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Wisconsin Department of Natural Resources
Sent via Email
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From: Wisconsin Paper Council

Date: March 3, 2021

RE: Comments on Proposed Guidance for Next Business Day Deviation Reporting

Thank you for the opportunity to comment on the proposed "Next Business Day Deviation Reporting Guidance (Guidance). These comments are submitted on behalf of the Wisconsin Paper Council (WPC). WPC is the premier trade association that advocates for the papermaking industry before regulatory bodies, and state and federal legislatures to achieve positive policy outcomes. WPC also works to educate the public about the social, environmental, and economic importance of paper, pulp, and forestry production in Wisconsin and throughout the Midwest.

The pulp and paper sector employs over 30,000 people in Wisconsin and has an annual payroll of \$2.5 billion. Wisconsin is the number one paper-producing state in the United States, with the output of paper manufactured products estimated to be over \$18 billion. Our members are dedicated to maintaining both a healthy environment and a healthy economy in Wisconsin and believe both are attainable together through appropriate regulation and responsible manufacturing practices.

Our members typically have air operation permits and are subject the deviation reporting requirements contained in NR 439.03(4). This provision provides:

- (a)** The owner or operator of a source shall report to the department the next business day following the onset, any malfunction or other unscheduled event at the source, not reported in advance to the department, which causes or may cause any emission limitation, including the visible emission limit, to be exceeded with the following exceptions:
1. Hazardous air spills that require immediate notice to the department under s. [NR 445.16](#).
 2. Exceedances of visible emission limitations detected by a continuous emission monitor which are less than 10% opacity above the opacity limit for a period not to exceed 30 minutes. These

exceedances shall be reported in the quarterly excess emissions reports required under s. [NR 439.09 \(10\)](#).

- (b) The person shall report the cause and duration of the exceedance, the period of time considered necessary for correction, and measures taken to minimize emissions during the period.
- (c) The owner or operator of a source which has been issued an operation permit shall report to the department by the next business day any deviation from permit requirements, the probable cause of the deviation, and any corrective actions or preventive measures taken or which will be taken to prevent future deviations.

This Guidance sets forth the Wisconsin Department of Natural Resources' (DNR) description of the legal basis for requiring reporting under this provision. The Guidance further specifies the information that should be in a Next Day Deviation Report (NDD). The Guidance also notes that a "responsible official" is required to certify the NDD. The Guidance then indicates that the NDD may be submitted to the facility's DNR air compliance engineer through WAMS, or by submitting a hard copy to the air compliance engineer.

WPC's comments regarding this Guidance are set forth below.

1. *Previous DNR Guidance.* Insofar as the Guidance requires next business day reporting for all operation permit deviations, it is inconsistent with previous guidance provided on this matter. In a December 16, 2010 memorandum provided by Bill Baumann to Air Management Compliance Staff (attached), Mr. Baumann addressed reporting pursuant to NR 439.03(4)(c). Mr. Bauman made the following key points in this memorandum:

- There was inconsistent interpretation, implementation, and enforcement of this provision.
- The counterpart Clean Air Act provision allows reporting of such deviations every 6 months.
- DNR intends to revise this provision to make it consistent with federal requirements.
- Pending changes in the rule, the Air Program should use discretion in pursuing enforcement of this provision by "focusing on those situations that have significant actual or potential environmental or health-related impacts, or that involve pattern of recurring violations."
- Generally, events under NR 439.03(4)(a) are more likely to have these impacts, while deviations reported under 439.03(4)(c) are likely less significant.
- Enforcement discretion should be used for violations of NR 439.03(4)(c), especially when it is the sole basis for enforcement, unless there are extenuating circumstances.

DNR's proposed Guidance emphasizing the need for next business day reporting of every permit deviation, regardless of significance, is out of sync with the Bauman memorandum discussed above, as well as with the approach taken by other states.

2. *Authority for Reporting:* The Guidance indicates that “the specific reporting for operating permits, identified in NR 439.03(4)(c), Wis. Code, are authorized by s. 285.60(8), Wis. Stats.” This provision, however, provides no such authority for NR 439.03(4)(c). As noted in the Guidance, this provision prohibits the DNR from enacting a rule or taking an action that conflicts with the federal Clean Air Act. It provides no grant of authority to do anything.
3. *Federal Reporting Requirements:* Insofar as the discussion under the “summary” portion of the Guidance is intended to exclude from reporting under NR 439.03(4) items that are reported under federal requirements, WPC supports that approach. The language in the Guidance, however, is confusing. NR 439.01(1) specially mandates that for sources subject to emission standards under NR ch.s 460 to 469 (federal hazardous air pollutant standards), or under 40 CFR part 63, the requirements of NR 439 apply. This seems inconsistent with the Guidance, which suggests certain reporting under 40 CFR part 63 does need to be reported under NR 439. Similarly, the guidance indicates reporting is not necessary under NR 439 if reporting is required under the federal §§ 111 or 112 standards. Nothing in NR 439, however, appears to provide such an exemption from reporting. Thus, this portion of the Guidance should be further clarified.

Wis. Stat. §§ 285.27(1)(a) and (2)(a) provide support for not requiring reporting under NR 439 when reporting is required under the federal §§ 111 or 112 standards. These provisions indicate that state administrative provisions relating to these standards are to be consistent with federal requirements. Deferring to federal requirements would make state and federal requirements consistent.

4. *Next Day Reporting.* As noted in the Guidance, federal requirements specify that deviations from operation permit requirements be reported “promptly” to the permitting authority. The Guidance, as well the Baumann memorandum, note that there is significant flexibility in what is meant by “prompt.” Other states have taken different approaches to conform with this reporting provision rather than the “next business day reporting” approach taken by Wisconsin. Minnesota, for example, requires expedited reporting for deviations that “endanger public health or the environment.” Other deviations are reported semi-annually. See Mn. Admin. Rule § 7007.0800(6)(B).

Wisconsin should not mandate “next business day” reporting for all deviations from every operation permit requirement. Air permits can contain hundreds of detailed requirements, many of which do not result in any excess emissions being released if there is a deviation from those requirements. Consequently, such immediate reporting is not necessary because there is no impact to the public or the

environment. Moreover, if the “next business day” reporting deadline is missed, the source is subject to another violation for a minor permit deviation that had no environmental impact.

Furthermore, NR 439.03(1)(b) currently requires that all deviations, in addition to the reporting requirements NR 439.03(4) to (6), be identified in the semiannual monitoring reports. This reporting should meet the needs of the DNR for deviations that do not cause an exceedance of an emission limitation.

5. *Relationship Between NR 439.03(4)(c) and NR 439.03(5)*. As previously noted, NR 439.03(4)(c) indicates next business day reporting is required for deviations from permit requirements. NR 439.03(5), however, indicates that for any breakdowns, shutdowns or malfunctions of continuous monitoring systems or monitoring devices, DNR is required to be notified if the problem is anticipated to continue more than one week. In such instances, notice is to be provided the next business day after the breakdown, shutdown, or malfunction.

DNR should clarify that for monitoring the more specific reporting provisions of NR 439.03(5) rather than the provisions of 439.03(4)(c) apply. Requiring reporting under NR 439.03(4)(c) would make the provisions of NR 439.03(5) largely meaningless and not applicable.

For reporting under NR 439.03(5), circumstances may arise in which the owner or operator does not anticipate the problem will continue more than one week, but as the matter is further investigated, it becomes apparent that problem will continue for more than a week. In such circumstances, reporting should be required on the next business day after it is anticipated that the issue will continue for more than a week, rather than the next business day after the onset of the problem.

6. *Duplicative Reporting Requirements*. As noted in regard to federal requirements, WPC is supportive of eliminating duplicative reporting. That is also the case regarding duplicative state reporting requirements. Moreover, Wis. Stat. §285.11(11) requires the DNR to coordinate reporting requirements to minimize duplicative reporting. This Guidance is contrary to that statutory charge because it mandates yet another reporting requirement for information that is already required to be reported by other rules. NR 439.03 should be interpreted to be consistent with the legislative directive to minimize duplicative reporting.
7. *Deviations that “May Cause” an Emission Limitation Exceedance*. The inclusion in NR 439.03(4)(a) for next business day reporting for deviations that “may cause” an exceedance creates confusion as to what needs to be reported. For example, a pressure drop in a bag house, which is a relatively frequent occurrence, “may cause” an exceedance, but often does not result in an exceedance. The reference to “may cause an exceedance” should be further defined or eliminated from the rule.

8. *Information to be Reported.* NR 439.03(4) specifies what information must be reported to the DNR. Regarding an emission limitation exceedance, NR 439.03(4)(b) provides that the cause and the duration of the exceedance, the period of time necessary for correction, and measures taken to minimize emissions during the period, must be reported. NR 439.03(4)(c) provides for permit deviations, the probable cause of the deviation, and corrective or preventive actions taken or that will be taken to prevent future deviations, must be reported.

The reporting requirements contained in the Guidance do not reflect the distinction between the two reporting requirements contained in NR 439.03(4). Moreover, the Guidance includes reporting requirements that are not required by the rule. For example, the rule does not require the reporting of the method used to identify the deviation, nor does it require the status of operation.

Furthermore, the Guidance indicates that any revisions to the malfunction prevention and abatement plan should be submitted. NR 439.03 does not require submittal revisions to this plan, although revisions would be submitted pursuant to other applicable requirements. This is significant because it is unlikely that a revision to the plan would be completed on the next business day. The Guidance should be amended to reflect the actual reporting requirements contained in the rule.

9. *Voluntary Use of Form 4530-182.* The Guidance indicates that Form 4530-182 “may” be used to report a “next business day deviation.” Moreover, the Form specifies that the “use of this form voluntary.” DNR should expressly state in the Guidance that Form 4530-182 is voluntary to ensure that permittees and DNR staff know the use of the form is not required.

10. *Modifying NR 439.* DNR noted in the Baumann memorandum in 2010 that modifications to NR 439 were needed. More recently, DNR indicated in its September 2019 submittal to the Natural Resources Board for approval of a permit streamlining rule that it intended to move forward with modifications to NR 439. Moreover, DNR has a statutory obligation to simplify, reduce and make more efficient air reporting, monitoring and recordkeeping requirements, for certain sources. See Wis. Stat, § 285.17(4). DNR should move forward with this required rulemaking and include within any scope statement changes to deviation reporting.

To the extent authorized by law, DNR should eliminate NR 439 reporting requirements that are of little value. This includes eliminating duplicative reporting requirements and reporting deviations that are of little significance. This could include reporting associated with transient process monitoring conditions, conditions with long averaging times, and conditions that are not measuring emissions.

11. *Guidance is Not Retroactive.* If this new interpretation of NR 439.03(4) contained in the Guidance moves forward, it should not be applied retroactively.

In summary, requiring next business day reporting for every deviation from an operation permit requirement is excessive and unnecessary. Next business day reporting should focus on when there is an emission limit exceedance. There are numerous requirements in permits where a deviation, does not result in any environmental impact. Such deviations are already reported on the semiannual report, and such reporting should be sufficient to meet DNR's needs.

Please contact Patrick Stevens at the Wisconsin Paper Council if you have any questions regarding these comments. Furthermore, we would be happy to meet with you and other appropriate DNR personnel discuss this matter. Thank you again for the opportunity to comment on this proposed Guidance.