



**BUREAU OF WATER QUALITY
PROGRAM GUIDANCE**

WASTEWATER POLICY MANAGEMENT TEAM

Wisconsin Department of Natural Resources
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Streamlined Variance Procedures for Emergency Operator-in-Charge (OIC) Situation

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This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

APPROVED:

A handwritten signature in black ink that reads 'Adrian Stocks'. The signature is written in a cursive style.

Adrian Stocks, Director
Bureau of Water Quality

3/3/2020

Date

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1.0 Definitions

1. Department: means the department of natural resources (referenced from s. NR 113.03(12), Wis. Adm. Code).
2. Grade T master operator: operator that may conduct all aspects of septage servicing except land application and is eligible to be an operator-in-charge for a business that does not land apply (referenced from ss. NR 114.17 and NR 114.18, Wis. Adm. Code)
3. Grade L master operator: operator that may conduct all aspects of septage servicing including land application and is eligible to be an operator-in-charge for a business that land applies (referenced from ss. NR 114.17 and NR 114.18, Wis. Adm. Code)
4. Grease interceptor (aka grease trap): means a watertight receptacle designed to intercept and retain grease or fatty substances contained in kitchen and other food wastes (referenced from s. NR 113.03(21), Wis. Adm. Code). This term should not be confused with a receptacle for used grease collected from fryers (and similar cooking processes) and retained in onsite containers for removal/reuse.

A) Industrial/process grease interceptor (aka food processing grease): a watertight receptacle designed to intercept and retain grease that enters the interceptor from process piping (not sanitary plumbing).

Note: Industrial (process) grease is generated from large-scale food production. Numerous meat and poultry processors generate industrial/process grease. Grease generated by the industrial food production process enters a grease interceptor installed in or connected to process pipes, not sanitary plumbing pipes. Non-domestic septage (including process grease) is regulated pursuant to ch. NR 214, Wis. Adm. Code. In addition, process piping is not regulated by the plumbing code; therefore, this waste is exempt from ch. NR 113, Wis. Adm. Code requirements. This waste is regulated as an industrial sludge pursuant to s. NR 214.18, Wis. Adm. Code.

B) Sanitary grease interceptor: a watertight receptacle designed to intercept and retain grease that enters the interceptor from sanitary plumbing in or from kitchens and restaurants. Sanitary grease contains human pathogens. See ch. NR 113, Wis. Adm. Code.

5. Holding tank: means an approved watertight receptacle for the collection and holding of sewage.

A) Domestic holding tank: a watertight receptacle for the collection and holding of domestic wastewater [See definition of wastewater-domestic below] (referenced from s. NR 113.03(26), Wis. Adm. Code).

B) Nondomestic or mixed (domestic + nondomestic) holding tank: a watertight receptacle for the collection and holding of nondomestic wastewaters or a mix of domestic/nondomestic wastewaters [See definition of wastewater-nondomestic below].

6. Portable restroom: means fixtures, incorporating holding tank facilities, designed to directly receive human excrement. Portable restrooms are self-contained units, may be designed for one or more person's use at a given time and are readily transportable (referenced in s. NR 113.03(41), Wis. Adm. Code).
7. Privy: means a cavity in the ground or a portable above-ground device constructed for toilet uses which receive human excrement either to be partially absorbed directly by the surrounding soil or stored for decomposition and periodic removal (referenced in s. NR 113.03(43), Wis. Adm. Code).

Note: Wis. Stats. s. 281.48(2)(c) defines "privy" as an enclosed nonportable toilet into which human wastes not carried by water are deposited to a subsurface storage chamber that may or may not be watertight.

8. Septage: means the wastewater or contents of septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage pits, seepage trenches, privies, or portable restrooms (referenced from s. NR 113.03(55), Wis. Adm. Code).

Note: This does not include non-domestic wastewater (non-domestic examples include, but are not limited to, process grease, car wash waste, catch basin waste, etc.) regulated pursuant to s. NR 214.02(1) and (3)(c), Wis. Adm. Code.

