

The attached **Applicant for Operator-in-Charge (OIC)** and **Streamlined Variance Procedures for Emergency Operator-in-Charge (OIC) Situation** are being made available for public review at this time.

This draft guidance was compiled to create a working guide for assisting Wisconsin Department of Natural Resources (DNR) staff and Licensed Septage Businesses to clarify the OIC application process and to communicate a streamlined approach for emergencies.

This draft guidance was assembled with significant input from the Wis. Liquid Waste Carriers Board of Directors and assistance from Deputy Secretary, Matt Moroney.

The Wisconsin DNR is now soliciting input from external stakeholders on this guidance. Once this 21 day notice period is complete, all comments will be considered, revisions will be made to the guidance as needed, and final guidance will be made available to internal and external stakeholders.

Comments related to this draft guidance should be sent Fred Hegeman at the following email address: Frederick.Hegeman@Wisconsin.gov

APPLICANT WORK EXPERIENCE REQUIREMENTS for Master Operator Applicants

The Master Operator (MO) applicant shall provide notarized statements of work experience and proof of work experience in the following manner:

- 1) The Master Operator applicant shall document time and experience requirements through submittal of a notarized certification statement explaining duties performed in compliance with Wis. Adm. Codes, NR 113 and NR 114. The statement shall include:
 - a. The number of hours of experience servicing, hauling and disposing of septage waste. The hours shall have been earned over at least one calendar year.
 - b. A listing of septage businesses where employed including:
 - i. Name of Septage Business
 - ii. Address of Septage Business
 - iii. Phone Number of Septage Business
 - iv. Contact at Business
 - v. Dates of Employment at Septage Business
 - c. A description of regular duties performed in compliance with Wis. Adm. Codes, NR 113 and NR 114.
 - d. A list of additional certifications or licenses held by the applicant (i.e., POWTS Maintainer, plumber licenses, CDL, certified soil tester, PSAI, etc.) and for how long.
 - e. A list of any additional certifications or licenses currently underway or in progress.
 - f. A signature and date of signature of the applicant.
 - g. A notarized signature, date and stamp.

The applicant is reminded the certification statement communicates to the Department he/she is prepared to be a Master Operator and is able to operate a septage business in compliance with Wis. Adm. Codes, NR 113 and NR 114. Further, the applicant is reminded to be specific in the statement and to include all relevant information associated with the septage experience.

- 2) The Master Operator applicant shall provide one of the following showing work experience in the septage industry within the last five years:
 - a. SEPTAGE LOGS. A photocopy of septage logs showing a minimum of 50 entries completed by the applicant as a certified operator. The logs shall show required information relating to servicing, any testing and disposal. The photocopy shall be signed by the applicant and notarized to show its authenticity. A signed certification by the operator-in-charge pursuant to Wis. Adm. Code, NR 113. 11 (3) (c) g. shall be included on the log or attached to the log authenticating the log entries.
 - b. EMPLOYER STATEMENT. A notarized statement from employer(s), past and present, stating the number of hours of septage employment experience gained with the employer. Start and end dates of employment shall be included. Experience shall be in the previous five years. In addition, the employer(s) shall provide a listing of experience activities and septage disposal methods typically used by the applicant during their experience.
 - a. Experience activities shall include but not be limited to:
 - i. Completing County Maintenance Reports
 - ii. Servicing Septic and Pump Tanks
 - iii. Servicing Holding Tanks
 - iv. Servicing Portable Restrooms
 - v. Completing Daily Logs
 - vi. Completing and Submitting Site Approvals
 - vii. Entering and Submitting Annual Reports
 - b. Disposal Methods used shall include:
 - i. Treatment Plant Disposal
 - ii. Injection Practices

- iii. Incorporation Practices
 - iv. pH Treatment Practices
 - v. Other
- c. COUNTY VERIFICATION. A verification from sanitary personnel from county(ies) indicating the applicant serviced private onsite wastewater treatment systems (POWTS) within the county. The verification shall include: name, title, county name, office address, and additional contact information including but not limited to county email address and county phone number. The verification shall be on county letterhead or sent from the county email system showing authenticity.
- d. ALTERNATE DOCUMENTATION. Alternate proof of documentation of work experience within the septage industry in the last five years. All documentation directly submitted by the applicant shall be signed and notarized. Alternative documentation procedures are subject to Department approval.

