



**To: Gail Good, Ron Binzley, Olivia Salmon  
Wisconsin Department of Natural Resources**

**From: Bill Skewes, Executive Director  
Wisconsin Utilities Association, Inc.**

**Re: WUA Comments on the Wisconsin Department of Natural Resources' Proposed Rule to Revise Chapters NR 400, 419, 439, 462 and 484, Wis. Adm. Code, Relating to Simplifying, Reducing and Making More Efficient Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements for Sources of Air Contaminants (Board Order AM-05-22)**

**Date: April 25, 2024**

On behalf of Wisconsin's investor-owned gas and electric energy providers, the Wisconsin Utilities Association, Inc. (WUA) is pleased to provide the following comments to the Wisconsin Department of Natural Resources (WDNR) regarding the proposed rule changes to Chapters NR 400, 419, 439, 462 and 484, Wis. Adm. Code. WUA supports and appreciates WDNR's efforts to update these rules with a goal of simplifying, reducing, and allowing for more efficient reporting, recordkeeping, testing, inspection, and determination of compliance. WUA's comments are focused on the changes proposed to NR 439, Wis. Adm. Code, and are as follows, organized by section:

### **NR 439.02 Definitions**

WDNR proposes to add the following definition for the term "*Monitoring device*."

*(9) "Monitoring device" means ~~any instrument~~ 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.*

WUA believes this definition is overly prescriptive and will require unnecessary calibrations. WUA agrees it is prudent to perform calibrations on the instruments that obtain a reading, but it is not necessary to perform a calibration on instruments that transmit the reading. Transmitting instruments typically send a standard signal to the recordkeeping device or control system and do not need to be calibrated. These instruments either work or they don't (i.e., loss of signal). Requiring these benign instruments to undergo yearly calibrations is unnecessary and an added cost burden.

WUA recommends the original definition be maintained.

## NR 439.03 Reporting

WDNR proposes to add enhanced reporting requirements for monitoring reports under NR 439.03(1)(b)2., as follows:

*The results of monitoring, or a summary of monitoring results, with respect to each monitoring requirement for the period covered by the monitoring report.*

WUA members are subject to an extensive amount of permit requirements and monitoring requirements. Furthermore, WUA members have an obligation to identify and notify WDNR of any permit deviations. In addition, the Responsible Official of each source is responsible certifying compliance. Providing monitoring results in reports submitted to the Agency during all times of compliance will result in an increased reporting burden and seems contrary to the overall goal of the rulemaking to simplify, reduce, and make reporting more efficient. WDNR has the right to ask any permitted source to provide data at any time to demonstrate compliance, in addition, sources are inspected on a regular basis. As such, WUA asks WDNR to remove this requirement to provide the results of all monitoring, or a summary of monitoring results, during all times during the monitoring period.

At a minimum, more clarification is needed on what is expected (e.g., CEMS records, operator logs, etc.).

WDNR further notes in NR 439.03(1)(b) the following:

*The ~~semiannual~~ monitoring report may be consolidated with other required reports, such as the quarterly excess emission report required under s. NR439.09, when submission of more than one report ~~both these reports~~ is required.*

This provision still requires multiple and duplicative submittals considering WUA members submit compliance reports quarterly, semi-annually, and annually. WUA asks WDNR to further evaluate the opportunity to reduce and streamline reporting.

Regarding deviation reporting, WDNR proposes the following:

*(4) (am) The owner or operator of a source shall ~~report~~ notify to the department of the next business day following the onset, any malfunction or other unscheduled event at the source, not reported in advance to the department, which that causes or may cause any emission limitation, including a visible emission limit, to be exceeded with the following exceptions: within 2 business days of when the owner or operator knew or should have known of the event. In addition, in accordance with sub. (1) (am) the owner or operator of a source shall report to the department all of the following within 10 calendar days of when the event becomes discoverable:*

1. *The affected emissions unit, operation, or activity.*
2. *The pollutant affected and an estimate of excess emissions, including calculations and assumptions.*
3. *The date, time, cause, and duration of the exceedance, the period of time considered necessary for correction, and measures taken to minimize emissions during the period.*
4. *Any corrective actions or preventative measures taken, or which will be taken to prevent future exceedances.*
5. *The method used to determine the exceedance.*

WUA requests that WDNR change the due date for the follow up report from 10 calendar days to 10 business days for consistency with the initial notification, which is based on business days. This change would avoid potential confusion about due dates and bring more cohesion to the notification requirements. Further, WUA requests that the notification be updated to include “*initially notify the department (via email, telephone, or oral communication)*” so it is clear how the department can be notified within 2 business days.

Additionally, at a minimum, WUA would like WDNR to clarify within the final rule how it will determine “*when the owner or operator...should have known of the event.*” For example, WUA members have a variety of programs and procedures in place to record compliance data, but there are situations where data is missing and it takes time to recover the data before evaluating if a deviation occurred. As written in the proposed rule, the statement “*should have known*” could apply in that situation, but it appears subjective. WUA members are concerned this subjectivity could create confusion regarding applicability and result in inconsistent enforcement throughout the state. Given the vague nature and potential varied interpretation, WUA requests WDNR to consider removing the “*should have known*” language from the final rule.

#### **NR 439.04 Recordkeeping**

WDNR proposes to change NR 439.04(1)(b) to require sources to maintain records detailing all malfunctions that cause *or may cause* an applicable emission limitation to be exceeded, including logs to document the implementation of the plan required under s. NR 439.11.

WUA requests that the “*or may cause*” language not be added in the final rule. WUA believes this is overly broad, likely will create confusion regarding implementation and result in inconsistent recordkeeping throughout the state. Further, the removal of “*or may cause*” from NR 439.04(1)(b) would be consistent with the changes WDNR is proposing to NR 439.03(4)(am), where similar phrasing was removed.

