), (2), (5) and (6), 114.59 (1) (h), 146.04 (2) (i), (2m), (3) (c), (3m), and (9) (c), 146.06 (3), 146.065 (3), 146.09 (3) (a) and (c) and 524.08 (3) (a), (b), (d) and (f); to **repeal and recreate** NR 114.19 (2); and to **create** NR 114.06 (1) (e) and (5), 114.20 (1) (f) and (4), 114.34 (1) (f) and (6), 114.54 (2) (Note), 114.55 (1) (g) and (4), 146.04 (1) (e), 146.045 and 524.08 (3) (em) relating to allowing for third party administration of operator certification examinations and affecting small business.

WY-26-20(E)

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted:

Section 281.17 (3), Wis. Stats. (ch. NR 114, Wis. Adm. Code)
Section 280.15 (2m) (e) and (f), Wis. Stats. (ch. NR 146, Wis. Adm. Code)
Sections 289.06 and 289.42, Wis Stats. (ch. NR 524, Wis. Adm. Code)

2. Statutory Authority:

Section 227.11 (2), Wis. Stats.

3. Explanation of Agency Authority:

Revisions to options for providing department certification exams under ch. NR 114, Wis. Adm. Code, Certification Requirements for Waterworks, Wastewater Treatment Plant, Septage Servicing and Water System Operators will be promulgated pursuant to s. 281.17 (3), Wis. Stats.:

- Section 281.17 (3), Wis. Stats., grants the department authority to establish an examining program for the certification of operators of water system, wastewater treatment plants and septage servicing vehicles operated under a license issued under s. 281.48 (3), Wis. Stats.

Revisions to options for providing department license exams under ch. NR 146, Wis. Adm. Code, Water Well Driller, Heat Exchange Driller, and Pump Installer Licensing and Registration; Drilling Rig Operator Registration will be promulgated pursuant to chs. 280 and 281, Wis. Stats.:

- Section 280.15 (2m) (e), Wis. Stats.: The department may not issue a pump installer license unless the applicant demonstrates competency in pump installing by passing an examination administered by the department.
- Section 280.15 (2m) (f) 1m.a., Wis. Stats.: The department may not issue a driller license that authorizes well drilling unless the applicant demonstrates competency in well drilling by passing an examination administered by the department.
- Section 280.15 (2m) (f) 2m.a., Wis. Stats.: The department may not issue a driller license that authorizes heat exchange drilling unless the applicant demonstrates competency in heat exchange drilling by passing an examination administered by the department.

Revisions to options for providing department certification exams under ch. NR 524, Wis. Adm. Code, Training and Certification Requirements for Solid Waste Disposal Facility Operators will be promulgated pursuant to ss. 289.06 and 289.42, Wis. Stats.:

- Section 289.06 (4), Wis. Stats.: Collect and disseminate information and conduct educational and training programs relating to the purposes of this chapter and ss. 292.31 and 292.35, Wis. Stats.
- Section 289.06 (5), Wis. Stats.: Organize a comprehensive and integrated program to enhance the quality, management and protection of the state's land and water resources.
- Section 289.42 (1) (a), Wis. Stats.: The department shall, by rule, establish a program for the certification of persons participating in or responsible for the operation of solid waste disposal facilities. The department shall establish the requirements for and term of initial certification and requirements for recertification upon expiration of that term. At a minimum, the department shall require applicants to complete a program of training and pass an examination in order to receive initial certification.

4. Related Statutes or Rules:

NR 114 - s. 281.17(3), Wis. Stats.

NR 146 – ch. 281, Wis. Stats.

NR 524 – s. 289.06, Wis. Stats.

5. Plain Language Analysis:

Under the Clean Water Act, the U.S. Environmental Protection Agency (EPA) created partnerships with states, water systems, and the public to provide guidelines on minimum standards for certification and recertification of operators. Wisconsin operators initially become certified upon passing an examination evaluating their technical knowledge.

The goal of this rule is to provide online options for taking exams. The rule change will allow an organization under contract with the department to provide exams developed by the department. The department lacks the IT resources necessary to build its own online platform. Online exams will allow greater flexibility for taking exams throughout the year and expand the number of testing locations. In-person exams will continue to be an option provided by the department, and the fees charged for department-administered exams are not proposed to change.

