

**Summary of Economic Impact Comments and DNR Responses
Natural Resources Board Order AM-05-22**

March 15, 2024

This document presents a summary of public comments received on the economic impact of proposed rules affecting chapters NR 400, 419, 439, 462, and 484 under Board Order AM-05-22 related to simplifying, reducing, updating, and making more efficient the reporting, recordkeeping, testing, inspection and determination of compliance requirements for sources of air contaminants. A public comment period on the economic impact of the rule was held from December 13, 2023, to January 12, 2024. The department received comments from four organizations on the draft economic impact analysis (EIA) during this period. The comments received and responses are listed below.

EIA Comment Ahlstrom - Ahlstrom provided the following comment on the EIA of the proposed changes to s. NR 439.055 via email on December 19, 2023:

We believe it is not correct to say that the proposed changes add flexibility to the rule. Both the existing rule and the proposed rule allow no more than 12 months (yearly) between calibrations. In addition, if a manufacturer's recommendation is to calibrate at frequencies of less than one year but currently a facility is using operational history to calibrate on a yearly basis or longer, under the proposed rule they would calibrate more often. If calibration is required more often that may mean shutting down the emission source more frequently, which is likely to result in higher costs. Therefore, a \$0 implementation cost cannot be estimated from these proposed changes.

Response:

The proposed rule removes the requirement that calibrations be performed yearly, at a minimum. Unlike the existing rule, the proposed rule allows calibrations to be performed according to the frequency specified by the equipment manufacturer unless a frequency is specified in an applicable standard, even if that frequency exceeds one year. When estimating the economic impact of the proposed rule change, the department assumed that sources currently maintain monitoring equipment according to manufacturer recommendations. If a source's operational history shows that less frequent calibrations than those recommended by the manufacturer are adequate, the source could contact the manufacturer to obtain site-specific recommendations for the equipment. The department will consider written, site-specific recommendations from an equipment manufacturer to meet the requirement to follow manufacturer's recommendations. No change has been made to the proposed rule language in response to this comment. For more information on the calibration language in the proposed rule see the response to Wisconsin Manufacturers & Commerce and Wisconsin Paper Council (WMC/WPC) Comment F.

EIA Comment Milwaukee Metropolitan Sewerage District - Milwaukee Metropolitan Sewerage District provided the following comment on the potential economic impact of proposed ch. NR 439 via email on January 8, 2024:

At this time, we cannot ascertain whether we will be affected in a material economic way by the implementation of the rule without spending significant resources to make the determination. If our current instrumentation is not able to meet the revised accuracy requirements, we will have to replace a significant number of instruments. If our existing instruments are grandfathered out

of the revised accuracy requirements until they need to be replaced, then there will not be a material economic impact to us.

Response:

The proposed changes to the monitoring instrumentation accuracy requirements are intended to clarify that accuracy requirements are specific to individual measurement devices and to accommodate instrumentation that is currently commercially available. To address this comment and WMC/WPC Comment H, the department has added a definition of “accuracy” and “accurate” under s. NR 439.055 (1g) and has re-evaluated the accuracy requirements for temperature monitoring instruments. For more information on monitoring equipment accuracy requirements see the response to WMC/WPC Comment H.

EIA Comment Wisconsin Department of Corrections –Wisconsin Secure Program Facility provided the following comment on behalf of the 36 Department of Correction (DOC) Facilities:

We are all operating with inadequate maintenance budgets in the DOC so if there will be costs associated with these rule changes please note (or Legislate) in these administrative changes that the legislators (when approving the changes) will have to include funding for each of our facilities to meet the change requirements with the equipment at our facilities and funding to keep up with the annual fees or compliance requirements. I know I find it difficult to meet all of the required annual test, certifications and inspections required by all of the regulatory departments both state and federal. It’s just like building a house, “Change Orders cost money”

Response:

The proposed rule changes do not add new requirements and will not require sources to modify current operations or replace or install new monitoring equipment. The proposed changes create flexibility and additional compliance options for reporting, monitoring and recordkeeping. The proposed rule language should not result in additional overall costs compared to the current requirements. Some changes were made to the proposed rule to clarify this. See the responses to WMC/WPC Comments H and J.

