



August 18, 2022

Wisconsin Department of Natural Resources
Attn: Olivia Salmon
101 S. Webster Street
Madison, Wisconsin, 53703
Olivia.Salmon@wisconsin.gov

Sent Via Email

RE: Comments on Scope Statement SS 047-22 (Board Order AM-05-22) Relating to Revisions to NR 439 to Simplify, Reduce, Modernize and Make More Efficient the Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements for Sources of Air Contaminants

Dear Ms. Salmon:

I. Introduction

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 clean air in Wisconsin.

Many of our members have air permits and are subject to NR 439 requirements. Consequently, we appreciate the opportunity to provide comments on this matter.

II. NR 439 Should be Modified

Statutory requirements, as well as previous DNR statements, verify the need to update NR 439. Wis. Stat. § 285.17(4) directs the Wisconsin Department of Natural Resources (DNR) to evaluate reporting, monitoring, and reporting requirements for minor sources and to simplify, reduce and make more efficient those requirements. Furthermore, in a December 16, 2010, memorandum provided by Mr. Bill Baumann to Air Management Compliance Staff, Mr. Baumann, in relation to same business day deviation reporting requirements in NR 439, noted the need to update those provisions. Moreover, in a

September 2019 submittal to the Natural Resources Board for approval of a permitting streamlining rule, DNR indicated that it intended to move forward with modifications to NR 439. WPC agrees with DNR that NR 439 needs modification and updating.

III. Potential NR 439 Modifications

Prior to initiating rulemaking, DNR held listening sessions to solicit input on potential modifications to NR 439. At DNR's October 11, 2021, listening session, WPC indicated that DNR should consider a variety of changes to Ch. NR 439, and that the scope statement should be broad enough to allow for consideration of those of changes. These topics are briefly discussed below.

- *Deviation reporting requirements (NR 439.03) should be modified*

There should be several changes made to these provisions. For example, any applicable federal reporting requirements should supersede NR 439 reporting requirements. In addition, the rule should not require next day business reporting for all permit deviations. This goes beyond federal requirements and what other states, such as Minnesota, require. Such reporting requirements should focus on when there is an actual release to the environment that may impact public health or the environment. In addition, these provisions are confusing and should be clarified. For example, DNR should clarify that issues with monitors are subject to the reporting requirements of NR 439.03(5) and not the reporting requirements of NR 439.03(4)(a). Please see the comments WPC submitted on DNR's "Next Business Day Deviation Reporting" Guidance for additional information on this issue:

[Comments+Next+Business+Day+Deviation+Reporting+Requirements+3+2+21.pdf \(squarespace.com\)](#)

- *NR 439 should defer to federal reporting requirements*

WPC strongly believes that DNR should defer to the federal counterparts to NR 439 where such provisions exist. This approach simplifies and removes duplication from the regulatory structure, and at the same time ensures adequate regulatory oversight.

Such an approach is also required by state law. Wis. Stat. § 285.27 (1) and (2) requires that DNR "may not be more restrictive in terms of emission limitations" for federal new source performance standards and for federal hazardous air contaminants.

Furthermore, Wis. Stat. §285.01(16) defines "emission limitation" or "emission standard" to include "a requirement relating to the operation or maintenance of a source to assure continuous emission reduction." Thus, this provision, for example, would require items such as measuring pressure drops for a baghouse to not be more restrictive than federal requirements because the requirement is to ensure the baghouse is operating correctly and reducing emissions.

- *Additional definitions should be included in NR 439*

Providing additional definitions would also be useful. For example, one frequently used term in permits is “calibration.” Defining what this means would help provide consistency in permitting. There are also often reference to “technical drawings” or “blueprints,” which could also benefit by an updated definition. DNR should also consider defining what constitutes a “deviation.”

- *Any reporting or other requirements imposed on permittees must be based on explicit rule language rather than generic language*

DNR uses several provisions in NR 439 to impose requirements on permittees that are not explicitly set forth in NR 439. For example, DNR frequently relies on and cites NR 439.03(1) and NR 439.04(1)(d) in permits as the basis for requiring information and/or permit conditions. This provision is broadly written to allow DNR to require “such other information as may be necessary” from sources. Wis. Stat. § 227.10(2m), however, prohibits DNR (and other agencies) from implementing or enforcing any requirement unless the requirement is explicitly required or permitted by rule or statute.

Consequently, any requirements should be specified explicitly in the rule. Importantly, such an approach would provide notice of the applicable regulatory requirements to permittees, as well as the public, and help ensure consistency in permit requirements by providing DNR staff with clear direction.

- *Reporting requirements need to be consolidated*

Air-related reports include annual emissions reports, quarterly excess emissions reports, annual compliance reports, semi-annual monitoring reports, reports specific to NSPS and MACT standards, and reporting of fuel sampling results. These reports should be consolidated to the extent possible to minimize duplication and workload, and to ensure the information that is obtained is of value and being used by DNR for regulatory purposes. Moreover, including a table in the rule or a note summarizing report requirements and submittal deadlines would provide a simplified method for communicating reporting requirements to permittees and other members of the public.

- *Modifying the malfunction and pollution prevention plan requirements*

DNR requires malfunction and pollution prevention plans to be incorporated into permits. This is problematic, as arguably any change to a plan requires a permit modification. Plans, however, should be flexible to accommodate different circumstances that arise. Requiring a permit modification for every change limits flexibility and may discourage the inclusion of useful details in plans.

IV. Breadth of NR 439 Scope Statement

The scope statement for this rulemaking specifies the purpose of this effort. The purpose 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...while remaining consistent with the federal Clean Air Act..." The scope statement also specifies several areas in which DNR wants to accomplish these goals, including, for example, recordkeeping, inspection, compliance, and parametric testing.

WPC believes DNR's NR 439 scope statement is broad enough to accommodate the changes generally outlined above, including changes to "next business day" reporting requirements, which are not specifically mentioned in the scope statement. Consequently, WPC requests that DNR verify that the scope statement allows for potential changes to these provisions outlined above.

V. Conclusion

Thank you for your consideration of these comments. WPC looks forward to actively participating in this rulemaking as it moves forward. Please contact me if you have any questions.

A handwritten signature in black ink that reads "Patrick Stevens". The signature is written in a cursive style with a prominent initial "P".

Patrick Stevens
Wisconsin Paper Council
Vice President, Environment & Regulatory Affairs
General Counsel