The proposed rule changes are prompted by the Covid-19 public health emergency.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

EPA guidelines do not address the method of examination. In-person and online exams are allowed.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

The department held an online preliminary public hearing on the statement of scope on February 5, 2021. Two attendees testified in support of the statement of scope; no attendees testified in opposition.

The department received written comments from eight individuals or groups on the statement of scope. Six commenters were in support of the scope statement, one commenter was in opposition with concerns about changing the exam questions, and one commenter was neither in support nor opposition, but offered his help with the process. Wisconsin Liquid Waste Carriers Association included a comment that they want the department to maintain the requirement for a Master Operator class. Municipal Environmental Group wants limited fee increases. One wastewater operator suggested allowing more options for proctoring exams.

8. Comparison with Similar Rules in Adjacent States:

Drinking water operator exams (ch. NR 114):

- Ohio and Indiana are the only two EPA Region V states allowing online exams.
- Iowa is providing online exams to landfill operators in place of written exams, during the pandemic.
- Fee comparisons:
 - Wisconsin: \$25 + \$70 estimated online fee (proposed \$95 total cost)
 - Indiana: \$30 + \$40 online fee
 - Ohio: \$45 + \$112 online fee
 - Illinois: \$40
 - Iowa: \$110
 - Michigan: \$70
 - Minnesota: \$55

Wastewater and Septage exams (ch. NR 114):

- Indiana has no statewide certification program. Some counties have rules in place.
- Minnesota offers written exams only. Fees are \$125.
- Ohio offers an online exam. Fees are \$80 to \$145 for a written exam; \$157 for online exams.
- Illinois offers written exams only for no fee.
- Iowa offers written exams only for \$110.
- Michigan offers written exams only. Fees are \$80-\$110.
- Wisconsin fees are \$25 for wastewater exams and septage exams are \$100. (With \$70 estimated online fee, a proposed \$45 or \$170 total cost.)

Well driller/pump installer exams (ch. NR 146):

- Ohio does not require an exam
- None of the EPA Region V states or Iowa offer an online exam.
- Fee comparisons:
 - Wisconsin: \$25 + \$90 estimated online fee (proposed \$115 total cost)
 - Indiana: \$25 + \$100 for license
 - Ohio: N/A (no exam required)
 - Illinois: \$50 well driller or pump installer, \$80 well driller and pump installer, \$175 closed loop driller
 - Iowa: \$100 plus \$300 driller license, \$250 pump installer license
 - Michigan: \$40 driller, \$25 pump installer
 - Minnesota: \$75

Landfill exams (ch. NR 524):

- Illinois is considering third-party exams. Fees are currently \$500.
- Iowa is offering online exams only during the pandemic for \$20.
- Indiana offers an online exam. Fees are \$175 to \$225 for third-party exams.
- Michigan does not require exams for landfill operators.
- Minnesota offers a written exam only. Fees are \$375 which include a class and exam.
- Ohio is currently developing a landfill operator certification program.
- Wisconsin fees are \$200 for site operator examinations. (With \$70 estimated online fee, a

proposed \$270 total cost.)

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

Not applicable. No changes are being proposed to a regulatory approach. Minor procedural changes are being proposed to allow more options for taking exams.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The department administers approximately 3,000 exams to 1,500 individuals each year. The proposed rule change would allow a third-party organization to administer those exams and charge fees to cover the cost of providing any examination as allowed under its contract with the department. The department has executed a contract with the Association of Boards of Certification (ABC) to administer exams at a cost of \$70 for a one-hour session, \$80 for two hours, and \$90 for 3 hours. Most exams can be completed in one hour. However, exams for water well drillers, heat exchange drillers, and pump installers can typically take up to three hours, so they would likely need to pay for the \$90 session. There are approximately 140 individuals who take these longer exams each year. On average we anticipate that 500 individuals will register for the one-hour session to take one exam, 1,000 individuals will sign up for the two-hour session to take two or three exams, and 140 individuals will take the three-hour exam each year.