EIA Comments Wisconsin Manufacturers & Commerce (WMC) and Wisconsin Paper Council (WPC) –WMC and WPC provided a number of comments and proposed alternatives on the EIA relating to modification to ch. NR 439, in a letter sent via email on January 12, 2024. The comments are enumerated below as presented in WMC/WPC’s January 12, 2024, letter:

WMC/WPC Comment A – Email Submittals

As a general matter, we continue to encourage DNR to allow for submittal of reports via email. Allowing email submittals would simplify the process and reduce administrative costs for sources. In addition, e-mail submittals would presumably be easier for DNR to process than hard copy reports, which the rule allows.

Response:

To provide flexibility and accommodate alternative submittal methods that may become available in the future, the proposed language specifying electronic or hard copy submittal of reports was removed from ss. NR 439.03(1)(am), 439.06(intro), 439.07(1m), 439.075(1)(d), 439.09(10)(ag), 439.095(1), and 439.11(2), Wis. Adm. Code.

WMC/WPC Comment B – Applicability [NR 439.01]

This provision provides in part that for sources subject to certain federal emission standards, the requirements of 40 CFR parts 60 to 62 apply in addition to the requirements of NR 439. Requiring different reporting requirements under both federal and state law unnecessarily increases complexity and costs. State requirements should align with federal reporting requirements. That alignment policy is reflected in Wis. Stat. § 285.27(1)(a) and (2)(a) which require that DNR adopt by rule standards, “including administrative requirements,” consistent with any federal NSPS or NESHAP unless DNR makes certain findings of necessity that are not at issue here.

Response:

When preparing the proposed updates to ch. NR 439, the department reviewed federal requirements in 40 CFR parts 51, 52, 60, 61, 63, 64, 68, 70, and 75 to ensure the proposed changes align with corresponding federal requirements. This comparison with federal statutes and regulations is summarized in section 6 of Board Order AM-05-22.

Section 285.27(1)(a) and (2)(a), Wis. Stats., specifically address department promulgation of a rule similar to a specific standard of performance for new stationary sources or a specific emission standard for hazardous air contaminants promulgated under sections 111 or 112 of the federal clean air act (40 CFR parts 60 to 63). The department is not promulgating any rules similar to any federal standards promulgated under section 111 or 112 of the federal clean air act as part of the update to ch. NR 439, Wis. Adm. Code.

The federal standards in 40 CFR part 60 to part 63 apply to some, but not all air contaminants emitted from the type of emissions unit specified in the standard. Other requirements, including those in chs. NR 400 to 499, Wis. Adm. Code may also apply to that same emissions unit subject to a federal standard in 40 CFR part 60 to part 63 for a different air contaminant that is not regulated by the standard. The applicability statement in s. NR 439.01(1), addresses the situation that emissions units are subject to other requirements in chs. NR 400 to 499, in addition to federal standards. The language in s. NR 439.01(1), Wis. Adm. Code, specifically states that in the case of a conflict between applicable provisions under 40 CFR part 60 to part 63 and the provisions of ch. NR 439, the provisions of the federal standards apply.

The proposed changes to s. NR 439.01(1), Wis. Adm. Code align the cross references with federal requirements to reduce the need for frequent updates to the cross references and do not propose changes to the applicability of ch. NR 439, Wis. Adm. Code. Therefore, it is anticipated there will not be an economic impact from the proposed changes to this section. No change has been made to the proposed rule language in response to this comment.

WMC/WPC Comment C – Credible Evidence [NR 439.06]

DNR has proposed the following language regarding the use of credible evidence: “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.” This language is an improvement from DNR’s previous proposals, which generally stipulated that DNR may use credible evidence, but was silent as to whether sources could use credible evidence to demonstrate compliance.

