

Report From Agency

REPORT TO LEGISLATURE

NR 114 , Wis. Adm. Code

**Board Order No. WT-29-09
Clearinghouse Rule No. 13-054**

Basis and Purpose of the Proposed Rule

Operator certification requirements in Wisconsin originated with Chapter 614, Wisconsin laws of 1965. After passage of the Clean Water Act of 1972, the operator certification program became more solidified with the establishment of wastewater treatment plant classifications (1, 2, 3, and 4) and numerous subclasses. Study guides and exams were developed for operators of the different classes and subclasses of treatment plants. The Bureau of Science Services administers the certification program, while the Bureau of Water Quality provides the technical base and support. Examinations are given in each of the regions twice a year in May and November.

The program underwent code revisions in the 1990's and currently has a critical need of revisions with the advent of changes and innovation in computer and wastewater technologies over the past two decades. Wisconsin permits over 1000 industrial and municipal wastewater treatment plants and has 2400 certified operators operating these wastewater plants. In the past 25 years, most treatment plants have received more stringent effluent limitations, and have become more complex and technologically advanced through upgrading and new construction. Well-operated and maintained wastewater treatment plants and associated collection systems by knowledgeable and skilled operators directly translates into protections of public health and the environment. Increased competency of operators also results in more consistent and improved compliance with Wisconsin Pollutant Discharge Elimination System (WPDES) permit requirements. This then leads to fewer instances of noncompliance and a lowered potential for costs due to enforcement of permit violations by the department.

Chapter NR 114, Subchapter I – Certification of Waterworks and Wastewater Treatment Plant Operators, Wis. Adm. Code, is being amended to remove references to wastewater treatment plant operators and subch. IV is being created of the same chapter to address certification of wastewater treatment plant operators separately from certification of waterworks. Five objectives are achieved: (1) update and revise treatment plant classifications and subclasses to reflect new and changed technologies; (2) eliminate advanced certification examinations and replace them with an advanced certification point system to allow operators more flexibility and educational options towards advancement; (3) expand certification to include sanitary sewer collection systems; (4) provide more options for a new generation of operators to gain knowledge and competency through on-line classes and apprenticeship opportunities; and (5) separate the certification requirements for waterworks and wastewater plant operators for improved readability and understanding.

Chapter NR 114, Wis. Adm. Code, establishes revised plant classification levels (basic or advanced) and subclasses, an advanced certification point system, future certification requirements for sanitary sewer collection systems and a fair conversion (grandfathering) process of transferring existing operators into the new certification system.

Summary of Public Comments

The department published notice of public hearings on proposed revisions to NR 114 on July 12, 2013, in the Administrative Register. The public comment period was open through August 29, 2013. Public hearings were held at Eau Claire (August 13), Wausau (August 16), Green Bay (August 27), Milwaukee (August 28) and Fitchburg (August 29).

Nine written comments were received on the rule proposal. Those persons or organizations providing comment were:

- Wisconsin Wastewater Operators Association (in full support of the rule)
- Michael Davy, Davy Engineering, LaCrosse WI
- Gary Hanson, AECOM, Sheboygan, WI
- Brian Hein, LaCrosse WWTP
- Thomas Grisa, DPW, City of Brookfield
- Daniel Stephany, DPW, City of Monona
- Rod Maas, Electrotek Corporation, Oak Creek, WI
- Chris Groh, Wisconsin Rural Water Association , Plover, WI

Comments are summarized below:

Comment: Three comments were made recommending changing the name of Wastewater Treatment Plant Operators to Water Resource Recovery Specialists, Water Resources Operators or Wastewater Operations Specialists.

Response: The department does not feel a name change should be made at this time. There is a long history of this position title. It is clear and descriptive of the position. All operator certification programs in other states, the national Association Board of Certification (ABC), the state and federal wastewater operator apprenticeship program and educational institutions still refer to operators of treatment plants as Wastewater Treatment Plant operators. A position name change may also lead to confusion and impact Wisconsin operator reciprocity or job applications in other states.

Comment: Two comments were made regarding the new Subclass SS – Sanitary Sewage Collection Systems. Both were in favor of this new important subclass and that operators certified in the operation and management of sewage collection systems would be beneficial. Additionally, a comment was made that certification requirement for collection systems should also apply to satellite collection systems (communities only owning a sewer system that discharges to a large regional wastewater treatment facility).