9. Servicing: means removing the scum, liquid, sludge, or other wastes from a private sewage system such as septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies, or portable restrooms and properly disposing or recycling of the contents as provided in ch. NR 113 (referenced from s. NR 113.03(57), Wis. Adm. Code).
10. Wastewater-Domestic: means wastewater originating solely from human and domestic activities such as sanitary, bath, laundry, dishwashing, garbage disposal, and the cleaning of domestic areas or utensils. Wastewater from restaurants is considered domestic wastewater. [clarified pursuant to DSPS (DComm) and DNR Memo of Understanding dated December 16, 1999].
11. Wastewater-Non-Domestic: means wastes collected from non-residential garages used for storage, maintenance, or washing of motor vehicles, commercial food processing, commercial laundromats, animal shelters or kennels, animal rendering, metal fabricating, electronic component manufacturing, chemical manufacturing, milkhouses and include other industrial and commercial process water. [clarified pursuant to DSPS (DComm) and DNR Memo of Understanding dated December 16, 1999].

2.0 Acronyms

1. DNR: Department of Natural Resources
2. DSPS: Department of Safety and Professional Services (former Dept. of Commerce-DComm)
3. ELC: Environmental Licensing and Certification Database
4. LLC: Limited Liability Company
5. MO: Master Operator
6. OIC: Operator-in-Charge

3.0 Applicability

This guidance document applies to emergency septage operator-in-charge (OIC) situations in which a streamlined variance (pursuant to ss. NR 113.15 and NR 114.25, Wis. Adm. Codes) is requested from the department. An “emergency OIC situation” includes, but is not limited to, the OIC meeting an untimely death, or becoming temporarily or permanently incapacitated.

This streamlined variance procedure does not apply to the following scenarios:

1. MO fails to obtain the necessary credits (compliance and/or general) to fulfil the requirements of an operator certification renewal;
2. MO fails to pay the renewal fee associated with their operator certification renewal;
3. MO loses certification as a results of identified compliance issues and department stepped enforcement;
4. Septage business has multiple MOs employed and available to become OIC;
5. Inadequate information is provided by the septage business to justify the streamlined variance request; or
6. Other scenarios as determined by the department on a case-by-case basis.

This streamlined variance procedure is one of many options available to septage businesses. Alternative variance procedures shall follow ss. NR 113.15 and NR 114.25, Wis. Adm. Codes.

4.0 Background

Septage businesses in the State of Wisconsin that service and/or dispose of septage (contents from septic tanks, holding tanks, grease interceptors, portable restrooms, privies, etc.) are required to be licensed pursuant to ch. NR 113, Wis. Adm. Code. All individuals servicing septage, with the exception of portable restroom servicing assistants, are required to be properly certified under the following designations: operator-in-training, certified septage vehicle

operator, and/or master operator (MO) pursuant to ch. NR 114, Wis. Adm. Code. Each vehicle and/or trailer used for servicing of septage must be inspected and properly licensed pursuant to ch. NR 113, Wis. Adm. Code.

Each septage business must designate a certified master operator as the OIC for the business per s. NR 114.18, Wis. Adm. Code. A “grade T” MO may conduct all aspects of septage servicing except land application. A “grade L” MO may conduct all aspects of septage servicing including land application. The licensed septage business may only perform aspects corresponding to the OIC grade designation.

In 2014, representatives from the Wisconsin Liquid Waste Carriers Association (WLWCA) and Department of Natural Resources (DNR) developed guidelines, expectations, and instructions to assist business owners when the only MO exits from a licensed septage business due to an untimely death or temporary or permanent incapacitation.

Note: In January 2020, DNR representatives reformatted this document to meet the department guidance recertification procedures to comply with the 2017 ACT 369 requirements.

The objective of this guidance document is to provide a clear and defined set of instructions to designate an emergency OIC under predetermined circumstances. There are many other options for designating a MO as an OIC for a licensed septage business.

Variances to chs. NR 113 and NR 114, Wis. Adm. Code requirements are options to achieve continued compliance. Other options include, but are not limited to:

1. Hiring an MO from outside the licensed septage business,
2. Contracting with a certified MO, or
3. Selling the licensed septage business.

Note: The department allows for multiple MOs within a business. Should the MO designated as the OIC for the business be unable to perform his/her duties, a different MO associated with the business may be designated by the owner as the OIC. OIC succession planning is recommended for each septage business servicing septage in Wisconsin.

Note: Septage businesses may submit alternative variances pursuant to ss. NR 113.15 and NR 114.25, Wis. Adm. Codes that may better match the business structure than this standardized and streamlined variance procedure.

5.0 Designation of Emergency OIC

For the purpose of this guidance document, an “emergency OIC situation” requires all of the following:

1. Licensed Septage Business: Where a single MO is employed by a licensed septage business. This includes:

- A. A “one-person” licensed septage business where there is a single certified operator (i.e., the MO) and only one servicing vehicle in operation at a given moment; or
- B. A licensed septage business where in addition to the MO who is delegated as the OIC, the septage business employs up to and including:
 - i. Two other certified operators, two operators-in-training, or one certified operator and one operator-in-training; and
 - ii. Where no other certified operators are a MO.

Note: The number of portable restroom servicing assistants is irrelevant as portable restroom servicing assistants are not registered septage operators with the department.

Note: Under the “emergency OIC situation” streamlined variance there is no maximum limit to the number of licensed septage servicing vehicles.

- 2. Designated Operator-in-Charge: Where the only MO is designated as the OIC, and there is no other MO employed by the licensed septage business.
- 3. Business Lacking an OIC: Where the MO can no longer serve as the OIC due to:
 - A. Death, or
 - B. Temporary or permanent incapacitation.

Example “emergency OIC situations” are provided below.

Example 1: A married couple owns a licensed septage business together.

- 1. The MO (delegated OIC) performs the servicing and disposal related duties.
- 2. The spouse (no septage operator certification) performs receptionist, accounting, and scheduling duties.
- 3. Two servicing vehicles are licensed through the department, but only one truck is used for servicing at any given time.
- 4. The MO becomes permanently incapacitated.

Example 2: A person owns a licensed septage business through a solely owned LLC.

- 1. The MO (designated OIC) performs servicing and disposal duties.
- 2. An office assistant (no certification) performs receptionist, accounting, and scheduling duties.
- 3. The business employs one certified operator, one operator-in-training, and one portable restroom servicing assistant.
- 4. Four septage servicing vehicles are licensed through the department. One vehicle is used exclusively for servicing portable restroom units.
- 5. No other person than the LLC’s sole owner possesses a MO certification.
- 6. The LLC’s sole owner has granted the Power of Attorney to their sister.
- 7. The LLC’s sole owner, MO, and OIC for the business abruptly perished in a car accident.

6.0 Streamlined Variance Procedure for Emergency OIC

The streamlined variance procedure requires adherence to all the following requirements:

15 Days from Emergency OIC Situation

Within 15 calendar days of the commenced “emergency OIC situation:”

1. The septage business owner or representative of the business notifies the department’s Septage Certification Coordinator and Regional Septage Regulator pursuant to s. NR 114.18 (4), Wis. Adm. Code.
2. As part of streamlined variance request, this notification shall also include:
 - A. The background and explanation of the “emergency OIC situation;”
 - B. The date the “emergency OIC situation” commenced;
 - C. The septage business name and the business license number;
 - D. The business mailing address;
 - E. The full 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, operator certification number, and mailing address of the current/former OIC;
 - ii. The names and mailing addresses of all persons employed by the business including their typical duties within the business;
 - iii. All names and mailing addresses of the owners of the septage business; and
 - iv. All names and mailing addresses of potential spokespersons associated with the septage business, including but not limited to attorneys or persons with power of attorney.

21 Days from Emergency OIC Situation

Within 21 calendar days of the commenced “emergency OIC situation:”

1. The septage business shall:
 - A. Designate a spokesperson for the business;
 - B. This spokesperson shall:
 - i. Represent the owner(s) of the septage business;
 - ii. Notify the department of this designation and provide any change of information as listed in “Part 1” of the “Streamlined Variance Procedure for Emergency OIC” (above);
 - iii. Provide full name, mailing address, and any pertinent contact information (such as email address and phone number) of the designated spokesperson to the department; and
 - iv. Begin to develop a plan to resolve the “emergency OIC situation.”
2. The septage business shall notify the department of its intent to submit a variance application under this streamlined variance process.

30 Days from Emergency OIC Situation

Within 30 calendar days of the commenced “emergency OIC situation:”

1. The septage business shall layout a plan to address the “emergency OIC situation.” This plan shall include:
 - A. A proposed description for how the business will re-instate a certified OIC for the business;
 - B. A proposed timeline to achieve re-instatement of a certified OIC;
 - C. Proposed details including training and experience needs of staff and how these needs will be addressed by the business; and
2. The septage business shall submit an application for variance outlining the specifics of the variance request in ss. NR 113.15 or NR 114.25, Wis. Adm. Codes.

7.0 Department Approval and Documentation

The department Septage Certification Coordinator will monitor and document the “emergency OIC situation” in ELC.

Upon receiving the variance application, the Septage Certification Coordinator in coordination with the Statewide Septage Coordinator will review the “emergency OIC situation” for completeness. If the variance application is found adequate, then the Septage Certification Coordinator will conditionally approve the variance application and develop a schedule for reinstatement of a certified OIC.

The department Septage Certification Coordinator will document the approved “emergency OIC situation” in ELC, and notify the appropriate regional septage coordinator.

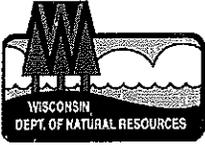
Failure to meet any portion of the conditionally approved variance application and reinstatement schedule will result in termination of the “emergency OIC situation” variance approval, and require the business to cease all operations regulated under chs. NR 113 and NR 114, Wis. Adm. Code, unless the business can designate an OIC through other provisions of these chapters. Failure to cease operations may result in the use of the department’s stepped enforcement.

Failure to meet any portion of Section 6.0 (“Streamlined Variance Procedure for Emergency OIC”) will result in automatic cancellation of the streamlined variance.

IMPORTANT: Six months from Emergency OIC Situation: Within six months of the commenced “emergency OIC situation” the business shall designate a properly certified MO as the OIC. Failure to designate a certified OIC after six months may result in stepped enforcement by the department.

8.0 Acknowledgements

This guidance document was originally developed by Matt Alft (WLWCA), John Bowen (WLWCA), Alan Kaddatz (WLWCA), Katie Boycks (Klaetsch Public Affairs Strategies, LLC), George Klaetsch (Klaetsch Public Affairs Strategies, LLC), Matt Moroney (DNR), Kelly Thompson (DNR), and Fred Hegeman (DNR). In January 2020, DNR representatives reformatted this document to meet the department guidance recertification procedures to comply with the 2017 ACT 369 requirements. This document was updated by Rachel Angel, Fred Hegeman, Kate Hanson, Steve Warrner, and Yu Zhuang. For any questions regarding this guidance document, please contact Fred Hegeman (Wastewater Septage Team Co-Coordinator) or Steve Warrner (Wastewater Septage Team Co-Coordinator).



WISCONSIN DEPARTMENT OF NATURAL RESOURCES
NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

DOCUMENT ID

WY-20-0014

DOCUMENT TITLE

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

PROGRAM/BUREAU

Water Quality

STATUTORY AUTHORITY OR LEGAL CITATION

Chapters NR 113 and NR 114, Wis. Adm. Code.

DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

02/10/2020

DATE FINALIZED

03/03/2020

DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

Signature

3/3/2020

Date