As WPC and WMC have previously noted, however, Wisconsin air permits contain language in “PART II: General Permit Conditions for Direct Stationary Sources” relating to the use of

credible evidence. This provision provides: “Notwithstanding the compliance determination methods which the owner or operator of a source is authorized to use under this permit, any relevant information or appropriate method may be used to determine a source’s compliance with applicable emission limitations.” It is our understanding that this language has been approved by the federal Environmental Protection Agency (EPA).

This permit language should be mirrored in the rule to avoid confusion between the proposed rule’s credible evidence language and the credible evidence language found in permits. Both provisions provide sources the opportunity to utilize credible evidence to demonstrate compliance with permit requirements, as provided by federal law. However, the existing EPA-approved “Part II” permit language further provides that a source may utilize credible evidence to demonstrate compliance with applicable emission limitations. This distinction helps ensure that sources can utilize “after-the-fact” compliance demonstrations to show that a required emission limitation has been met, regardless of any other compliance demonstrations provided under a permit.

Response:

The proposed credible evidence language in s. NR 439.06(intro) mirrors the federal credible evidence language under 40 CFR 51.212(c), 52.12(c), 60.11(g), and 61.12(e). The proposed language was created with input from EPA to reflect EPA’s longstanding position that no person, including regulated sources, EPA, states and citizens, may be precluded from using any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements. Including the language from Part II of permits currently issued by the department in ch. NR 439, Wis. Adm. Code, as suggested by the commenters, would not meet EPA’s longstanding position because it limits the use of credible evidence to only the owner or operator of a source. The broader language in the proposed version of s. NR 439.06(intro), Wis. Adm. Code is not in conflict with the language in Part II of permits currently issued by the department. But narrowing the scope of the use of credible evidence rule language to only the owner or operator of a source would not conform to EPA’s position on the use of credible evidence and could risk disapproval of the rule by EPA into Wisconsin State Implementation Plan (SIP.)

The proposed s. NR 439.06(intro) language meets the broader intent of EPA’s position regarding the use of credible evidence and also allows a source to utilize credible evidence to demonstrate compliance with applicable emission limitations and allows after-the-fact compliance demonstrations to show that a required emission limitation has been met, regardless of any other compliance demonstrations required in a permit. No change has been made to the proposed rule language in response to this comment.

The commenter did not comment on a specific economic impact of the proposed change to s. NR 439.06(intro), Wis. Adm. Code. Because the proposed language is included to clarify the existing credible evidence provisions, it is anticipated there will not be an economic impact from the proposed language.

WMC/WPC Comment D – The Rule should Clarify that Compliance Demonstrations are not Independently Enforceable

Our previously submitted comments (dated November 7, 2023) regarding this draft rule explain our belief that compliance demonstrations should not be independently enforceable in the absence of a violation of an emission limit. Such an approach would have a positive fiscal impact both on industry and DNR by allowing resources to be directed to circumstances in which there is an actual potential impact to the environment.

Unfortunately, language in the proposed rule, such as the language contained in NR 439.055(2m), suggest such provisions are enforceable. This section provides that “the department may require...the measurement of source or air pollution control operational variables if the department determines that these requirements are necessary to ensure that the source does not exceed an applicable emission limit...”

Compliance demonstrations have long been utilized by DNR within permits as a tool for a source to show compliance with an emissions limit. However, as provided under the EPA’s credible evidence rule, such compliance demonstrations are not the only means for a source to show compliance. The proposed language in NR 439.055(2m) implies that such provisions would be subject to DNR enforcement actions, even it can be demonstrated by a source that an emission limit has not been exceeded.

DNR has suggested that EPA has indicated that such provisions are enforceable and reportable under federal law. DNR should provide information setting forth EPA’s position on this matter, and its corresponding rationale for that position. As DNR is aware, WPC and WMC provided to DNR multiple examples of prior correspondence – involving EPA and DNR – demonstrating the broad scope of the credible evidence rule.