### **NR 439.055 Methods and Procedures for Determining Compliance Using Instrumentation of Air Pollution Control Equipment and Source Processes**

WDNR proposes to remove “*or within ± 1 inch of water column, whichever is greater*” in NR 439.055(3)(b), Wis. Adm. Code, for pressure drop monitoring devices. WUA requests for this language not be removed in the final rule. This proposed change would make the accuracy requirements for a pressure drop monitoring device inconsistent with those of a temperature monitoring device, which still allow for “*or within ± 1 inch of water column, whichever is greater*” under NR 439.055(3)(a). WUA believes this could also have a compliance impact given the Department’s current guidance document on rounding significant figures, “Standards for Mathematical Computations” from October 2003 (AM-19-0038).

The above referenced guidance provides a specific example (Example 3) for pressure drop that the proposed revision to NR 439.055(3) seem to contradict and thus could lead to confusion about compliance status. For example, if a source had a permitted pressure drop range of 1 to 8 (no decimal places) the applicable accuracy under the current NR 439 rule is 5% or 1 inch, whichever is greater. Since 1 inch is greater than 0.4 (8 x 5%) inches, the required accuracy is 1 inch and readings are rounded to the nearest whole number. Following the 2003 guidance document, a precise differential pressure reading of 8.2 is rounded to 8 (accurately), and the facility would be in compliance. Under this proposed revision, the accuracy is now within 0.4 inches. This is inconsistent with the significant figures of the limit and what is outlined in WDNR’s guidance document and could lead to confusion on rounding and compliance status.

Under NR 439.055(4) WDNR proposes to allow instruments used for measuring source or air pollution control equipment operational variables to be calibrated, replaced, or validated at a frequency based on written manufacturer recommendations or as required by an applicable standard. WUA appreciates and supports this proposed change. Certain WUA members have instruments that have timelines longer than one year, as recommended by the manufacturer. However, WUA asks WDNR to specify in the final rule that the calibration due date is determined based on the initial operating date of the equipment, rather than the delivery date, assuming the equipment comes initially calibrated.

### **NR 439.06 Methods and procedures for determining compliance with emission limitations (by air contaminant)**

WDNR proposes to add the following language in NR 439.06:

*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.*

WUA suggests WDNR further align this language with that contained in Part II of Title V operating permits to avoid confusion regarding the use of credible evidence.

### **NR 439.07 Methods and procedures for periodic compliance emission testing**

NR 439.07(1) states that WDNR expects sources to conduct compliance testing “*under conditions that would result in maximum emissions with any control devices in operation.*” In addition, WDNR notes 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.*” For WUA members, periods of maximum emissions and maximum capacity may not occur at the same time. As such, WUA suggests WDNR only require testing at maximum capacity to resolve any potential confusion about creating artificial operating limits by not testing at maximum capacity.

### **NR 439.08 Methods and procedures for periodic fuel sampling and analysis**

WUA proposes the inclusion of a statement under NR 439.08 to allow a facility to use a fuel sampling and analysis method approved under a federal standard applicable to the source. Adding this statement would simplify the fuel analysis requirements and alleviate the need for facilities to request an alternate method approval from WDNR for methods that have already been approved, and in many cases required, by EPA. For example, a source subject to fuel oil sampling under NR 439.08(2) may also be subject to fuel analysis under 40 CFR Part 75, which requires different ASTM procedures than those listed in the current and proposed NR 439.08(2). This can lead to confusion and the need to conduct multiple fuel analyses to obtain the same data (e.g., sulfur content).

### **NR 439.11 Malfunction, Prevention, and Abatement Plans**

WDNR has proposed a significant number of additional requirements in NR 439.11. WUA believes these added provisions in this section are very contrary to the overall goal of this rulemaking to simplify, reduce and allow for more efficient reporting.

The proposed provision to require malfunction, prevention, and abatement plans (MPAP) for sources that have “*the potential to emit hazardous air pollutants listed under section 112 (b) of the act or hazardous air contaminants under ch. NR 445*” may substantially expand the number of sources that are required to be included in an MPAP. The required inclusion of sources for pollutants in which there are no applicable emission limits is misaligned with the MPAP content requirements that are specific to how emission limit exceedances are addressed and avoided. WDNR should consider adding a minimum inclusion threshold, such as the applicable emission thresholds in Table A of ch. NR 445, to the proposed NR 439.11(1)(a) for cohesion with MPAP requirements.

WUA acknowledges and appreciates the proposed addition of NR 439.11(1g), which allows for the exclusion of many smaller, insignificant emission sources.

For large sources with a large number of staff and equipment, WUA believes the following changes proposed in NR 439.11(1r) are overly broad and burdensome:

(a) Identification of the individuals responsible for inspecting, maintaining, operating, calibrating, replacing, or validating, and repairing the source, air pollution control equipment, and monitoring equipment.

(c) A description of the items or conditions that will be checked during inspection, routine maintenance and calibration, replacement, or validation.

(d) A listing of materials and spare parts that will be maintained in inventory to correct malfunctions or equipment failures that may cause any applicable emission limitation to be reviolated for air pollution control equipment and monitoring equipment.

WUA encourages WDNR to further work with stakeholders and gather input specifically on this section prior to finalizing changes to NR 439.11.

WUA appreciates the opportunity to comment on the proposed rules. Please feel free to contact me at [bskewes@wisconsinutilities.com](mailto:bskewes@wisconsinutilities.com) if you have any questions regarding these comments or would like to discuss anything in more detail.