The combined statewide cost increase for exams would be approximately \$128,000. However, there would be some savings in travel costs with an increase in the number of testing sites. Depending on demand, there will also continue to be periodic written exams offered by the department. Third-party fees will not be assessed for those in-person exams.

11. Effect on Small Business (initial regulatory flexibility analysis):

The department estimates that the maximum annual cost increase for small businesses will be \$24,500.

Septage Servicing Businesses – an average of 150 operators take exams annually. The cumulative maximum annual cost increase for this business sector will be approximately \$10,500 (150 exams X \$70/one-hour exam session).

Well Drillers, Pump Installers, Heat Exchange Drillers – an average of 140 individuals take this exam annually. The cumulative maximum annual cost increase for this business sector will be approximately \$12,600 (140 exams X \$90/three-hour exam session).

Landfills – an average of 20 new operators take this exam annually. The cumulative maximum annual cost increase for this business sector will be approximately \$1,400 (20 exams X \$70/one-hour exam session).

12. Agency Contact Person:

For Operator Certification Program:

Steve Geis, Certification Services Section Chief, Bureau of Environmental Analysis & Sustainability; 101 S. Webster Street, Madison, WI 53705; Phone (Work Cell): 608-572-2752;

E-mail: Steven.Geis@wisconsin.gov

For Waterworks and Water Systems:

Cathy Wunderlich, P.E., Public Engineering Section Chief, Bureau of Drinking Water and Groundwater;

06/09/2021

101 S. Webster Street, Madison, WI 53705; Phone (Work Cell): 608-886-0864;
E-mail: Cathrine.Wunderlich@wisconsin.gov

For Wastewater and Septage Systems:

Wade Strickland, Permits Section Chief, Bureau of Water Quality; 101 S. Webster Street, Madison, WI 53705; Phone (Work Cell): 608-669-0171;
E-mail: Wade.Strickland@wisconsin.gov

For Landfill Systems:

Kate Strom Hiorns, Solid Waste Section Chief, Bureau of Waste and Materials Management; 101 S. Webster Street, Madison, WI 53705; Phone (Work Cell): 608-294-8663
E-mail: Kathrynm.stromhiorns@wisconsin.gov

For Private Water Licensing:

Marty Nessman, Private Water Section Chief - Bureau of Drinking Water and Groundwater; 101 S. Webster Street, Madison, WI 53705; Phone (Work Cell): 608-574-2592
E-mail: Martin.Nessman@Wisconsin.gov

13. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, or email to:

Department of Natural Resources
Attn: Steve Geis – EA/7
PO Box 7921
101 S. Webster St
Madison, WI 53707
Steven.geis@wisconsin.gov

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 114.05 (1) and (2) are amended to read:

NR 114.05 (1) Examinations and on-the-job experience shall be used to determine knowledge, skill, and ability of the applicant to perform duties at a waterworks. A score of 75% percent or higher shall be a passing score on each ~~written~~ examination. An applicant desiring to be certified to perform duties at a waterworks shall submit a completed examination application to the department ~~at least 28 days prior to the established date of a written examination on an application form provided by the department.~~ The department shall approve or deny the

application within 10 business days of receipt of the application, unless the application involves revoked or suspended certificate, in which case, the department shall approve or deny the application within 35 business days of receipt of the application. Fees as outlined ~~in~~ under s. NR 114.06 shall accompany the application. Applicants shall be notified of their eligibility for examination.

~~(2) Written examinations shall be conducted week days at least 2 times annually in 6 locations specified by the department, except as provided in sub. (3)~~ The department will primarily rely on an organization under contract with the department to provide examinations. The department may conduct examinations on a case-by-case basis when necessary to accommodate applicants' needs. An organization under contract to provide department examinations may charge fees to cover the cost of providing any examination under this section as allowed under its contract with the department.

SECTION 2. NR 114.05 (3) and (4) are repealed.

SECTION 3. NR 114.05 (5) and (6) are amended to read:

~~NR 114.05 (5) Examination papers may not be returned to an applicant. Examination results will~~ shall be mailed made available to an applicant within 60 30 days of the examination date.