Response:

This comment addresses both the use of credible evidence and the independent enforceability of permit conditions which are separate issues. For more information on credible evidence, see the response to WMC/WPC Comment C.

Compliance demonstration methods are made independently enforceable by a combination of the requirement that the permit contain periodic monitoring sufficient to yield reliable data representative of the source’s compliance with the permit, and the requirement that the permittee comply with all conditions of the permit. The department must maintain adequate rules to ensure the department’s permit program meets the requirements of the clean air act and is approvable by EPA. Currently, the permit requirements of 40 CFR part 70 (aka Title V) are codified in chs. NR 407 and 439, Wis. Adm. Code.

40 CFR 70.6(a)(1) requires that each operation permit include “operational requirements and limitations that assure compliance with applicable requirements.” 40 CFR 70.6(a)(3)(i) requires each permit to contain “all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements” and “where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit.” 40 CFR 70.6(a)(3)(i) also requires a permit to contain “(a)s necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment methods.” 40 CFR 70.6(a)(3)(ii) requires permits to contain specific recordkeeping requirements pertaining to monitoring information. 40 CFR 70.6(a)(iii) specifies that all permits require “submittal of reports of any required monitoring at least every 6 months” and establishes that “all instances of deviations from permit requirements must be clearly identified in such reports.” 40 CFR 70.6(a)(iii) also requires “(p)rompt reporting of deviations from permit requirements.” State rules include these requirements in s. NR 407.09, Wis. Adm. Code.

In addition, 40 CFR 70.6(a)(6)(i) requires the permit contain provisions stating that:

“(t)he permittee must comply with all conditions of the part 70 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.”

This is the provision that makes compliance demonstrations independently enforceable as conditions of an operation permit. This provision of 40 CFR part 70 is reflected in NR 407.09(1)(f)1., Wis. Adm. Code, which states:

“The permittee has the duty to comply with all conditions of the permit. Any noncompliance with the operation permit constitutes a violation of the statutes and is grounds for enforcement action; for permit suspension, revocation or revision; or for denial of a permit renewal application.”

40 CFR part 70 allows sources to use means other than costly reference test method emissions testing or continuous emission monitoring equipment to demonstrate they are meeting emission limits to assure and certify they are in compliance with emission limits.

Proposed s. NR 439.055(2m), Wis. Adm. Code reflects the permit content requirements of 40 CFR 70.6(a)(1) and (3). If these requirements were not codified, the department’s operation permit program would not meet the requirements of the clean air act and may not be approvable by EPA. Note that proposed s. NR 439.055(2m) is not a new requirement to ch. NR 439, Wis. Adm. Code, but is currently contained in s. NR 439.055(5), Wis. Adm. Code. It has been moved and modified to address the proposed removal of the prescriptive monitoring requirements currently in s. NR 439.055(1)(a)-(g) and (2), Wis. Adm. Code. As has always been the case, sources should identify meaningful compliance demonstration methods during the permit application process and work with the department to include compliance demonstration methods in their permits that provide an accurate reflection of whether the source is in compliance with their applicable requirements, while providing adequate operational flexibility.

In spite of the fact that compliance demonstration methods included as permit conditions are enforceable, the use of credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements is not precluded.

The proposed rule changes do not impose new requirements as compared to the current rule and allow additional flexibility for the compliance monitoring used by sources. For these reasons, it is anticipated that the proposed rule will not have an economic impact on sources. No change has been made to the proposed rule language in response to this comment.

WMC/WPC Comment E – Deviation Reporting [NR 439.03(4)(am)]

Proposed NR 439.03(4)(am) provides in part that the owner or operator of a source shall notify DNR of any event that causes an “emission limitation” to be exceeded within two business days of when the operator knew or should have known of the event. Moreover, additional information must be provided within ten calendar days of the event becoming discoverable.

