

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: AM-05-22

Relating to: Revisions to ch. NR 439 to simplify, reduce, modernize, and make more efficient reporting, recordkeeping, testing, inspection and determination of compliance requirements for sources of air contaminants.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rule will be proposed as a permanent rule.

2. Detailed description of the objective of the proposed rule:

The primary objective of the proposed rule is to simplify, reduce, modernize, 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 approvability by the U.S. Environmental Protection Agency (EPA). Specific proposed rules along with issues to be examined in order to accomplish this objective are described below. The Wisconsin Department of Natural Resources (department) may encounter potential opportunities related to this objective which are unforeseen and therefore not described. The department will evaluate and act on such opportunities consistent with the stated objective. Chapters not previously identified but explicitly associated with proposed changes under ch. NR 439, Wis. Adm. Code, could be affected by such an effort.

The proposed revisions will remove inconsistencies between state and federal rules and ensure continued approvability by the EPA. In addition, the department is proposing to update related sections of the NR 400 series to meet federal requirements and ensure consistency with the proposed revisions to ch. NR 439, Wis. Adm. Code. Specifically, the department is proposing to clarify and update definitions. The department is also proposing to simplify, reduce, modernize, and make more efficient, reporting, recordkeeping, inspections and access to records. Additionally, the department is proposing to simplify, reduce, modernize, 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.

The department will consider including rule provisions to expand the types of sampling techniques, test methods, and advanced monitoring equipment facilities can choose to use. Examples of advanced monitoring equipment include: infrared cameras, new continuous emissions monitoring applications, and bag leak detection systems. Modernizing ch. NR 439, Wis. Adm. Code, to give facilities the option of using new technology may simplify and reduce source workload and obligations while resulting in more complete, real-time monitoring data, improved emissions detection, and the option to submit data electronically to the department.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapter NR 439, Wis. Adm. Code, serves the important role of establishing the recordkeeping, reporting, monitoring and other compliance demonstration requirements necessary to meet CAA requirements for the Air Permit Programs in chs. NR 405, 406, 407, and 408, Wis. Adm. Code, and for approvability of Reasonably Available Control Technology (RACT) requirements in chs. NR 419, 420, 421, 422, 423, and 424, Wis. Adm. Code. Approvable permit programs and RACT are necessary for attainment planning purposes, and demonstrate that the state can attain and maintain National Ambient Air Quality Standards.

Proposed rule changes will be 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 keep Wisconsin's State Implementation Plan (SIP) current and maintain Wisconsin approval under Title I of the Clean Air Act. Section 285.14(1), Wis. Stats., requires SIP submittals resulting in regulatory requirements to be promulgated by rule.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 285.17, Wis. Stats., requires the department to establish reporting, recordkeeping, and monitoring regulations for sources of air contaminants. That section also requires the department to reevaluate and simplify, where possible, the requirements of this chapter as they apply to minor sources.

Section 285.11(1), Wis. Stats., requires the department to promulgate additional rules implementing ch. 285, Wis. Stats. Chapter NR 439, Wis. Adm. Code, also currently includes provisions related to s. 285.19, Wis. Stats., which authorizes the department to conduct inspections at air contaminant sources, and s. 285.65, Wis. Stats., which authorizes the department to include reporting, recordkeeping, and monitoring requirements in air pollution control permits.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that 1600 hours of state employee time will be required to complete the promulgation of the proposed rule.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule will apply to all air contaminant sources and to their owners and operators for purposes of simplifying, reducing, modernizing, and making more efficient reporting, recordkeeping, testing, inspection and determination of compliance requirements. There are organizations that may not be directly affected by the rule but may have an interest in rule development, including businesses, local government units, tribal governments as well as environmental and public health organizations.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The intended result of this proposed rulemaking is to simplify, reduce, modernize and make more efficient reporting, recordkeeping, testing, inspection and determination of compliance requirements for sources of air contaminants. This rulemaking will also resolve inconsistencies between Wisconsin's compliance requirements and those promulgated by the EPA.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The department estimates that the economic impact of implementing the revised rule in Wisconsin will be moderate. Proposed rule changes are unlikely to have a significant economic impact on small businesses.

The department expects this rulemaking will result in improved efficiency for sources of air contaminants and the department. Proposed rule changes to allow electronic reporting, signature, and submittal practices and updates to the departmental inspection protocol could improve clarity for sources and department staff and have the potential to result in time savings. Efficiencies may also be achieved through removal of redundancies with federal rules, potential reduction in calibration and maintenance costs, and modernization of compliance demonstration practices.

The department expects this rulemaking will have a small administrative impact on all sources of air contaminants in the form of time required to become familiar with the rule updates. Other anticipated rule changes that could have relatively small cost and/or time impacts include:

- Evaluation of the frequency of monitoring, recordkeeping, testing and reporting requirements;
- Clarification of the information sources must include in plans, reports, and submittals to the department; and
- Evaluation of departmental inspection protocol.

Sources in the state that emit air contaminants are subject to ch. NR 439, Wis. Adm. Code, but the majority of sources, including small businesses, are not expected to experience economic impacts beyond those noted above. During the rulemaking process, the department plans to review current control device and monitoring technology requirements and ensure flexibility in the rule text to apply to future technology. The department anticipates that the majority of the potential cost of the rule could result from the purchase of equipment to comply with expanded monitoring requirements. However, many sources already use this technology due to existing permit and federal requirements. New technology requirements could cost between \$0-\$50,000 per facility for up to approximately 130 facilities whose actual emissions meet or exceed major source thresholds, depending on the type of technology and if the equipment is already installed at the facility. Any rule changes that could result in an economic impact on sources with respect to new technology may be due to alignment with federal requirements or be source-initiated. The rulemaking will not result in fee increases for sources.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding two public hearings in the month of February 2024. The hearing cities will be: Madison, WI and Green Bay, WI.

The department will hold the hearing in these locations to obtain public input on the proposed rules.

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For Preston D. Cole, Secretary

Date Submitted