Response: The department agrees certified sewage collection system operators are very important in the improved operation and maintenance of this vital, but aging infrastructure. The department also agrees that satellite sanitary sewage systems would benefit by having a certified operator but adding certification requirements to satellite collection systems is beyond the scope of this rule revision at this time. The department hopes, however, that satellite sewer systems voluntarily certify their collection system operators.

Comment: Two comments were made regarding the elimination of subclass L (metal plating/finishing) with no conversion to another subclass.

Response: The department agrees with these comments and will revise the code accordingly. Subclass L (Metal Plating & Finishing) will be converted to subclass U (Unique Treatment Process).

Comment: One comment was made that Wisconsin's certification program be expanded to include complex industrial pretreatment facilities.

Response: Expanding the NR 114 certification program to include complex industrial facilities is beyond staffing/resources of the department and the scope of this code revision. Pretreatment facilities will remain excluded from certification requirements of NR 114 as in the current code because wastewater treatment plants that receive wastewater from pretreatment facilities already are required to have certified operators, sewer use ordinances regulate and control such discharges in municipalities and the complex pretreatment facilities are also regulated under the department's Pretreatment program.

Comment: One comment was provided asking the department to clarify code language regarding grace periods (time) for replacement operators to achieve the required certification levels. One-year and three-year grace periods were suggested for basic and advanced plants respectively.

Response: The department agrees that the language needs to be clearer and will revise it, however, disagrees that a person lacking any knowledge or experience in wastewater treatment should be given a grace period to operate and maintain a wastewater facility. However, for basic treatment plants, the department will allow an operator-in-training (passed the basic general wastewater and the basic subclass exams) to be designated as the operator-in-charge. Such an operator shall be given one year to obtain the year of experience to obtain the year of experience for basic level certification. This is similar to current code.

Advanced treatment plants, however, must plan for and find a fully certified (in all subclasses of the plant), knowledgeable and competent operator-in-charge for advanced treatment systems, critical and imperative to operate such sophisticated and complex plants. This will ensure they meet limits and remain in compliance at all times to protect public health and water quality.

Modifications Made

Subclass L (Metal Plating & Finishing) will be converted to subclass U (Unique Treatment Process). Rule language was revised and clarified regarding grace periods for replacing an operator-in-charge when the operator-in-charge leaves unexpectedly.

Appearances at the Public Hearings

Non-department attendees include four (4) in Eau Claire; one (1) in Wausau and one (1) in Milwaukee. The attendees had no comments. They came for informational purposes and to ask some questions.

Changes to Rule Analysis and Fiscal Estimate

No changes were made as there were no comments during the public hearings regarding the rule analysis or fiscal estimate. From March 27 - April 25, 2013, the department also solicited comments or participation on the economic impact analysis. No comments were received.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on August 6, 2013. Most comments were recommendations that improve or correct the clarity, grammar and form of the rule revisions and have been incorporated into the final rules. All comments and recommendations were incorporated into the rule except:

5.a. The LCRC suggested that it believes some of the defined terms have an obvious meaning. However, it is the department's opinion that some of the terms identified by the LCRC may not be obvious to operators in the context of this rule. Therefore, it is important that these definitions remain in the rule, with those revised as recommended, for clarity and the operator's clear understanding of the terms and respective certification requirements as it pertains to those terms.

2.p. The LCRC stated that the effective date clause be written as follows : (2) SECTION 16 (now SECTION 18) of this rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register. Only SECTION 18. s NR 114.57 (3) is to take effect on the first day of the month following publication. The rest of the code will take effect 12 months later as stated in SECTION 19.

Final Regulatory Flexibility Analysis

No small businesses, as defined in s. NR 227.114 (1), Wis. Adm. Code, will be affected by changes in wastewater treatment plant operator certification requirements. Small businesses, as defined, do not generally own and operate treatment plants, or at least mechanical treatment plants with surface water discharges, that require certified operators under ch. NR 114, Wis. Adm. Code. Any fiscal impacts that would occur from these rule changes would affect municipalities and larger industries that have treatment plants or municipal sanitary sewer collection systems. Based on this analysis, the department concluded there are few, if any, small businesses that will be affected by changes in wastewater treatment plant or sanitary sewer system operator certification requirements.

A positive effect on small business will be additional training opportunities for consultants and private trainers to provide advanced training (on-line or classroom) to operators, especially those seeking advanced certification through education. The requirement for municipal collection systems to have a certified operator will result in the development of sanitary sewer collection system classes by wastewater education based

businesses and technical colleges for municipal operators who will need this certification in the next 5-10 years.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.

Attachments:

Adopted Board Order WT-29-09.