We believe that the use of the term “emission limitation” may result in more reporting under this provision than necessary, and therefore will result in additional costs incurred by the regulated community and DNR.

Wis. Stat. § 285.01(16) defines emission limitation as “a requirement which limits the quantity, rate, or concentration of emissions of air contaminants on a continual basis. An emission limitation or emission standard includes a requirement relating to the operation or maintenance

of a source to assure continuous emission reduction.” This definition is also contained in NR 400.02(58).

Our understanding is that the purpose of this provision is to require reporting within a short timeframe when there is an actual release that may impact the environment. Consequently, we believe reporting should be limited to when there is an exceedance of “the quantity, rate or concentration of emissions or air contaminants” specified in the applicable permit.

Moreover, DNR’s proposed use of “emission limitation” would result in more reporting by permitted sources than necessary to meet EPA requirements. As DNR is required under s. 285.27(1) to ensure standards are not more restrictive than federal standards, DNR should adopt our proposed standard.

Response:

Requiring reporting of “emission limitation” exceedances as that term is defined, in full, in s. 285.01(16), Wis. Stats., and s. NR 400.02(58), Wis. Adm. Code, ensures that actual releases that may impact public health and the environment are reported promptly under s. NR 439.03(4)(am), Wis. Adm. Code, as required under 40 CFR 70.6(a)(3)(iii). In addition to emission limitations expressed as quantities, rates, or concentrations, emission limitations may be expressed as requirements to operate control equipment, equipment control efficiencies, or restrictions on duration of operation. These types of emission limitations are “requirements relating to the operation or maintenance of a source to assure continuous emission reductions.” The proposed rule, as currently written, does not require two business day notification of all operation or maintenance requirements of a source, but only those operation or maintenance requirements that “assure continuous emission reductions”. No change has been made to the proposed rule language in response to this comment.

Section 285.27(1)(a) and (2)(a), Wis. Stats., specifically addresses department promulgation of a rule similar to a specific standard of performance for new stationary sources or a specific emission standard for hazardous air contaminants promulgated under sections 111 or 112 of the federal clean air act (40 CFR parts 60 to 63). By contrast, the deviation reporting requirements reflected in proposed s. NR 439.03(4), Wis. Adm. Code, are included to address federal requirements from 40 CFR 70.6(a)(3)(iii), which requires prompt reporting of deviations from permit requirements, as explained in section 6 of Board Order AM-05-22. The proposed rule change reduces the number of deviations that will be reported to the department within two days of the event, as compared with the current rule, by specifying that only deviations that cause an emission limitation to be exceeded need to be reported within this short time frame and allowing all other deviations to be reported in the semi-annual or annual monitoring report. The proposed rule change meets the federal requirements, reduces the number of deviations that require short-term reporting, and as such, will reduce the economic impact on sources.

WMC/WPC Comment F – Methods of Determining Compliance and Instrument Calibration [NR 439.055(4)]

DNR is proposing to modify NR 439.055(4). NR 439.055(4) currently provides: “All instruments used for measuring source or air pollution control equipment operational variables shall be calibrated yearly or at a frequency based on good engineering practices as established by operational history, whichever is more frequent.”

The proposed new language provides:

All instruments used for measuring source or air pollution control equipment operational variables shall be calibrated ~~yearly or at a frequency based on good engineering practice~~

~~as established by operational history~~, replaced, or validated at a frequency based on written manufacturer recommendations or as required by an applicable standard, whichever is more frequent. If there is not a maximum interval recommended by the manufacturer or as required by an applicable standard, the time between calibrations, replacements, or validations may not exceed one year.

Thus, under the current rule, there is a minimum calibration time of one year, if good engineering practices established by operational history demonstrate a longer time is appropriate. Under DNR's proposed language, however, the period may be shorter than a year, even if good engineering practices demonstrate a longer prior is appropriate, if the manufacturer's recommendations are for periods less than a year.