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

SECTION 4. NR 114.06 (1) (a) is amended to read:

NR114.06 (1) (a) Each ~~written~~ examination \$25.00

SECTION 5. NR 114.06 (1) (e) is created to read:

NR 114.06 (1) (e) A third-party organization may charge additional fees to administer an online exam.

SECTION 6. NR 114.06 (4) is amended to read:

NR 114.06 (4) Fees ~~will~~may not be refunded to an applicant who fails to pass a ~~written~~ certification examination, who fails to appear to take the examination, or who fails to identify himself or herself on request.

SECTION 7. NR 114.06 (5) is created to read:

NR 114.06 (5) A veteran may request a fee waiver for a first-time license or operator certificate in accordance with the veterans fee waiver program under s. 45.44, Stats.

SECTION 8. NR 114.1 (1) (a) is amended to read:

NR 114.11 (1) (a) *Grade T.* Pass the ~~written~~ examination for the given waterworks subclass.

SECTION 9. NR 114.14 (1) (i) is amended to read:

NR 114.11 (1) (i) Used deception or any form of dishonesty when ~~writing~~taking examinations, or ~~removing~~removed examination materials from the examination site.

SECTION 10. NR 114.19 (1) is amended to read:

NR 114.19 (1) The department shall use examinations to determine the knowledge and ability of an applicant to do septage servicing. A score of 75% percent or higher shall be a passing score on each ~~written~~ examination. The department may give oral examinations in lieu of the written or online 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% percent 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.~~

SECTION 11. NR 114.19 (2) is repealed and recreated to read:

NR 114.19 (2) The department will primarily rely on an organization under contract with the department to provide examinations. The department may conduct examinations on a case-by-case basis when necessary to accommodate applicants' needs. An organization under contract

to provide department examinations may charge fees to cover the cost of providing any examination under this section as allowed under its contract with the department.

SECTION 12. NR 114.19 (3) is amended to read:

NR 114.19 (3) A person desiring to be certified shall file ~~an~~ a completed examination 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. The department shall approve or deny the application within 10 business days of receipt of the application, unless the application involves revoked or suspended certificate, in which case, the department shall approve or deny the application within 35 business days of receipt of the application. Fees as outlined under s. NR 114.20 shall accompany the completed application.

SECTION 13. NR 114.19 (4) is repealed.

SECTION 14. NR 114.19 (5) and (6) are amended to read:

NR 114.19 (5) ~~Examination papers may not be returned to an applicant.~~ Examination results shall be ~~mailed~~ made available to the applicant within 30 days of the examination date.

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

SECTION 15. NR 114.19 (7) is repealed.

SECTION 16. NR 114.19 (8) is amended to read:

NR 114.19 (8) The requirements ~~of~~ under sub. (6) notwithstanding, ~~applicants~~ an applicant who ~~fail~~ fails the examination associated with the mandatory class required ~~in~~ under s. NR 114.18 (2) may apply to retake the examination ~~at a regional office whenever a mutually agreed time can be scheduled.~~

SECTION 17. NR 114.20 (1) (a) is amended to read:

NR 114.20 (1) (a) Each ~~written or oral~~ examination — \$100.00

SECTION 18. NR 114.20 (1) (f) and (4) are created to read:

NR 114.20 (1) (f) A third-party organization may charge additional fees to administer an online exam.

(4) A veteran may request a fee waiver for a first-time license or operator certificate in accordance with the veterans fee waiver program under s. 45.44, Stats.

SECTION 9. NR 114.24 (2) (a) is amended to read:

NR 114.24 (2) (a) Uses deception or any form of dishonesty when ~~writing~~ taking ~~examinations~~ an examination, or removes examination material from an examination site.

SECTION 10. NR 114.33 (1), (2), (3), (5), and (6) are amended to read:

NR 114.33 (1) A person desiring to be certified to perform duties at a water system shall submit a completed examination application form to the department ~~at least 28 days prior to the established date of a written examination.~~ The department shall approve or deny the application within 10 business days of receipt of the application, unless the application involves revoked or suspended certificate, in which case, the department shall approve or deny the application within 35 business days of receipt of the application. Fees as outlined ~~in~~ under s. NR 114.34 shall accompany the application form. Applicants shall be notified of their eligibility for examination.

(2) Examinations shall be used to determine knowledge, skill, and ability of the applicant to perform duties at a water system. A score of 75% percent or higher shall be a passing score on each ~~written~~ examination.

(3) ~~Written examinations shall be conducted by at least 2 times annually in 6 locations specified by the department.~~ The department will primarily rely on an organization under contract with the department to provide examinations. The department may conduct examinations on a case-by-case basis when necessary to accommodate applicants' needs. An organization under contract to provide department examinations may charge fees to cover the cost of providing any examination under this section as allowed under its contract with the department.

(5) ~~Examination papers may not be returned to an applicant.~~ Examination results ~~will~~shall be ~~mailed~~ made available to an applicant within ~~60~~ 30 days of the examination date.

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

SECTION 11. NR 114.34 (1) (a) is amended to read:

NR 114.34 (1) (a) Each ~~written~~ examination \$25

SECTION 12. NR 114.34 (1) (f) is created to read:

NR 114.34 (1) (f) A third-party organization may charge additional fees to administer an online exam.

SECTION 13. NR 114.34 (4) is amended to read:

NR 114.34 (4) Fees may not be refunded to an applicant who fails to pass a ~~written~~ certification examination, who fails to appear to take the examination, or who fails to identify himself or herself on request.

SECTION 14. NR 114.34 (6) is created to read:

NR 114.34 (6) A veteran may request a fee waiver for a first-time license or operator certificate in accordance with the veterans fee waiver program under s. 45.44, Stats.

SECTION 15. NR 114.37 (1) (g) is amended to read:

NR 114.37 (1) (g) Used deception or any form of dishonesty when ~~writing-taking~~ examinations an examination, or ~~removing~~removed examination materials from the examination site.

SECTION 16. NR 114.54 (1) and (2) are amended to read:

NR 114.54 (1) Examinations, education, and on-the-job experience shall be used to determine knowledge, skill, and the ability of the applicant to perform duties at a wastewater treatment plant. A score of 75% percent or higher shall be a passing score on each examination.

An applicant desiring to be certified to perform duties at a wastewater treatment plant shall submit a completed exam application to the department ~~at least 28 days prior to the established date of the written examination.~~ ~~The applicant shall submit the completed application on an application form provided by the department.~~ The department shall approve or deny the application within 10 business days of receipt of the application, unless the application involves revoked or suspended certificate, in which case, the department shall approve or deny the application within 35 business days of receipt of the application. Fees as listed ~~in~~under s. NR 114.55 shall accompany the application.

~~(2) Written examinations shall be conducted on week days at least 2 times annually in locations specified by the department.~~ The department will primarily rely on an organization under contract with the department to provide examinations. The department may conduct examinations on a case-by-case basis when necessary to accommodate applicants' needs. An organization under contract to provide department examinations may charge fees to cover the cost of providing any exam under this section as allowed under its contract with the department.

SECTION 17. NR 114.54 (2) (Note) is created to read:

NR 114.54 (2) Note: The special U subclass exam will only be a written exam conducted by the department on an as needed basis for examinees with approved applications.

SECTION 18. NR 114.54 (4) is repealed.

SECTION 19. NR 114.54 (5) and (6) are amended to read:

NR 114.54 (5) ~~Examinations shall not be returned to an examinee.~~ Examination results shall be ~~mailed~~ made available to the examinee an applicant within ~~60~~ 30 days of the examination date.

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

SECTION 20. NR 114.55 (1) (g) and (4) are created to read:

NR 114.55 (1) (g) A third-party organization may charge additional fees to administer an online exam.

(4) A veteran may request a fee waiver for a first-time license or operator certificate in accordance with the veterans fee waiver program under s. 45.44, Stats.

SECTION 21. NR 114.59 (1) (h) is amended to read:

NR 114.59 (1) (h) Used deception or any form of dishonesty when ~~writing~~ taking an examinations, or removed examination materials from the examination site.

SECTION 27. NR 146.04 (1) (e) is created to read:

NR 146.04 (1) (e) A veteran may request a fee waiver for a first-time license or operator certificate in accordance with the veterans fee waiver program under s. 45.44, Stats.

SECTION 28. NR 146.04 (2) (i), (2m), (3) (c), (3m), (9) (b) and (9) (c) are amended to read:

NR 146.04 (2) (i) After fulfilling pars. (a) to (h) and receiving a notice of eligibility from the department, demonstrate ~~his or her~~ the ability, understanding, and competency to engage in the business of water well drilling in Wisconsin by passing an exam administered ~~by the department~~ under s. NR 146.045.

(2m) VOID APPLICATIONS: WATER WELL DRILLER. If the applicant fails to take and pass the ~~exam~~ examination under sub. (2) (i) within ~~two~~ 2 years of receiving a notice of eligibility from the department, the application becomes void. ~~If a water well driller applicant fails to pay the license fee within two years of passing the exam, the application will become void.~~

(3) (c) After meeting the requirements ~~of~~ under pars. (a) and (b), demonstrate the ability, understanding, and competency to engage in the business of pump installing in Wisconsin by passing an exam administered ~~by the department~~ under s. NR 146.045.

(3m) VOID APPLICATIONS: PUMP INSTALLER. If a pump installer applicant fails to pass an examination under sub. (3) (c) within one year ~~after receiving a notice of eligibility from the department, the application will become void.~~ ~~If a pump installer applicant fails to pay the~~

~~license fee within one year of passing the exam, the application will become void of submitting an examination application, the application shall become void.~~

(9) (b) If the applicant meets the requirements of par. (a), and receives a notice of eligibility from the department, the applicant may take an exam administered ~~by the department~~ under s. NR 146.045 to demonstrate ability, understanding and competency to engage in the business of heat exchange drilling in Wisconsin.

(9) (c) ~~If the applicant passes the exam under par. (b), the applicant shall submit the license fee of \$50 in order to obtain an individual heat exchange driller license. Submit the license application fee of \$50.~~ If the applicant holds a current water well driller license, the applicant is not required to submit an additional fee to become a licensed heat exchange driller.

SECTION 29. NR 146.045 is created to read:

NR 146.045 Examination administration, application, and fees. (1) ADMINISTRATION. The department shall administer examinations required under this chapter. The department will primarily rely on an organization under contract with the department to provide examinations. The department may conduct examinations on a case-by-case basis when necessary to accommodate applicants' needs. An organization under contract to provide department examinations may charge fees to cover the cost of providing any exam under this section as allowed under its contract with the department. Examination results shall be made available to an applicant within 30 days of the examination date.

(2) APPLICATION. An eligible applicant shall apply for an examination using a form prepared by the department and submit the fees specified under sub. (3). Applications and fees shall be submitted to the department no later than 10 business days prior to the examination date. An applicant that does not achieve a passing score may apply to the department to retake an examination.

(3) FEES. An eligible applicant shall pay the license application fee as specified under s. NR 146.04 (2) (k), (3) (d), or (9) (c) prior to taking an examination. An eligible applicant shall also pay any examination fees charged by an organization contracted under sub. (1). Fees may

not be refunded to an applicant who fails to pass a license examination, fails to appear to take the examination, or who fails to identify themselves upon request.

SECTION 30. NR 146.06 (3) is amended to read:

NR 146.06 (3) The applicant demonstrates competency to engage in the business of potable well drilling in Wisconsin by passing an ~~exam~~ examination administered ~~by the department~~ under s. NR 146.045.

SECTION 31. NR 146.065 (3) is amended to read:

NR 146.065 (3) The applicant demonstrates competency to engage in the business of heat exchange drilling in Wisconsin by passing an ~~exam~~ examination administered ~~by the department~~ under s. NR 146.045.

SECTION 32. NR 146.09 (3) (a) and (c) are amended to read:

NR 146.09 (3) (a) An individual whose license was suspended based on incompetency to act in the industry or industries for which a Wisconsin license was issued shall demonstrate competency to engage in the industry or industries by passing an exam administered ~~by the department~~ under s. NR 146.045 before the suspension is ended by the department.