REQUIREMENTS FOR DEPARTMENT:

The Department shall review each submitted document and verify the applicant’s submittal materials meet the minimum submittal requirements as listed above. In addition, pursuant to Wis. Adm. Code, NR 114.18 (2), the Department may verify information submitted on a case-by-case basis when evaluating Master Operator applications.

ALTERNATIVE EXPERIENCE HOURS for Master Operator Applicants

ALTERNATE EXPERIENCE HOURS

The Department may grant alternative experience towards meeting the required 1600 hour experience requirements of Master Operator applicants as required pursuant to Wis. Adm. Code, NR 114.18 (2). The Master Operator applicant shall submit to the Department in writing his/her desire to apply for alternative experience hours towards the 1600 hour requirement and include the necessary information as listed below:

- 1) The total maximum number of equivalent hours for credit shall not exceed 500 hours. Hours can be gained from the categories below, but not exceed this maximum equivalent hours.
- 2) Certified Soiltesters (credentialed through DSPS) or Professional Soil Scientists (Licensed through DSPS) may request up to 100 hours equivalent work experience hours by:
 - a. Conducting 50 soil/site evaluation reports over the last 5 years;
 - b. Providing a list showing the names and legal descriptions of the soil/site evaluation reports;
 - c. Providing County Sanitary Contact information including: County, administrator name, address, phone number, and email to the Department to verify the 50 sanitary permits were approved in a proper manner.
- 3) Master Plumbers (credential through DSPS) or Master Plumbers Restricted Service (credentialed through DSPS) persons may request up to 400 equivalent work experience hours by:
 - a. Conducting 50 private onsite wastewater treatment system (POWTS) installs where the MP or MPRS is the responsible plumber over the last 5 years;
 - b. Providing County Sanitary Contact information including: County, administrator name, address, phone number, and email to the Department to verify the 50 sanitary permits were approved in a proper manner; and
 - c. Provide
 - i. a listing showing the POWTS owner names, sanitary permit numbers and tax parcel IDs of the sanitary permits for the POWTS installations; or
 - ii. Photocopies of the State Sanitary hard card or photocopies of the approved sanitary permit application.

- 4) Journeyman Plumbers (credential through DSPS) or Journeyman Plumbers Restricted Service (credentialed through DSPS) persons may request up to 100 equivalent work experience hours by:
- Actively participating on 25 POWTS installations within the last 5 years;
 - Providing County Sanitary Contact information including: County, administrator name, address, phone number, and email to the Department to verify the 50 sanitary permits were approved in a proper manner; and
 - Provide a listing showing the POWTS owner names, sanitary permit numbers and tax parcel IDs of the sanitary permits for the POWTS installations.

ALTERNATE TIMEFRAME FOR ACHIEVING EXPERIENCE HOURS

When alternative experience is used towards meeting the 1600 hour experience requirement, the timeframe over which the experience gained can be reduced. The difference between the number of hours required and the number of alternative hours can be divided over the 1600 hour requirement. This ratio is then multiplied by the 1 year timeframe to achieve a reduced timeframe for which the applicant can achieve the actual experienced hours gained.

$$[(1600 \text{ hours} - \text{alternate hours}) / 1600 \text{ hours}] \times 1 \text{ calendar year}$$

Example:

A Master Plumber (MP) with 50 sanitary permits requests alternative experience toward the 1600 hour requirement. The MP provides documentation of the 50 sanitary permits by providing sanitary permit approvals from two local counties. A phone conversation between Department staff and the two county sanitarians confirm the 50 sanitary permits were properly submitted and approved. A credit of 400 hours is provided to the 1600 credit hour requirement reducing the credits needed of operator experience to 1200. Because the experience for additional work experience is reduced, the timeframe for achieving the hours can be reduced at the same ratio.

$$\begin{aligned} \text{Min. Timeframe} &= (1600 \text{ hours} - 400 \text{ hours}) / 1600 \times 1 \text{ calendar year} \\ &= 0.75 \times 12 \text{ months} \\ \text{Min. Timeframe} &= 9 \text{ months} \end{aligned}$$

DRAFT 7-24-2014 (FJH)

Streamlined Variance Procedures for Emergency Operator-in-Charge (OIC) Situation:

Purpose: The objective of this guidance is to provide clear, defined instructions to assist small business owners when the only Master Operator (MO) exists for a licensed septage business:

1. Meets an untimely death, or
2. Becomes temporarily or permanently incapacitated.

There are many options for designating a MO to be the OIC for the licensed septage business. A variance to Wis. Adm. Code, NR 113 requirements is only one option. Other options include but are not limited to:

- Hiring an MO from outside the licensed septage business,
- Selling the licensed septage business,
- Contracting a MO, and
- Many others.

NOTE 1: The Department allows for multiple MOs within a business. Succession planning is recommended.

NOTE 2: This streamlined variance procedure is NOT for use when a MO simply fails to obtain the necessary credits to fulfill the requirements of a renewal.

For the purpose of this Guidance Document, an Emergency OIC Situation is defined as:

1. Pertinent Smaller Businesses: Where a single Master Operator is employed by smaller licensed septage business. This includes:
 - a. A “one-man” licensed septage business where there is a single certified operator (i.e., the Master Operator) and only one truck in operation at a single moment; or
 - b. A licensed septage business where in addition to the Master Operator delegated as the OIC, the master operator employs up to:
 - i. Two other certified operators,
 - ii. Two operators-in-training, or
 - iii. One other certified operator and/or one operator in training;And, where no other certified operators are a master operator. The number of portable restroom operators are irrelevant as none are registered with the Department.
2. Designated Operator-in-Charge. Where the only Master Operator is designated as the Operator-in-Charge and there is no other master operator employed by the licensed septage business.
3. Business Lacking OIC. Where this Master Operator can no longer serve as the Operator-in-Charge because of:
 - a. Death, or
 - b. Incapacitated Status, either temporarily or permanently due to injury or disease.

EXAMPLES

Example 1: A married couple:

- A married couple owns licensed septage business together.
- The master operator (delegated OIC) performs the servicing and disposal related duties.
- The spouse (no certification) performs receptionist, accounting and scheduling duties.
- Two trucks are licensed through DNR, but only one is used for servicing at any given time.
- The master operator becomes permanently incapacitated.

→How does the business continue to operate?

→What has to occur to maintain the business?

Example 2: A person:

- A person owns a licensed septage business through a solely owned LLC.
- The master operator (delegated OIC) performs servicing and disposal related duties.
- An office assistant (no certification) performs receptionist, accounting and scheduling duties.
- The business employs one certified operator, one operator-in-training and one portable restroom servicing assistant.
- Four septage trucks are licensed through DNR. One is used strictly for portable restrooms.
- No other person than the LLC's sole owner possesses a master operator certification.
- The LLC's sole owner has granted given the Power of Attorney to their sister.
- The LLC's sole owner, the master operator, the OIC for the business is killed in a car accident.

→How does the business continue to operate?

→What has to occur to maintain the business and the employees of the business?

STREAMLINED VARIANCE PROCEDURE

A streamlined variance procedure to overcome an **Emergency OIC situation** is outlined as follows:

1. **15 Days.** The business owner or representative of the business notifies the Department within 15 calendar days [of when emergency commenced] pursuant to NR 114.18 (4). This notification shall include:
 - a. The background and explanation of the emergency situation.
 - b. The date of the emergency commenced;
 - c. The business name and business license number;
 - d. The mailing address of the business;
 - e. The name of the person submitting the information to the Department and representing the business
 - f. All persons potentially involved with the business including but not limited to:
 - i. The name and address of the current/former OIC;
 - ii. The names and addresses of all persons employed by the business including their typical duties within the business;
 - iii. All names and addresses of the owners of the business;
 - iv. All names and addresses potential spokespersons associated with the business such as attorneys, persons with power of attorneys, etc.
2. **21 Days.** Within 21 days of the date of the commenced Emergency OIC situation the business shall:
 - a. Designate a spokesperson for the business;
 - b. This person shall:
 - i. Represent the owner(s) of the business;
 - ii. Notify the Department of this designation and provide any change of information as listed in 1. above.
 - iii. Provide full name and address of self, including contact information such as email address, phone numbers
 - iv. Shall begin to develop a plan to resolve the missing/incapacitated OIC of the business.
 - c. A notification communicating to the Department an intent to submit a variance application under this streamlined approval process.

3. **30 Days.** Within 30 days of the date of commenced Emergency OIC Situation, the business shall layout a plan to address the missing/incapacitated OIC. This plan shall include:
 - a. A basis how the business will re-instate an OIC for the business;
 - b. A timeline to achieve re-instatement of an OIC.
 - c. Details including training and experience needs of staff and how these needs will be addressed.
 - d. An application for variance outlining the specifics of the variance request in NR 113.15 or in NR 114.25
4. The Department will review and if the variance application is found adequate, the variance will be conditionally approved and a compliance schedule will be developed. Failure to meet any portion of the compliance schedule as shown above will result in automatic cancellation of the conditional variance.
5. 6 months. Within 6 months of the date of the commenced Emergency OIC situation, the business designate a properly certified master operator as the operator-in-charge.

DRAFT

CODE REFERENCES:

NR 113.15 Variances. (1) GENERAL. The department may approve a variance from the requirements of this chapter when it determines that special circumstances make compliance impractical or not in the best interests of the state and the department is satisfied that issuance of a variance will not be detrimental to public health or the environment.

(2) APPLICABILITY. A variance may be requested from any requirement in this chapter that is not based on state statutes or federal statutes or regulations. A variance may not be issued for a statutory requirement.

(3) REQUEST FOR VARIANCE. A request for a variance shall be submitted in writing to the department. Each request for a variance shall contain the following:

- (a) The name of the applicant;
- (b) The section of this chapter from which a variance is sought and a statement explaining why the variance is necessary;
- (c) An adequate 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 of granting the variance; and
- (d) A statement as to whether the same or similar variance has been requested previously, and if so, circumstances of the previous request.

History: Cr. Register, September, 1996, No. 489, eff. 1-1-97.

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.

History: CR 04-047: cr. Register November 2004 No. 587, eff. 12-1-04.

NR 114.18 Operator-in-charge or master operator.

(1) 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 master operator.

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

(2) Persons shall accrue at least 1600 hours of experience working in their designated grade certification 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 certified as a master operator. 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. Master operator grade certification shall be consistent with their operator certification grade.

(3) The mandatory training class for designation as a master operator 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.

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

History: CR 04-047: cr. Register November 2004 No. 587, eff. 12-1-04; CR 09-123: am. (title) and (1), r. (2), (4) and (5), renum. (3) and (6)

NR 113.05 Licensing. (1) Applicants for licensure shall meet the following requirements:

- (a) Every business, before engaging in servicing in this state, shall submit an application on forms prepared by the department. The application shall designate an operator-in-charge for the business in accordance with ch. NR 114. License fees in par. (b) shall accompany each application.

Note: Application forms are available at department offices