

DATE: February 9, 2021

TO: Permits and Stationary Source Modeling Section  
Compliance, Enforcement and Emissions Inventory Section  
Owners and operators of a permitted source

FROM: Maria Hill, Compliance, Enforcement, & Emissions Inventory Section Chief

SUBJECT: Next business day deviation reporting

The purpose of this guidance document is to describe the department's understanding of the next business day deviation (NDD) requirements in ch. NR 439, Wis. Adm. Code, and to inform regulated entities of recommended steps to comply with these requirements.

#### **Next business day deviation reporting**

Chapter NR 439 contains reporting requirements for air contaminant sources and to their owners and operators. Specifically, s. NR 439.03(4), Wis. Adm. Code, states the following:

(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 percent 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.

The reporting requirements in s. NR 439.03(4), Wis. Adm. Code, are authorized by ch. 285, Wis. Stats. Section 285.17(1)(a), Wis. Stats., requires the department to classify, by rule, air contaminant sources which may cause or contribute to air pollution. For any sources that have been classified under this section, the department may require reporting. Chapter NR 439, Wis. Adm. Code, which was adopted in part under s. 285.17(1)(a), Wis. Stats., applies to all air contaminant sources in Wisconsin.

The specific reporting requirements for operating permits—identified in s. NR 439.03(4)(c), Wis. Adm. Code—are authorized by s. 285.60(8), Wis. Stats. This section of the statute prohibits the department from promulgating rules or taking any other action with respect to air permitting that conflicts with the federal Clean Air Act. Title V of the Clean Air Act established a federal operation permitting program requiring approved programs with prompt deviation reporting (see 42 USC § 7661b.(b)(2)). States were given broad latitude to define “prompt” in this context; the State of Wisconsin determined that reporting within the next business day was appropriate. EPA approved the department's Title V program

in 2001. ([see](#) 66 FR 62951 (Dec. 4, 2001)). Section NR 439.03(4), Wis. Adm. Code, was incorporated into Wisconsin's State Implementation Plan since in 1995. ([see](#) 60 FR 20643 (Apr. 27, 1995)).

### Summary

States implementing Part 70 programs under the 1990 Clean Air Act amendments are required to include deviation reporting requirements in their code and are given significant discretion on minimum timelines for that reporting. The department requires next-day reporting for *any* permit deviations under s. NR 439.03(4)(c). In addition, the reporting of malfunctions or other unscheduled events that may cause emission limit exceedances fall within, "such other information as is relevant to air pollution. . . reasonably capable of being assembled," per s. 285.17(1)(b), Wis. Stats. Other rules may require alternate reporting timeframes. For example, a hazardous air spill requires immediate notification in accordance with ss. NR 439.03(4)(a)1 and NR 445.16, Wis. Adm. Code, while a MACT startup, shutdown, or malfunction deviation allows the reporting timeline as provided in 40 CFR §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii). 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.

### Next Day Deviation Reporting (NDD) assistance

What should be reported when a deviation occurs?

The following information should be reported in the initial deviation report.

1. Facility Name and FID
2. Permit number and condition deviated (e.g., 555555550-P01, I.B.3.c.(4))
3. Permit process number and unit description (e.g., boiler B10)
4. Start/stop time of deviation
5. Pollutants affected and estimate of excess emissions emitted
6. Description of the deviation
7. Cause(s) of deviation
8. Method used to identify deviation
9. Corrective action(s) taken (including when they were taken) to minimize emissions and the time necessary to correct the deviation
10. Status of operation
11. Measures taken to prevent re-occurrence
12. Updates to malfunction prevention and abatement plan (MPAP), if revised

The department created [Form 4530-182](#) , Air Permit Next Business Day Deviation, which may be used for submitting the above information to DNR .

Who needs to submit the NDD report?

The report may be submitted by any facility contact. However, the NDD shall contain a certification by the responsible official as to its truth, accuracy and completeness according to NR 439.03(10), Wis. Adm. Code. In addition, the report shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete. Responsible official is defined in s. NR 400.02(136), Wis. Adm. Code.

Where to submit the NDD report?

The facility may submit the NDD report to the DNR Air compliance engineer assigned to the facility through the facility's Web Access Management System (WAMS). When submitting electronically on the switchboard, the assigned Air compliance engineer is notified via email upon upload. Electronic submittal assistance can be found in this [quick instruction guide](#).

Alternatively, the facility may submit a hard copy of the NDD report to the assigned Air compliance engineer. To find the DNR Air compliance engineer assigned to a facility, log into the DNR Switchboard at <http://dnr.wi.gov/topic/Switchboard> and click *review facility contacts*.

#### How to sign the NDD report?

After the NDD has been submitted electronically, the responsible official shall either electronically sign the report on the switchboard or mail the wet ink signature to the assigned Air compliance engineer. Electronic signature assistance can be found in this [video tutorial](#) or [quick instruction guide](#).