(c) An individual whose water well drilling, heat exchange drilling, or pump installing license was revoked for any reason shall demonstrate the ~~individual's [licensee's]~~ individual licensee's knowledge to engage in ~~the industry [business or businesses]~~ water well drilling, heat exchange drilling, or pump installing by passing an exam administered ~~by the department~~ under s. NR 146.045. An individual ~~whose [who has had]~~ who has had a water well drilling, heat exchange drilling, or pump installing license ~~was~~ revoked for incompetency is not eligible to become licensed again until after the individual has demonstrated competency in the activity for which the individual was deemed incompetent. In the alternative, the department may grant a conditional license to the applicant, which restricts the individual from engaging in the activity for which the individual was deemed incompetent. Competency shall be demonstrated by performing the activity while working under the direct supervision of an individual licensed for that activity for at least ~~two~~ 2 years without violations.

SECTION 33. NR 146.09 (3) (c) (Note) is repealed.

SECTION 34. NR 524.08 (3) (a) and (b) are amended to read:

NR 524.08 (3) EXAMINATIONS. (a) ~~Written examinations~~ The department shall administer examinations to determine the knowledge and proficiency of those seeking certification as certified facility managers and certified site operators shall be administered by the department or its designated agent. The department will primarily rely on an organization under contract with the department to provide examinations. The department may conduct examinations on a case-by-case basis when necessary to accommodate applicants' needs. An organization under contract to provide department examinations may charge fees to cover the cost of providing any exam under this section as allowed under its contract with the department. Examination results shall be made available to an applicant within 30 days of the examination date.

(b) A score of 70% percent or higher shall be a passing score for the ~~written~~ examination.

SECTION 35. NR 524.08 (3) (c) is repealed.

SECTION 36. NR 524.08 (3) (d) is amended to read:

NR 524.08 (3) (d) ~~Persons who have not applied at least 30 days prior to the examination date, or who fail to pay the required fees, or fail to identify themselves on request at the examination site, are not eligible to take the written examination~~ seeking certification as facility managers and site operators shall file an examination application with the department and pay fees required under s. NR 520.04 (6). Applications and fees shall be submitted to the department no later than 10 business days prior to the examination date.

SECTION 37. NR 524.08 (3) (em) is created to read:

NR 524.08 (3) (em) A veteran may request a fee waiver for a first-time license or operator certificate in accordance with the veterans fee waiver program under s. 45.44, Stats.

SECTION 38. NR 524.08 (3) (f) is amended to read:

NR 524.08 (3) (f) Examination papers may not be returned to an applicant. Examination results shall be made available to an applicant within 30 days of the examination date.

SECTION 39. STATEMENT OF EMERGENCY. Pursuant to s. 227.24 (1) (a), Wis. Stats., the department finds that promulgating rules under this subsection as emergency rules are necessary for the preservation of public peace, health, safety, or welfare. Currently, ch. NR 114 requires that the department provide in-person operator certification examinations for water systems, waterworks and wastewater treatment operators, and septage servicing operators. Chapter NR 146 requires that the department administer licensing examinations for water well drillers, heat exchange drillers and pump installers. Finally, ch. NR 524 requires that the department administer in-person licensing examinations for landfill managers and operators. This amounts to roughly 1,500 individuals requiring in-person testing administered by department staff each year.

Historically the department has provided exams in-person to large groups across the state, to meet the certification and licensing requirements under chs. NR 114, 146, and 524. The current COVID-19 health pandemic has now made it unsafe for large groups to gather indoors without risk of contracting COVID-19. As such, the department has provided only small group in-person examinations since February 2020 and it is unclear when large group in-person examinations will be able to safely resume. It is paramount that this workforce remains current and properly licensed to ensure proper operation of the essential services they provide for all Wisconsinites (e.g., drinking and wastewater treatment, septage servicing, water well drilling, landfill managers and operators, etc.). Accordingly, the department finds that promulgating emergency (and permanent) updates to chs. NR 114, 146, and 524 to provide the opportunity for online examinations complies with the preservation of health, safety and welfare criteria found in s. 227.24 (1) (a), Wis. Stats.

SECTION 40. EFFECTIVE DATE. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

SECTION 41. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 23, 2021.

06/09/2021

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary