

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request adoption of Emergency Board Order WY-26-20(E), proposed rules affecting chapters NR 114, 146 and 524 to allow for third party administration of operator certification, well driller or pump installer license, and landfill operator examinations.

FOR: June 2021 Board meeting

PRESENTER'S NAME AND TITLE: Steve Geis, Certification Services Section Chief

SUMMARY:

The proposed rule revisions update the examination requirements found in chs. NR 114, 146, and 524, Wis. Adm. Code, to allow for third party administration of online examinations. Sections NR 114.05(2), 114.19(2), 114.33(3), and 114.54(2), Wis. Adm. Code, all currently state that the department shall administer in-person examinations for activities related to waterworks, water systems, wastewater treatment plants, and septage servicing operators at least twice annually at multiple locations throughout Wisconsin. Chapter NR 146, which is dedicated to water well drillers, heat exchange drillers, and pump installer licensing and registration, requires these types of professionals to pass an exam administered by the department (ss. NR 146.04(2)(i), (3)(c) and (9)(b), Wis. Adm. Code). Chapter NR 524 requires landfill operators to pass an exam administered by the department (s. NR 524.08(3), Wis. Adm. Code). The proposed administrative code provisions allow for a third party organization to provide online exams to meet the needs of all these professions.

The rule is expected to have a minimal (level 3) impact on small businesses.

The Board last acted on this rule on February 24, 2021 when it approved the scope statement for the emergency and permanent rules. The department is continuing to work on the permanent rule. If approved, the emergency rule will remain in effect for up to 270 days or until a permanent rule takes effect, whichever is sooner. A hearing will be held on the emergency and permanent rules within 90 days after the emergency rule is promulgated.

RECOMMENDATION: That the Board adopt Emergency Board Order WY-26-20(E).

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Background Memo
Fiscal estimate and economic impact analysis (EIA) form
Response summary
Attachments to background memo
Board order/rule
(insert document name)

Table with 3 columns: Approved by, Signature, Date. Rows include Greg Pils, David R. Siebert, and Preston D. Cole.

by Todd Amb's

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CORRESPONDENCE/MEMORANDUM

DATE: May 21, 2021

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order WY-26-20(E), proposed emergency rules affecting chapters NR 114, 146, and 524, Wis. Adm. Code, to allow for third party administration of operator certification, well driller or pump installer license, and landfill manager and operator examinations.

1. Subject of Proposed Rule:

Revisions to chs. NR 114, 146, and 524, Wis. Adm. Code, to allow for third party administration of operator certification, well driller or pump installer license, and landfill manager and operator examinations.

2. Background:

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, Wis. Adm. Code. The current COVID-19 health pandemic has now made it unsafe for groups to gather indoors without risk of contracting COVID-19. As such, the department has not provided large-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 it is necessary to promulgate emergency updates to chs. NR 114, 146, and 524, Wis. Adm. Code, to provide the opportunity for online examinations without complying with the notice hearing, and publication requirements under ch. 227, Wis. Stats., to preserve the public health safety and welfare.

3. Why is the rule being proposed?

The proposed rule revisions update the examination requirements found in chs. NR 114, 146, and 524, Wis. Adm. Code, to allow for third party administration of online examinations. Sections NR 114.05(2), 114.19(2), 114.33(3), and 114.54(2), Wis. Adm. Code, all currently state that the department shall administer in-person examinations for activities related to waterworks, water systems, wastewater treatment plants and septage servicing operators at least twice annually at multiple locations throughout Wisconsin. Chapter NR 146, Wis. Adm. Code, which is dedicated to water well drillers, heat exchange drillers, and pump installer licensing and registration, requires these professionals to pass an exam administered by the department (s. NR 146.04(2)(i), (3)(c) and (9)(b), Wis. Adm. Code). Chapter NR 524, Wis. Adm. Code, requires landfill operators to pass an exam administered by the department (s. NR 524.08, Wis. Adm. Code). The proposed administrative code provisions allow for a third party organization to provide online exams to meet the needs of all these professions.

4. Summary of the rule:

The proposed rule would allow exam takers to take a department exam online through a third-party organization under contract with the department. The third-party organization would offer these exams at testing centers located throughout the state. Exams would be proctored either by individuals on site or using proctoring software. The exam takers would pay an additional exam session fee to the third-party organization for this service.

5. How does this proposal affect existing policy?

Existing policy is to offer all the various types of department exams to about 600 people, two times per year at six locations throughout the state. Two additional exam sessions per year are offered at one central location and limited to 100 test takers per session.

The rule revision would allow exam takers to take exams at any time throughout the year when testing centers are open. An extra exam session fee would be paid to the third-party organization. The department will continue to offer limited in-person exams proctored by department personnel. The department will work with stakeholders to determine the frequency and location of these exams.

6. Has Board dealt with these issues before?

Yes. The Board authorized a preliminary public hearing and comment period on the statement of scope for WY-26-20(E) and WY-27-20 at its January 2021 meeting. The Board approved the statement of scope for WY-26-20(E) and WY-27-20 at its February 2021 meeting.

7. Who will be impacted by the proposed rule? How?

Potentially affected parties include all entities involved with water and waterworks, wastewater treatment, septage servicing, well and heat exchange drillers and water well pump installation in the state. The rules would more specifically apply to the various municipalities and industrial operations that require the services of a certified or licensed professional under chs. NR 114, 146, and 524, Wis. Adm. Code. The proposed rules would also apply to all operating landfill facilities that are required to have a certified facility manager or site operator present.

The rule changes will increase flexibility and accessibility for the public by allowing individuals to take exams at their convenience, instead of in large group settings offered only a couple of times per year in limited locations. The number of testing sites will expand, making travel easier. Individuals who fail an exam will be able to retake an exam more quickly. The department will still offer some in-person exams, but it is expected that the demand for this will decrease over time, freeing up department resources. Exam takers will pay the third-party organization for each exam session.

8. Soliciting public input on economic impact synopsis:

Comments on the economic impact of the permanent rule will be solicited from affected parties.

9. Small Business Analysis:

The rule may have an economic impact on small businesses, as defined in s. 227.114(1), Wis. Stats. The anticipated total economic impact of this rule includes the estimated small business impact. The department estimates that on average 310 exam takers per year (21% of all exam takers) are attributable to small businesses. The maximum cumulative small business impact of this rule will be an approximately \$24,500 annual increase. The department will engage small business and business affiliated associations during the development of the economic impact analysis of the permanent rule.

Drafter: Steve Geis

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 5/18/21</p>								
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</p> <ul style="list-style-type: none"> • NR 114 – Certification Requirements for Waterworks, Wastewater Treatment Plant, Septage Servicing and Water System Operators • NR 146 – Water Well Driller, Heat Exchange Driller, and Pump Installer Licensing and Registration; Drilling Rig Operator License • NR 524 – Training and Certification Requirements for Solid Waste Disposal Facility Operators 									
<p>4. Subject Third party administration of operator certification examinations. Board Order WY-26-20(E)</p>									
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.370(4)(b)1 - 42600</p>								
<p>7. Fiscal Effect of Implementing the Rule</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> No Fiscal Effect</td> <td><input type="checkbox"/> Increase Existing Revenues</td> <td><input checked="" type="checkbox"/> Increase Costs</td> <td><input type="checkbox"/> Decrease Costs</td> </tr> <tr> <td><input type="checkbox"/> Indeterminate</td> <td><input type="checkbox"/> Decrease Existing Revenues</td> <td colspan="2"><input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</td> </tr> </table>		<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs	<input type="checkbox"/> Decrease Costs	<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
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<p>8. The Rule Will Impact the Following (Check All That Apply)</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> State's Economy</td> <td><input checked="" type="checkbox"/> Specific Businesses/Sectors</td> </tr> <tr> <td><input checked="" type="checkbox"/> Local Government Units</td> <td><input type="checkbox"/> Public Utility Rate Payers</td> </tr> <tr> <td colspan="2"><input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</td> </tr> </table>		<input type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors	<input checked="" type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	<input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)			
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<input checked="" type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers								
<input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)									
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$125,000 to \$135,000 per year</p>									
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>									
<p>11. Policy Problem Addressed by the Rule The proposed rule revisions update the examination requirements found in chs. NR 114, 146, and 524, Wis. Adm. Code, to allow for third party administration of online examinations. Sections NR 114.05(2), 114.19(2), 114.33(3), and 114.54(2), Wis. Adm. Code, all currently state that the department shall administer in-person examinations for activities related to waterworks, water systems, wastewater treatment plants, and septage servicing operators at least twice annually at multiple locations throughout Wisconsin. Chapter NR 146, Wis. Adm. Code, which is dedicated to water well drillers, heat exchange drillers and pump installer licensing and registration, requires these professionals to pass an exam administered by the department (ss. NR 146.04(2)(i), (3)(c), and (9)(b), Wis. Adm. Code). Section NR 524.08(3), Wis. Adm. Code, requires landfill operators to pass an exam administered by the department. The proposed administrative code provisions allow for a third-party organization to provide online exams to meet the needs of all these professions. The policy problem was initially highlighted by the COVID-19 pandemic. Post-pandemic, however, these rule changes will continue to allow greater flexibility in meeting exam requirements.</p>									
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Municipal wastewater and drinking water facilities and their operators, water well drillers, heat exchange drillers, pump installers, landfills and their operators, septage businesses and septage haulers, incinerator operators. Associations: WI Wastewater Operators Association, WI Rural Water Association, Municipal Environmental Group, WI Liquid Waste Carriers Association, Wisconsin Counties Association.</p>									

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

Local government units will be given the opportunity to participate in the development of the EIA during the EIA comment solicitation period.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The department administers approximately 3,000 exams to 1,500 individuals each year. The proposed rule change would allow the department to contract with a third-party organization to proctor 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. Those choosing to take in-person exams will not be assessed the third-party fees.

Fiscal Impact and Impact on State Economy

The department does not anticipate that this rule will impact the state's economy adversely. The department costs will increase to pay for the annual maintenance of the exams. The estimated fiscal impact of this rule is \$16,750 for the initial implementation cost and then \$6,750 annually for maintenance of the exams. The department can absorb these costs into its current budget. There will be department savings due to a reduction in staff time required to proctor exams.

Impacts on Local Governmental Units

Approximately 90% of exams are taken by wastewater and drinking water operators each year. The majority of exam fees are paid or reimbursed by the utility (both private and municipalities owned entities). We anticipate that the majority of the total compliance cost estimated for this rule can be attributed to local government units and municipalities. Local governmental units will be given the opportunity to participate in the final EIA.

Impacts on Public Utility Rate Payers

The department does not anticipate this rule to impact public utility rate payers adversely.

Impact on Small Businesses

The department anticipates that the following entities regulated under this rule are small businesses:

- Septage servicing businesses – an average of 150 operators take exams annually.
- Well Drillers, Pump Installers, Heat Exchange Drillers – an average of 140 individuals take this exam annually.
- Landfills and Incinerators – an average of 20 new operators take this exam annually.

The total small business impact is estimated to be a maximum \$24,500 annually. A detailed assessment of this impact is present in attachment A (attached to this analysis).

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

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101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
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ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

The rule changes will increase flexibility and accessibility by allowing individuals to take exams at their convenience, instead of in large group settings offered only a couple of times per year in limited locations. The number of testing sites will expand, making travel easier. Individuals who fail an exam will be able to retake an exam more quickly. The department will still offer some in-person exams, but it is expected that the demand for this will decrease over time, freeing up department resources.

The alternative to this rule is to use department resources to develop its own online exams. IT resources would have to be contracted to develop an online platform. Since the technology currently exists with non-government entities, it will be more cost effective to contract for online testing services.

Another alternative is to make no changes to the rule and continue to offer two in-person exam sessions at six locations per year. However, any future health emergency would limit access at some testing sites and be a hardship to small businesses and municipalities. It is paramount that this workforce remains current and properly licensed to ensure proper operation of the essential services they provide for the citizens of Wisconsin.

16. Long Range Implications of Implementing the Rule

The convenience of being able to take an exam as needed to earn a professional certification may lead to an increase in operators, which are currently in high demand.

17. Compare With Approaches Being Used by Federal Government

The federal government does not offer these certifications.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Iowa is offering online exams for landfill operators, in place of written exams during the pandemic. Ohio and Indiana routinely offer online exams for all wastewater and drinking water operators.

19. Contact Name

Steve Geis

20. Contact Phone Number

608-572-2752

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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 and Incinerators – 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).

The total maximum small business impact is estimated to be \$24,500 annually.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses
Department records of current license holders.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe: The department considered developing its own online exam platform, however, the timeline and resources to create this were not considered to be practical, leading to a negative impact to small businesses and municipalities.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The rule change will make it possible to take exams throughout the year, allowing businesses more flexibility for scheduling. The department will continue to offer in-person exams proctored by department staff on a schedule to satisfy demand.

5. Describe the Rule's Enforcement Provisions

These rules address certification requirements. Enforcement involves the suspension or revocation of a license as outlined in ss. NR 114.14, 114.24, 114.37, and 114.59; s. NR 146.09; and s. NR 524.14, Wis. Adm. Code. The proposed rule revisions would amend the enforcement provisions to encompass both in-person and online examinations.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes
 - No
-

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**This draft shows changes to the rule text since the green sheet was first routed.
Those changes are shown in red font.**

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 insert date.

**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

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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

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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.

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- 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

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For Waterworks and Water Systems:

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

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~~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.

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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-~~

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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 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

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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 19. 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 20. 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.

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~~(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 21. NR 114.34 (1) (a) is amended to read:

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

SECTION 22. 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 23. 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 24. 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 25. 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 26. 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.

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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 27. 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 28. NR 114.54 (4) is repealed.

SECTION 29. 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 30. NR 114.55 (1) (g) and (4) are created to read:

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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 31. 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 32. 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 33. 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~~

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~~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 34. 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

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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 35. 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 36. 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 37. 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.

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SECTION 38. NR 146.09 (3) (c) (Note) is repealed.

SECTION 39. 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 40. NR 524.08 (3) (c) is repealed.

SECTION 41. 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 42. 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 43. NR 524.08 (3) (f) is amended to read:

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

SECTION 46. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

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Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary

06/09/2021

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 insert date.

**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.

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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.

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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

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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;

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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

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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:

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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~~

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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~~ 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

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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 19. 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 20. 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.

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

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

SECTION 22. 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 23. 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 24. 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 25. 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 26. 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.

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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 27. 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 28. NR 114.54 (4) is repealed.

SECTION 29. 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 30. NR 114.55 (1) (g) and (4) are created to read:

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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 31. 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 32. 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 33. 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~~

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~~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 34. 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

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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 35. 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 36. 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 37. 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.

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SECTION 38. NR 146.09 (3) (c) (Note) is repealed.

SECTION 39. 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 40. NR 524.08 (3) (c) is repealed.

SECTION 41. 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 42. 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 43. NR 524.08 (3) (f) is amended to read:

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

SECTION 46. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

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Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary