

Report From Agency

REPORT TO LEGISLATURE

NR 400, 419, 439, 462 and 484, Wis. Adm. Code

Board Order No. AM-05-22
Clearinghouse Rule No. 24-030

Basis and Purpose of the Proposed Rule

The primary objective of the proposed rule is to simplify, reduce, and make more efficient, requirements for sources of air contaminants related to reporting, recordkeeping, testing, inspection and demonstrating compliance administered under ch. NR 439, Wis. Adm. Code, while remaining consistent with the federal Clean Air Act (CAA) and retaining program approvability by the U.S. Environmental Protection Agency (EPA).

The department is proposing to simplify, reduce, and make more efficient, methods and procedures for activities listed in ch. NR 439 including determining compliance, periodic compliance testing, fuel sampling and analysis, continuous emission monitoring, combustion optimization, and parametric testing, circumvention, and malfunction prevention and abatement plans. In addition, the department is proposing to clarify and update definitions.

This proposed rulemaking to revise ch. NR 439, Wis. Adm. Code, is part of the department's ongoing effort to simplify reporting, monitoring, and recordkeeping requirements and make the process for demonstrating compliance more efficient, while remaining consistent with the applicable requirements of 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 most recently with a Permit Streamlining rule (which became effective on October 1, 2020), by expanding permit options, improving permit and compliance processes and procedures, and creating online tools.

Summary of Public Comments

See attached "Comments and DNR Responses - Natural Resources Board Order AM-05-22."

Modifications Made

See attached "Comments and DNR Responses - Natural Resources Board Order AM-05-22."

Appearances at the Public Hearing

The public hearing held on April 18, 2024, was attended by 22 members of the public. Attendees were able to register as: Supportive of the proposed rule / Opposed to the proposed rule / Attending for information only / None of the above. All attendees registered as either "Attending for information only" or "None of the above". Patrick Stevens, representing Wisconsin Paper Council, and Craig Summerfield, representing Wisconsin Manufacturers and Commerce, provided brief verbal comments on the proposed rule which reiterated some points of the organizations' more extensive written comments.

Attendee Name	Affiliation	Provided Verbal Comments
Nick Anderson	Michels Corporation	
Rob Bermke	Georgia-Pacific	
Brent Bohn	Barron County Waste to Energy and Recycling	
Jordan Bryant	Lignets Group	

Wai Lun “Lenny” Chui	365 Fish LLC	
Tyler Dennis	Encapsys	
Kevin Fabel	City of Wausau	
Ashley Jacoby	Matalco	
Jodi Jensen	WTBA	
Austin Lesmeister	Northern States Power – Wisconsin d.b.a. Xcel Energy	
Carolyn Lovelace	Marshfield Utilities	
Micki Martin	Donaldson Company	
Evan Miller	Office of State Senator Robert Cowles	
Anthony Muniz	Green Bay Packaging	
Dusty Nance	Matalco	
Ryan Nernberger	Piranha Proppant	
Patrick Stevens	Wisconsin Paper Council	X
Craig Summerfield	Wisconsin Manufacturers and Commerce	X
Steve Tasch	Trinity Consultants	
Corey Thompson	Sherwin Industries	
Isaac Torres	Alliant Energy	
Ken Yass	Geosyntec Consultants	

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis or fiscal estimate in response to public comments received. Clarifications were provided to commenters where fiscal concerns were raised.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement in administrative code and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for Comment 5.f. Comment 5.f. recommends that new language beginning with “Nothing in this chapter...”, in s. NR 439.06 (intro.), be clarified. Specifically, the department should clarify by whom would the evidence or information be used and in what circumstances “would” a source have been in compliance.

DNR Response – The department did not make the recommended changes because the referenced language, *“Nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements.”* is copied directly from federal credible evidence language. The department is retaining this language for consistency with EPA.

Final Regulatory Flexibility Analysis

Proposed rule changes are compatible with existing policy to maintain consistency between state rules and EPA regulations. The department must ensure that state recordkeeping, monitoring, and reporting requirements align with those established in federal code in order to maintain program approval under Title V of the CAA and to keep Wisconsin’s State Implementation Plan (SIP) current and maintain Wisconsin approval under Title I of the CAA. Section 285.14(1), Wis. Stats., requires SIP submittals resulting in regulatory requirements to be promulgated by rule.

Response to Small Business Regulatory Review Board Report

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