

Air Reporting System (ARS) Rules

Emission Inventory Reporting

Wisconsin DNR Bureau of Air Management

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Air Management

Program 608-267-7546

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Authority/Certification

Authority

The Department is authorized to collect air emission inventory information under s. 285.17(1)(b), Stats. and Chapter NR 438, Wis. Adm. Code. The Department is authorized to collect air emission fees under s. 285.69(2), Stats. and s. NR 410.04, Wis. Adm. Code. Clicking on the following weblinks will allow you to review the statutes and Wisconsin Administrative Code Sections applicable to air emission reporting:

- [Chapter NR 410 -Air Permit, Emission, and Inspection Fees \[exit DNR\]](#)
- [Chapter NR 438-Air Contaminant Emission Inventory Reporting Requirements \[exit DNR\]](#)
- [Chapter 285, Wis. Stats. \[exit DNR\]](#)

Data Certification

At the initial submittal of air emission inventory information in March 2014 there is no certification requirement because the air emissions are preliminary. We will ask you to finalize your data at the end of May 2014 using the Air Reporting System (ARS). If you are satisfied with your emission calculations for your facility, we will ask you to generate a certification form from ARS, have a responsible corporate official sign the certification form and send the signed form back to DNR by July 1. You may:

- Scan and email the signed certification form to Ralph Patterson at Ralph.Patterson@wisconsin.gov . ***We have found that this is the easiest way to send the signed certification to DNR and ensure that it gets to the right people. Some of our customers have had problems sending mail to DNR.***
- Fax the signed certification to Ralph Patterson at 608-267-0560.
- Send the signed certification form to Ralph Patterson, WDNR-AM/7, 101 S. Webster Street, Madison, WI 53707

Data Usage

Air emissions inventory data is used by DNR in state implementation plan development, fulfilling open records requests, partially funding the air management program, and completing trends analyses of various pollutants over the entire state.

The Department views most information as an open record and available for public review unless it has granted confidential status. In order for DNR to grant confidential status the information must constitute a trade secret.

2014 Deadlines

[Section NR 438.03\(2\), Wis. Adm. Code](#), requires that a facility file its annual emission inventory with DNR by *March 1st of the following calendar year* but allows a company a two week extension until *March 15th* or submission of these reports

If you are interested in obtaining this time extension contact your regional air emission inventory contact. He or she can give you the time extension over the telephone, via email, etc. The deadlines for submittal of 2013 in 2014 are:

- Monday, March 3, 2014 – Submittal of data without time extension
- Monday, March 17, 2014 – Submittal of data with time extension
- Tuesday, July 1, 2014 – Environmental fee payment and certification

Confidentiality and the Air Emission Inventory

The Department views most information as an open record and available for public review unless it has granted confidential status. In order for DNR to grant confidential status the information must constitute a trade secret.

The DNR's confidentiality procedure consists of the facility's confidentiality request, the department's granting of interim confidentiality, the department's use of [interrogatories](#) for determining confidentiality, and the confidentiality determination. The confidentiality status continues once granted. DNR has confidentiality contacts for air issues in each DNR region.

Open Records and Confidentiality

Generally, unless confidential status is granted, any person has a right to inspect any record in the Department's files, according to the state open records law (ss. 19.31-19.39 Wis. Stats.). In order to obtain confidential status for certain information, the applicant must prove that the information is entitled to protection as a trade secret, as defined in s. 134.90(1)(c), Wis. Stats. It should be noted, however, that emission data and air pollution control permits cannot be given confidential status, pursuant to sec. 285.70(2), Wis. Stats. The burden of proof for showing that specific information constitutes a trade secret is upon the applicant (s. NR 2.19(2), Wis. Adm. Code). Click on the following links to review Wisconsin statutes and administrative code applicable to confidentiality:

- [Chapter NR 2 - Procedure and Practices - Wis. Administrative Code \[exit DNR\]](#)
- [Chapter 19 - Miscellaneous Trade Regulations - Wisconsin Statutes \[exit DNR\]](#)
- [Chapter 134 - Miscellaneous Trade Regulations - Wisconsin Statutes \[exit DNR\]](#)
- [Chapter 285 - Air Pollution, Wis. Statutes \[exit DNR\]](#)

Procedure for Submitting a Confidentiality Request

Requests for confidentiality should be sent to the regional or central office air management staff member in charge of compliance review for the facility. You can find information for this individual by completing this search:

1. Go to this webpage: http://dnr.wi.gov/cias/am/amexternal/AM_PermitTrackingSearch.aspx
2. Use the search feature to find the facility.
3. The results of the search will be shown on the bottom of the search page in a table. Choose the facility by clicking on the box located under the Sel in the table.
4. Using the slider bar on the right side of the page, slide the webpage to the middle. The information regarding the DNR air contacts should be listed.

If no such contact exists, requests should be sent to the Bureau of Air Management for proper distribution. Confidentiality requests must be made in affidavit form pursuant to s. NR 2.19(3), Wis. Adm. Code. The sworn statement on an affidavit is required to ensure the truthfulness of the information provided. The signed and notarized affidavit must include:

1. The name and address of the applicant.
2. The position of the individual filing the application.
3. The specific type of information for which confidential status is sought. For this requirement, an applicant should list and briefly describe the information that it wants to keep confidential. For example: "flow rates of process P2", "chemical composition of the coatings used in process P3", "monthly hours of operation for process P4". The descriptions should be in sufficient detail so that the Department can ascertain exactly what information the applicant desires to be confidential.
4. The facts and supporting legal authority believed to constitute a basis for obtaining confidential treatment of the information. For this requirement, the applicant should explain how or why the information constitutes a "trade secret".

In addition to the affidavit, two sets of documents relating to the confidential information should be included with the submittal: one set for the public file, in which the specific information for which confidential status is requested has been blocked out; and the second set containing the complete information for the Department's confidential file. This information will assist the Department in properly identifying the information for which confidential treatment has been requested. Moreover, dual documents are specifically required if the request for confidentiality is in conjunction with an application for an operation permit under s. NR 407.05(6), Wis. Adm. Code.

If the request is not in the proper format or is incomplete, the Department will contact the applicant and ask that the request be re-submitted or that the applicant provide the missing materials which would make the confidentiality request complete. In the meantime, the information for which confidentiality has been requested will be given interim confidential status.

Trade Secret Definition

Once it receives a complete confidentiality request, the Department will begin processing the request. In order to grant confidential status, the information must constitute a "trade secret". Two requirements must be met to satisfy a finding that the information is a trade secret under s. 134.90(1)(c), Wis. Stats.

1. A company must derive independent economic value, actual or potential, from the fact that the information is not generally known or readily ascertainable by proper means. To satisfy this requirement, the affidavit should contain sufficient details to support the contention: for example, why or how the information gives the company a competitive advantage over its competitors, how long it took the company to develop the information, the actual or potential economic value of the information to the company, whether the company is the sole possessor of the information, whether the general public has knowledge of the information, and any other potentially relevant factors.
2. A company must make reasonable efforts to maintain the secrecy of the information for which it is requesting confidential status. To assist the Department in ascertaining whether this requirement is satisfied, details should be provided in the affidavit relating to the extent of access to the information. Important information to supply are the number and type of employees given access to the information, whether persons outside the company have knowledge of the information, awareness of employees and others as to the confidential nature of the information, previous disclosure of the information to another governmental agency and requests to or approval by them of confidential treatment, any other persons or groups the company has disclosed the information to and why, past marking of the information as "confidential," other general attempts to maintain secrecy and anything else that is potentially relevant.

Use of Interrogatories

If the Department has a complete confidentiality request but additional information is required for the Department to make its determination, it may send interrogatories (formal questions or inquiries) to the applicant. Section NR 2.19(4), Wis. Adm. Code, specifies that such interrogatories will be sent to the requester within 21 days of receipt of a completed application, and that answers to these interrogatories

must be received by the Department within 30 days. If an extension to answer has been granted by the Department, then an applicant may take longer to answer the interrogatories. If there is no extension and the interrogatories are not answered within 30 days, confidential status will be denied. The Department may also deny confidential status for failure to provide the information requested in the interrogatories.

Interim Confidentiality

Air management staff is able to grant "interim confidentiality" to some information supplied by a company on a case-by-case basis. Implied with granting of interim confidentiality, is that the company supply information requesting full confidential status within a reasonable amount of time, usually within 30 days after the company receives Interim Confidentiality.