For facilities that have historically dealt with calibration issues during annual shutdowns, the elimination of the reference to "good engineering practice as established by operational history" could have a significant impact if one manufacturer's recommendation was for less than a year. If this results in the need for more frequent shutdowns, there would likely be a significant impact on the facility, and there could be additional, unnecessary emissions as a result of the additional shutdowns. Consequently, DNR should retain the reference in the rule to "good engineering practice as established by operational history."

Response:

The proposed rule is consistent with EPA CAM Technical Guidance Document: [Technical Reference for Monitoring Equipment and Instruments](#), which states that "in general, calibration frequency should be within manufacturer's recommendations" and that the "manufacturer can best recommend at what interval these inspection and calibrations should occur with regard to specific operating conditions..."

The proposed language may require more frequent calibrations if facilities are not currently calibrating according to manufacturer recommendations or as required by an applicable standard. The proposed rule allows flexibility for less frequent calibrations in situations where manufacturer's recommendations exceeded 1 year. In addition, the proposed rule allows more flexibility and expands what is allowed for a calibration to include replacements or validations. On the whole, the department expects facilities to have less cost associated with calibrations than currently required, due to the flexibility in calibration, validation, replacement, and allowing facilities to extend calibration frequency beyond the current minimum of 1 year when recommended by the manufacturer for a specific instrument. Facilities are encouraged to contact the manufacturer for written concurrence if specific operating conditions for a source warrant less frequent calibrations than established in written manufacturer recommendations.

DNR considers the phrase "good engineering practices as established by operation history" to mean that calibrations should be conducted based on site-specific conditions. More frequent calibrations may be needed per the EPA CAM Technical Guidance noted above, which states that if a facility notes that a gauge is near or has fallen out of calibration, the calibration interval is too long. In such a case, the calibration schedule should be shortened. This process should be repeated until adjustment is not necessary during a calibration. To avoid ambiguity, the phrase "good engineering practices as established by operation history" has been removed and replaced with the requirement to follow manufacturer recommendations for the specific equipment. In the case where a facility determines that less frequent calibrations are appropriate because the device has not fallen out of calibration and does not need adjustment, they may obtain written concurrence from the manufacturer to support less frequent calibrations.

No change has been made to the proposed rule language in response to this comment.

WMC/WPC Comment G – Methods and Procedures for Periodic Compliance Emission Testing [NR 439.07(1)]

Both the existing and proposed language contains similar language relating to compliance emission tests. The language in the proposed rule provides: “All compliance emission tests shall be performed with the equipment operating at capacity or as close to capacity as practicable or under other conditions as specified in an applicable requirement or as approved by the department.”

*While the current rule and the proposed rule reference operating at “capacity”, DNR’s description of the provision suggests it intends to clarify that emissions tests should be performed under conditions resulting in maximum emissions with control devices operating and at **maximum rated** capacity. It is worth noting that there are also costs associated with operating at maximum capacity, such as fuel costs.*

Also, over the course of a test, there is likely to be variability regarding the capacity reached. DNR should provide further clarification of what is expected regarding operating at maximum “rated” capacity.

Response:

The proposed rule states that “all compliance emission tests shall be performed with the equipment operating at capacity or as close to capacity as practicable or under other conditions as specified in an applicable requirement or approved by the department.” The department’s plain language analysis has been revised to state that proposed rule s. NR 439.07 will clarify that compliance emission tests be performed under conditions resulting in maximum emissions, with control devices operating, and at capacity. The clarifying language will not result in additional costs relative to current requirements. No change has been made to the proposed rule language based on this comment.

WMC/WPC Comment H – Methods of Determining Compliance and Equipment Accuracy [NR 439.055(3)]

DNR is proposing significant changes to NR 439.055(3). The proposed accuracy changes contained within this section would result in added costs for a facility because new monitoring equipment would be required.

