



## **BUREAU OF WATER QUALITY**

### **Guidance Document**

**Wisconsin Department of Natural Resources**

**101 S. Webster Street, P.O. Box 7921**

**Madison, WI 53707-7921**

### **Streamlined Variance Procedures for Emergency Septage Operator-in-Charge (OIC) Situations**

**August 2023**

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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.*

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APPROVED:

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8/30/2023

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Date

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## 1.0 Definitions

1. Department: means the department of natural resources (referenced from sub. NR 113.03(12), Wis. Adm. Code).
2. Certified operator: means a person who has been issued a certificate by the department to do septage servicing (reference sub. NR 114.153(3), Wis. Adm. Code). A grade T operator is certified to conduct all aspects of septage servicing except the land application of septage (reference par. NR 114.17(1)(a), Wis. Adm. Code). A grade L operator is certified to conduct all aspects of septage servicing including the land application of septage (reference par. NR 114.17(1)(B), Wis. Adm. Code).
3. Certified operator continuing education: means continuing education approved by the department with a focus on code compliance with chs. NR 113 and NR 114, Wis. Adm. Code, and other relevant provisions in the administrative code (referenced from sub. NR 114.153(3e), Wis. Adm. Code).
4. Grade: means the classification assigned to a person under s NR 114.17, Wis. Adm. Code (referenced from sub. NR 114.153(4), Wis. Adm. Code).
5. 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)
6. 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)
7. 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 sub. 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.

8. 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 sub. 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].
9. Land application or landspreading: means the spreading of septage onto the land surface, the injection of septage below the land surface, or the incorporation of septage into the soil, so that the septage can either condition the soil or fertilize crops or vegetation grown in the soil (referenced from sub. NR 113.03(31), Wis. Adm. Code).
10. Master operator: means a certified operator who has been issued a master operator certification by the department (referenced from sub. NR 114.153(4m), Wis. Adm. Code).
11. Operator-in-charge or OIC: means the master operator who has been designed by the owner to be directly responsible for the operation of the septage servicing business (referenced from sub. NR 114.153(5), Wis. Adm. Code).
12. Operator-in-training or OIT: means a person who has been properly registered as an operator-in-training with the department by the operator in charge (referenced from sub. NR 114.153(6), Wis. Adm. Code).
13. 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 sub. NR 113.03(41), Wis. Adm. Code).
14. Portable restroom servicing assistant: means a person who services portable restrooms under the supervision of the operator-in-charge (referenced in sub. NR 114.153(8), Wis. Adm. Code).

15. Privy: means an enclosed nonportable toilet into which human waste not carried by water are deposited to a subsurface storage chamber that may or may not be watertight. This includes a) pit privies and b) vault privy (reference sub. NR 113.03(43), Wis. Adm. Code).
16. Septage: means the scum, liquid, sludge, or other waste in any of the following: a) a septic or holding tank, dosing chamber, grease interceptor, seepage bed, seepage trench, distribution cell, or other component of private onsite wastewater treatment systems, and b) a privy or portable restroom (referenced from sub. 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.*
17. 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 sub. NR 113.03(57), Wis. Adm. Code).
18. 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].
19. 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: Wisconsin Department of Natural Resources
2. DSPS: Wisconsin 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
7. OIT: Operator-in-Training
8. PRSA: Portable Restroom Servicing Assistant
9. WLWCA: Wisconsin Liquid Waste Carriers Association

### **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 fulfill the requirements of an operator certification renewal (sub. NR 114.23(2), Wis. Adm. Code);
2. MO fails to pay the renewal fee associated with their operator certification renewal (s. NR 114.22, Wis. Adm. Code);
3. MO loses certification as a result of identified compliance issues and department stepped enforcement (ss NR 113.13 and NR 114.24, Wis. Adm. Code);
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. A septage business has the option to develop and submit an individual (alternative) variance. 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 (PRSAs), are required to be properly certified under the following designations: operator-in-training (OIT), 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 of septage. A “grade L” MO may conduct all aspects of septage servicing including land application of septage. 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 1: In January 2020, DNR representatives reformatted this document to meet the department guidance recertification procedures to comply with the 2017 ACT 369 requirements.*

*Note 2: In April 2023, DNR representatives updated this guidance document to comply with the revised chs. NR 113 and NR 114, Wis. Adm. Code (Register September 2021 and April 2022, respectively).*

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 to achieve continued compliance 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 1: 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 2: 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 1: The number of portable restroom servicing assistants (PRSAs) is irrelevant as PRSAs are not registered septage operators with the department (reference sub. NR 114.16(3), Wis. Adm. Code).*

*Note 2: 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.

Two example “emergency OIC situations” are provided below.

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

1. The MO (designated OIC) performs septage 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 suffers an abrupt medical issue and becomes permanently incapacitated.

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

1. The MO (designated OIC) performs septage servicing and disposal duties.
2. An office assistant (no certification) performs receptionist, accounting, and scheduling duties.
3. The business employs one certified operator, one OIT, and one PRSA
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 shall provide written notification to the department's Septage Certification Coordinator and Regional Septage Regulator of their intent to pursue a variance of sub. NR 114.18 (4), Wis. Adm. Code.
2. As part of streamlined variance request, this written 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, phone number, and email address 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 a detailed description of their typical duties within the business;
    - iii. All names and mailing addresses of the owners of the septage business; and
    - iv. All names, phone numbers, 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 provided during the initial notification and emergency OIC request;
    - 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. Including:
  - A. The name, address, phone number, and operator certification number (if applicable) of the applicant;
  - B. Section of chapter in which a variance is sought (specifically ss. NR 113.04 and NR 114.18, Wis. Adm. Codes);
  - C. Statement of explanation for why variance is sought;
  - D. 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; and
  - E. A statement as to whether the same or similar variance has been requested previously, and if so outcome of the previous request.

### **7.0 Department Approval and Documentation**

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

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’s Septage Certification Coordinator will provide written approval or denial of the variance as required under sub. NR 114.25(3), Wis. Adm. Code. The DNR written notification will instruct the septage business to retain a copy of the variance request and the department’s decision.

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

## **8.0 Variance Cancellation**

Failure to meet any portion of the approved variance application and reinstatement schedule will result in cancellation 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 stepped enforcement (including the issuance of citations) by the department.

Violations of chs. NR 113 and/or NR 114, Wis. Adm. Code may result in the cancellation of a previously approved variance (reference subs. NR 113.15(5) and NR 114.245(4), Wis. Adm. Code).

**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.

## **9.0 History and Acknowledgements**

This guidance document was originally developed from 2013 to 2014 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 further updated in 2023 by the DNR Wastewater Septage Team including Rachel Angel, Michelle Balk Ludwig, Alison Canniff, Teresa Hall, Fred Hegeman, Kassie Schultz, Heidi Schmitt Marquez, and Steve Warner. In addition, the authors would like to thank Max Levin and Yu Zhuang for their contributions to this guidance document. For any questions regarding this guidance document, please contact Fred Hegeman (Wastewater Septage Team Co-Coordinator) or Steve Warner (Wastewater Septage Team Co-Coordinator).