



To: Wisconsin Department of Natural Resources

From: Wisconsin Utilities Association, Inc. and Dairyland Power Cooperative

Re: Comments on Proposed Guidance on Next Day Deviation Reporting

Date: March 3, 2021

The Wisconsin Utilities Association (WUA) is submitting these comments on behalf of its members and Dairyland Power on the Department's February 9, 2021, proposed guidance addressing Next Business Day Deviation Reporting. We appreciate the Department developing this guidance and allowing for public comment and review of the proposed guidance. The issues addressed in this memorandum are of great interest to us and we submit the following comments for your consideration:

1. **Certification of next day deviations reports:** As identified in the draft guidance, s. NR 439.03(10), Wis. Adm. Code, requires each deviation report to be certified by the responsible official. There are practical issues, such as vacation, illness, travel, wireless communication problems, etc., with having the responsible official certify every report prior to submittal. In addition, the cause or details of any deviation may not be clear by the next day and this makes it challenging to brief the responsible official prior to their approval of the submittal. Thus, we suggest a clarification in the guidance that pre-certification reports be accepted for purposes of meeting the next day reporting requirement as long as the certified version is submitted in an expeditious manner.

S. NR 439.03(10), Wis. Adm. Code, does not specifically allow for delayed certification, but it also does not specifically state that the report needs to be certified prior to submittal. We believe this flexibility, consistent with the applicable Adm. Code, would resolve these practical concerns without impacting the next day reporting requirement.

2. **Application to s. 111 or s. 112 requirements:** The draft guidance provides a Summary in which the following is stated "Reporting required under either s. NR 445.16 or federal §§ 111 or 112 standards do not need to be submitted under ch. NR 439; See s. NR 439.01(1), Wis. Adm. Code." While we concur that reporting under these identified sections is not subject to ch. NR 439 requirements, it is unclear whether any deviation from a requirement other than an emission standard under these sections needs to be reported under NR 439 (i.e. next day). An example of such a potential deviation is downtime that occurs with a monitoring system which is required to be operated under a s. 111 or s. 112 standard, with any associated downtime being reported in a quarterly report to the

Department. In this case, reporting such an event in an otherwise required quarterly or semi-annual report would be sufficient based upon our interruption of the guidance. Thus, we request that the guidance clarify its position on the potential overlap between ch. NR 439 reporting and reporting under NR 445.16 or a s. 111 or s. 112 standard and confirm our approach to the example provided.

3. **Deviation reporting onset vs. discovery for next day reporting:** S. NR 439.03(4)(a), Wis. Adm. Code, requires next business day reporting following the onset of an event which leads to the exceedance of an emission limitation, with some exceptions. However, s. NR 439.03(4)(c), Wis. Adm. Code, states a permittee "...shall report to the department by the next business day any deviation from permit requirements...". While the language of these two sections is similar, the section requiring next day reporting of all deviations (s. NR 439.03(4)(c)) does not contain the word "onset".

Based on this language difference, we believe the Department has discretion as to whether all deviations are required to be reported by the next business day following onset or the next business day following discovery of the deviation. We recommend the Department in this guidance state that all deviations not involving an emission limitation exceedance be allowed to be reported the next business day after discovery.

Since these types of deviations are not associated with an exceedance of emission limitation, potential for actual environmental harm is unlikely, and thus discretion should be afforded. We believe this interpretation of the Adm. Code will lower the compliance burden of this requirement as many deviations, such as missing initials on a required inspection, not recording a required pressure drop reading or alarms at unstaffed facilities, are challenging to detect by the next business day.

In addition, the guidance should include language pertaining to the reasonableness of a permittee's efforts to discover any such deviation. This reporting requirement based on discovery would not include any reporting required in the semi-annual monitoring report or annual compliance certification (i.e. lack of discovery of a deviation is not an acceptable reason for a deviation not being reported in a semi-annual or annual compliance report). Finally, Chapter NR 439 does not define the term "deviation".

Given the absence of a definition in the chapter, the Department has discretion to provide guidance for the type of issues that require reporting. Under the memorandum, an instantaneous deviation in pressure drop that is recorded by an operating system would appear to constitute a deviation requiring reporting—even if it was unrelated to any operational issue and if the system simultaneously recorded results that were a fraction of an emission limit.

Absent a rule of reason, this position will potentially require permittees to flood the department with deviation notices or risk enforcement even when there was no potential risk of noncompliance associated with the issue.

We request that the Department provide for consultation with enforcement staff to determine if a given operational scenario constitutes a “deviation” requiring reporting under Chapter NR 439.

We encourage the Department to discuss matters and engage in an ongoing dialogue with stakeholders on matters such as those addressed by this proposed guidance, and we stand ready and available to partake in them. While the Air Management Study Group does meet on a recurring basis, it seems that items such as these go beyond those covered in that forum and more focused discussions would result in guidance that matches our common objectives when it comes to air quality.

Please contact me if you have questions or need clarification of any of these comments and thank you for the opportunity to provide these comments.