

Report to  
Legislative Council Rules Clearinghouse  
NR 400, 419, 439, 462 and 484, Wis. Adm. Code  
Natural Resources Board Order No. AM-05-22

Wisconsin Statutory Authority

Sections 285.11(1), 285.17, 285.19, 285.65, 299.15, Stats.

Federal Authority

Chapter NR 439, Wis. Adm. Code, incorporates the federal compliance testing, monitoring, reporting and recordkeeping requirements of 40 CFR part 70. Inclusion of these 40 CFR part 70 requirements in ch. NR 439 is necessary to retain EPA approval of the department's operation permit program. Revisions to sections with requirements from 40 CFR part 70 are intended to align language with federal requirements and do not increase or decrease stringency of the requirements and do not impact the ability of the department to retain approval of its operation permit program. Reporting requirements from 40 CFR parts 64 and 68 have also been incorporated.

Sections NR 439.06, 439.07, 439.075, 439.08, 439.085, 439.09, 439.095 incorporate federal methods and procedures for determining compliance with emission limitations, compliance emission testing, fuel sampling and analysis, and continuous emission monitoring requirements from 40 CFR parts 51, 60, 61, 63, and 75. Current rule language reflects federal requirements. Revisions to these sections are intended to update, clarify and simplify, but do not increase or decrease stringency or ability of the state to meet federal requirements.

The DNR is proposing to modify existing language related to credible evidence under s. NR 439.06, Wis. Adm. Code, to be consistent with federal credible evidence language under 40 CFR 51.212, 52.12, 60.11 and 61.12.

Comparison of Adjacent States

Recordkeeping and Reporting – The States of Illinois, Iowa, Michigan, and Minnesota have incorporated recordkeeping and reporting requirements into their administrative codes. The rules vary from state to state and the key differences relative to ch. NR 439, Wis. Adm. Code, are described below.

Control Equipment Monitoring – Proposed changes to s. NR 439.055, Wis. Adm. Code, remove the specific minimum monitoring requirements for sources and air pollution control equipment in current rule language, effectively increasing flexibility for demonstrating compliance.

Illinois' general control device monitoring requirements are incorporated under s. 201.281, Illinois Administrative Code (IAC) and are similar to the proposed changes to s. NR 439.055, Wis. Adm. Code. The IAC requires that every emission source or air pollution control device be equipped with monitoring instruments as required by its permit.

Iowa's control equipment monitoring rules are similar to the proposed changes to s. NR 439.055, Wis. Adm. Code. The monitoring requirements are determined on a case-by-case basis and included in the facility's air permit.

Michigan's control equipment monitoring requirements are incorporated under R. 336.1213(3), Michigan Administrative Code and are similar to or slightly more stringent than the proposed changes to s. NR 439.055, Wis. Adm. Code. In addition to general monitoring requirements, Michigan requires certain industries to participate in a monitoring program which meets specified requirements.

Minnesota's control equipment monitoring rules are incorporated under Minnesota Administrative Rules 7011.0080 and are similar to or slightly more stringent than the existing rules under s. NR 439.055, Wis.

Adm. Code, and are more stringent than the proposed changes to s. NR 439.055, Wis. Adm. Code. Minnesota rules specify monitoring parameters for more control device technologies than are currently included under s. NR 439.055, Wis. Adm. Code.

Deviation Reporting – Proposed changes to deviation reporting under s. NR 439.03, Wis. Adm. Code, include reporting tiers depending on the severity of the occurrence and are described in detail under section #5 of this board order. The basis for deviation reporting comes from federal rule 40 CFR 70.6(a)(3)(iii)(B) which requires prompt reporting of deviations from permit requirements and specifies that “the permitting authority shall define ‘prompt’ in relation to the degree and type of deviation...”

Illinois’ deviation reporting requirements are included under Section 201.530(c), Illinois Administrative Code and are more stringent to the proposed changes to s. NR 439.03, Wis. Adm. Code. Unless specified in the applicable permit-by-rule subpart, a written report of any deviation is required to be submitted within 30 days after the date the deviation occurred.

Iowa’s deviation reporting requirements are included under 567 Iowa Administrative Code (IAC) 22.108(5) and 24.1 and are similar to the proposed changes to s. NR 439.03, Wis. Adm. Code. Iowa’s reporting timeline of excess emissions is more stringent, but the reporting of non-excess emission deviations is less stringent. The IAC requires a written report regarding excess emissions to be submitted within seven days, instead of Wisconsin’s proposed 10 days. Under IAC, excess emissions during periods of startup, shutdown, or cleaning of control equipment are not violations and are not to be reported as long as the startup, shutdown, or cleaning is accomplished expeditiously and in a manner consistent with good practice for minimizing emissions. EPA has proposed to find IAC 24.1(1) as substantially inadequate under section 110(k) of the CAA because it does not comply with EPA’s policy on excess emissions during periods of startup, shutdown, and malfunction (88 FR 11842). All other deviations are to be clearly identified in reports submitted at least every six months.

Michigan’s deviation reporting requirements are included under Section R. 336.1213(3)(c), Michigan Administrative Code and are similar to the proposed changes to s. NR 439.03, Wis. Adm. Code. Michigan includes provisions that only emissions that exceed the applicable standard for greater than a specified time period need to be reported as deviations within two business days with a written report submitted within 10 days after the deviation occurred. For deviations which are less than the specified time period or which do not exceed the emissions allowed under the permit, a facility is required to submit a report of those deviations at least once every six months.

Minnesota’s deviation reporting requirements are included under 7019.1000 Subpart 1 and 7007.0800 Subpart 6, Minn. Adm. Rules and are similar to the proposed changes to s. NR 439.03, Wis. Adm. Code. Minnesota requires deviations which could endanger human health be reported within two business days and all other deviations are to be reported in a semiannual monitoring report. Minnesota is more stringent on reporting breakdowns for more than one hour that cause any increase in emissions. Breakdown notifications are required within 24 hours of when the breakdown was discovered or reasonably should have been discovered. Minnesota requires semi-annual reporting of permit deviations which do not result in an emissions limit to be exceeded, which is similar to Wisconsin’s proposed rule.

Calibration – Proposed changes to s. NR 439.055(4), Wis. Adm. Code, replace the requirement that monitoring equipment be calibrated at least yearly with a requirement that equipment be calibrated at a frequency based on written manufacturer recommendations or as required by an applicable standard, whichever is more frequent. If no such recommendations or standards exist, the time between a calibration, replacement or validation may not exceed one year.

Illinois’ control device monitoring equipment calibration requirements are similar to the proposed changes in s. NR 439.055, Wis. Adm. Code. Monitoring equipment is required to be installed, calibrated, operated and maintained according to vendor specifications.

Iowa’s control equipment calibration requirements are similar to the proposed changes in s. NR 439.055,

Wis. Adm. Code. Permits generally specify that monitoring equipment be operated in accordance with manufacturer recommendations. Iowa retains the authority to require more frequent calibrations.

Michigan requires air-cleaning devices to be calibrated under the authority of Mich. Admin. Code R. 336.1910. This section requires that these devices be installed, maintained, and operated in a satisfactory manner and in accordance with emissions limits and existing law. This requirement is similar to the proposed changes to s. NR 439.055(4), Wis. Adm. Code. Operation in a satisfactory manner is typically defined as operating according to manufacturer recommendations.

Minnesota's control equipment calibration requirements are included under 7011.0075 Subpart 2.G., Minn. Adm. Rule and are similar to the proposed changes in s. NR 439.055, Wis. Adm. Code. All monitoring equipment for each piece of listed control equipment is required to be calibrated annually, or as required by the manufacturing specification.

Malfunction Prevention and Abatement Plan (MPAP) – Proposed changes to s. NR 439.11, Wis. Adm. Code, include defining thresholds when an MPAP is required, excludes smaller units from needing an MPAP, and clarifies plan content.

Throughout the Illinois Administrative Code, monitoring equipment is required to be installed, calibrated, operated and maintained according to vendor specifications. This requirement is similar to proposed s. NR 439.11(1r)(bm), Wis. Adm. Code, which allows a facility to consider and/or use a manufacturer recommendation to set the interval for routine inspection, maintenance, and calibration, replacement, or validation.

Iowa's MPAP requirements are included in 567 IAC 24.2(445B). Maintenance plans are required for equipment or control equipment where the Iowa director determines that a continued pattern of excess emissions indicative of inadequate operation and maintenance is occurring. Iowa's plan is required when determined by the director, while Wisconsin's MPAP requirements are based on the emissions of the specific process. The content of the MPAP is similar to the proposed changes in s. NR 439.11, Wis. Adm. Code. Wisconsin's proposed rule provides more clarity for what emissions units need an MPAP than Iowa's rules, but Iowa would likely have less equipment subject to the MPAP requirements.

Michigan's MPAP requirements are included under Section R. 336.1911, Michigan Administrative Code. The content of the MPAP is similar to the proposed changes in s. NR 439.11, Wis. Adm. Code. However, Michigan's plan is required whenever requested by the department, while Wisconsin's MPAP requirements are based on the emissions of the specific process. Wisconsin's proposed rule provides more clarity for what emissions units need an MPAP than Michigan's rules, and Michigan has the option to be more or less stringent than Wisconsin on when a plan is required.

Under 7011.075 Subpart 2, Minn. Adm. Code, Minnesota's maintenance requirements for control equipment are included. The requirements include training, inspection timelines, and repair records for maintaining each piece of listed control equipment. These maintenance requirements are similar to and slightly more stringent than the proposed changes to s. NR 439.11, Wis. Adm. Code.

#### Court Decisions Directly Relevant

No court decisions are directly relevant to the proposed rule.

#### Analysis of the Rule - Rule Effect - Reason for the Rule

Chapter NR 439, Wis. Adm. Code, contains reporting, recordkeeping, testing, inspection, and determination of compliance requirements for all sources of air contaminants in the state. The primary objective of the proposed rule is to simplify, reduce, and make more efficient these requirements for the following sources:

- Sources required to have operation permits under s. 285.60, Stats., but not required to have permits under the federal Clean Air Act (CAA), as required by s. 285.17(4), Stats. These sources are sometimes referred to as “non-part 70 sources”.

- Sources required to have permits under the CAA.

The department continuously works to simplify, consolidate, and reduce frequency of reporting, monitoring, and recordkeeping requirements for all sources. The department has done this through rulemaking with Permit Streamlining Phase II (which became effective on October 1, 2020), by expanding permit options, improving permit and compliance processes and procedures, and creating online tools. Examples include: creating additional types of registration permits, accepting summary statements for compliance certification and monitoring requirements, offering optional electronic reporting and electronic signature for all compliance reporting, and reducing the frequency of department required emissions testing. This proposed rulemaking to revise ch. NR 439 is part of the department's ongoing effort to simplify reporting, monitoring, and recordkeeping requirements and make the process for demonstrating compliance more efficient, consistent with the applicable requirements of the CAA.

In addition to the specific changes described in Board Order AM-05-22, the department is proposing to make several types of general changes throughout ch. NR 439, including:

- Clarifying that many timelines set under the chapter for a particular number of days refer to *calendar* days.
- Converting many timelines given in *business* days to *calendar* days to simplify deadlines and reduce the potential for confusion.
- Clearly listing the content that shall be included as part of each submittal required under the chapter.

#### Agency Procedures for Promulgation

The department will hold a virtual hearing on April 18, 2024, at 1:00 PM. The hearing will be followed by board adoption, expected in August 2024, followed by a request for the governor's approval and legislative review.

#### Description of any Forms (copies attached)

The department has forms available on its [Air Permit and Compliance Forms webpage](#) that facilities may use to submit reports required under ch. NR 439, Wis. Adm. Code. Forms that are related to this proposed rulemaking include:

- Excess Emission Report for Opacity
- Excess Emission Report for Gases
- Air Operation Permit Compliance Certification & Deviation Summary Report
- Air Permit Next Business Day Deviation

The department plans to update these forms to align with the proposed rule changes after the rule goes into effect. While some businesses may be required under ch. NR 439 to report the content of the forms to the department, use of the forms is optional.

#### Name and Telephone Number of Agency Contacts

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