Using pressure monitoring as an example, the current rule requires the monitoring device to have an accuracy within 5% of the pressure drop being measured or within +/- 1 inch of the water column, whichever is greater. The revisions remove the +/- 1 inch of water column option. Thus, sources will now be required to meet the 5% threshold under the draft NR 439.

However, typically a differential pressure (DP) range across a baghouse or fabric filter is small, such as 1.0 to 8.0 inches of water column. Under the current rule the DP gauge would only need to be accurate within 1.0 inch of water column. Under the draft rule with the 5% threshold, such a gauge would need to be accurate within 0.1 inches. This is a more accurate reading than many standard non-digital gauges can meet. Thus, sources would likely need to install new gauges to meet the proposed 5% mandatory threshold and incur the related costs.

Similar changes are proposed for temperature monitoring devices under the draft rule. DNR proposes to eliminate the +/- 5 degrees allowance provided under the existing rule. To the extent new equipment is required, this would also impose additional costs on sources.

In addition to purchasing new monitoring equipment, a source would incur other costs as well. A source may need to take its equipment offline in order to replace the non-compliant devices.

Moreover, having only one accuracy standard – as provided under the draft rule – would force sources to incur additional O&M costs to maintain the equipment.

Finally, it should be noted that this proposed 5% threshold appears to be more stringent than relevant federal requirements, as EPA allows multiple equipment accuracy standards. For example, for CEMS QA tests, EPA allows alternate thresholds of 15% or +/- 5 PPM.

In order to avoid imposing additional costs associated with monitoring equipment upgrades, equipment shutdowns to replace non-compliant equipment, and new O&M costs to maintain new equipment, we urge DNR to remove the proposed accuracy requirements in the draft NR 439.055(3). Instead, DNR is encouraged to retain the alternate standards and flexibility afforded by the existing rule.

Response:

- *For Accuracy:*

To clarify that accuracy is specific to an individual measurement device, the following definition from [chapter 4 of U.S. EPA's CAM Technical Guidance Document \(epa.gov\)](#)¹ was added under s. NR 439.055 (1g):

In this section “accuracy” or “accurate” means the closeness of an indicator or reading of a measurement device to the actual value of the quantity being measured; usually expressed as ± percent of the full scale output or reading.

- *For pressure drop gauges:*

It is not intended that sources would be required to replace monitoring equipment based on the changes to the proposed rule. The proposed requirement that pressure drop monitoring devices be accurate within 5 percent reflects the accuracy of devices that are currently in operation and commercially available. (See tables 4.3-2 and 4.3-4 and section 4.3.3.3 of the U.S. EPA technical guidance document referenced above.) It is the department’s experience that sources are currently using devices that would meet at least a 5% accuracy requirement for measuring pressure drop.

The +/- 1 inch of water column accuracy level for pressure drop was removed from the proposed rule because this level of accuracy would not be appropriate for pressure drop monitoring devices designed to read values under 1 inch of water column, as the level of accuracy would be outside the range of the device. Using the percentage accuracy standard accommodates any device regardless of the range of values being measured and will not require a source to incur additional operation and maintenance costs to maintain the equipment. The accuracy of a device is inherent to the device itself and not an ongoing maintenance issue.

The requirements in s. NR 439.055 are specific to parametric monitoring devices, not continuous emission monitors. Requirements for continuous emissions monitors are covered in ss. NR 439.09 and 439.095, Wis. Adm. Code, and specific federal regulations. The 5% accuracy requirement for parametric monitoring instrument is not more stringent than federal requirements.

¹ Chapter 4 of U.S. EPA - Technical Guidance Document: Compliance Assurance Monitoring, MRI Project No. 4701-05, August 1998.

No change has been made to the proposed rule language based on this comment.

- *For temperature gauges:*
 - The accuracy range for temperature monitoring devices has been returned to the current language under s. NR 439.055(3)(a) which states that the “temperature monitoring device shall have an accuracy of 0.5 percent of the temperature being measured in degrees Fahrenheit or $\pm 5^{\circ}\text{F}$ of the temperature being measured, or the equivalent in degrees Celsius (centigrade), whichever is greater.” Upon review of the EPA CAM Technical Guidance Document: [Technical Reference for Monitoring Equipment and Instruments](#),¹ it is noted that devices that are currently in operation and on the market for sale may not be able to meet a 0.5% accuracy requirement alone. It is not the department’s intent to require facilities to install new monitoring devices. For this reason, the department has returned to the current rule language as requested by the commenter.

WMC/WPC Comment I – Malfunction Prevention and Abatement Plans [NR 439.11]

The proposed NR 439.11(1)(a) would require any source that has the potential to emit federal HAPs or a hazardous air contaminant listed in NR 445 to be included in the Malfunction Prevention and Abatement Plan (MPAP). Unlike the current rule, there is no inclusion threshold. As a result, many sources that were not previously included in an MPAP because they did not meet the 15 lbs/day or 3 lb/hr criteria in the current rule would need to be added.

The revised rule does allow for the exclusion of insignificant sources. However, there are plenty of thresholds set under NR 407 that would equate to less than 15 lbs/day or 3 lbs/hour. For example, the NR 407 inclusion threshold for Benzene is 22.8 pounds per year. However, under the draft NR 439, a source emitting only 25 lbs/year would now be subject to MPAP requirements even if that was the only pollutant emitted.

Adding all these new sources to MPAPs would increase O&M costs for facilities due to increased inspections, maintenance activities, calibration requirements, and other requirements. Moreover, these activities can often only be done if equipment is taken offline, which would incur additional compliance costs.

These substantial costs must be considered in DNR’s final EIA. In addition, DNR should consider retaining the current 15 lbs/day or 3 lb/hour MPAP exclusion found in the current rule.

Response:

The existing rule in s. NR 439.11(1), Wis. Adm. Code requires any source that may emit any hazardous air pollutants to prepare a malfunction prevention and abatement plan (MPAP). The proposed language clarifies the current rule language while allowing for additional exclusions from the need to prepare the MPAP, either for an entire facility or for emission units at the facility.

The proposed language adds that only facilities that are required to have an air pollution control permit must have MPAPs. Additionally, emissions units with hazardous air contaminant emissions below the inclusion levels in Table 3 of ch. NR 407 are no longer required to have MPAPs. Both of these proposed changes result in fewer facilities and emissions units being required to have MPAPs than under the current language. Because of the additional exclusions in the proposed rule, the department expects a decrease in costs for those facilities no longer

required to maintain an MPAP or that will have fewer emissions units to include. No change has been made to the proposed rule language based on this comment.

WMC/WPC Comment J – Definition of Monitoring Device [NR 439.02(9)]

DNR has proposed revising the definition of “monitoring device” as follows:

(9) “Monitoring device” means any instrument used all equipment necessary to measure the operating parameters of a control device or process, obtain a reading, and transmit the reading to recordkeeping equipment and to the control room, if applicable.

The revised definition proposes to include devices that “obtain a reading” and “transmit a reading.” For sources that do not currently have recordkeeping or transmittal equipment, this could impose added costs. In addition, the calibration of recording, indication, or transmittal devices would add a cost burden by possibly doubling or tripling the number of calibrations that a plant must complete. These costs must be considered in the final EIA.

Response:

In response to this comment, the department has modified the definition of “monitoring device” to read as follows:

“Monitoring device” means ~~all~~ **the collection of** equipment ~~necessary~~ **used** to measure the operating parameters of a control device or process, obtain a reading, and transmit the reading to recordkeeping equipment and to the control room, ~~if applicable~~.

Facilities will not be required to install new devices for recordkeeping or transmittal as a result of the proposed definition change. Rather, if a facility currently uses equipment that measures, obtains a reading or transmits a reading to recordkeeping equipment and to the control room, then those components are all part of a monitoring device. If a facility does not have all the components listed, they are not required to install them. The clarifying language will not result in additional costs relative to current requirements.