Confidential Determination

Following the review of a complete confidentiality request, the Department will issue a written preliminary determination, either granting or denying confidentiality. Pursuant to s. NR 2.19, Wis. Adm. Code, the Department is required to issue the preliminary decision 30 days after the receipt of a completed application (or within 30 days of receipt of responses to interrogatories). If the Department's preliminary decision is to grant confidentiality (in whole or in part), a copy of this decision will be forwarded to the applicant. The Department will also publish the preliminary decision to grant confidential status as a class 1 notice in the official state newspaper. An interested party (including the applicant) may request an adjudicatory hearing within 10 days of publication, challenging the preliminary decision to grant confidential status. If a hearing is not requested, the preliminary decision will become the final decision of the Department. The Department will notify the applicant of the final decision.

If the Department's decision is to deny confidentiality, the preliminary decision will be provided to the applicant, but it will not be published. Under this scenario, an applicant may request an adjudicatory hearing within 15 days of the date of mailing of the decision to deny confidentiality.

Hearings regarding the granting or the denial of confidentiality will be treated as contested case hearings. In either situation, the burden of establishing confidential status is on the applicant. If the final decision is to deny confidentiality, the information previously given interim confidential status will be made available to the public no earlier than 40 days after issuance of the final decision under s. NR 2.19(8), Wis. Adm. Code.

Continuing Confidentiality Requests

If a source has already received confidential status for a certain type of information, it can retain that confidential status when later submitting the same kind of information. To maintain confidentiality, the applicant should refer the Department to the original confidentiality determination and provide two copies of the new document, one complete and one with the confidential information blocked out. The Department will automatically keep the information confidential. However, if the type of information in the new document for which confidentiality is requested deviates in any way from the original, a new request and affidavit for confidentiality must be submitted.

Questions or Concerns

Should there be questions or concerns regarding confidentiality, the applicant may contact the air management staff person with responsibility for the source or the air program attorney, Mike Scott at (608) 266-7527, who is in charge of the air program's confidentiality program.

Applicable state laws and administrative rules

[Chapter NR 410 - Air Permit, Emission, and Inspection Fees \[exit DNR\]](#)

[Chapter NR 438 - Air Contaminant Emission Inventory Reporting Requirements \[exit DNR\]](#)

[Chapter 285, Wis. Stats. \[exit DNR\]](#) – authorization to collect emission inventory information.

Dispute Procedure

Air Emission Calculation Dispute

If you disagree with an emission calculation and you cannot work the problem out with your regional air contact, s. NR 438.03(6) contains a dispute procedure that both you and the DNR can follow to resolve the disagreement.

6) DISPUTED EMISSIONS. Any facility that disputes the emissions summary supplied by the department under sub. (5) (c) may request, in writing, that the department review its emissions summary. The department shall review and supply to the facility, within 14 calendar days of receipt of the facility's written request, information used to prepare the emission inventory and summary for that facility. If the facility continues to dispute the emissions summary, it shall supply to the department, within 14 calendar days of receipt of the department's information, the reasons it disputes the summary. The facility shall be notified within 7 calendar days of receipt of this information of the department's decision on whether to adjust the emission inventory and summary. If the facility continues to dispute the summary, it may appeal the department's final decision pursuant to state law. The facility shall certify any emissions not in dispute by June 30 of each year.

Air Emission Fee Dispute

If you disagree with an emission fee calculated from information determined by the calculated air emissions at your facility and you cannot work the problem out with your regional air contact, s. NR 410.04(6)(a) and (b) contains a dispute procedure that both you and the DNR can follow to resolve the disagreement.

(a) The owner or operator of a facility who disputes its annual emissions fee may request, in writing, that the department review the fee. Such a request shall be filed within 30 days of receipt of the bill. The department shall review and supply to the facility, within 14 calendar days of receipt of the written request, all information used to calculate the annual emissions fee. If the facility continues to dispute the fee, it shall supply to the department, within 14 calendar days after receipt of this information, the reasons it disputes the fee. The facility shall be notified by the department, within 7 calendar days of receipt of this information, whether the fee will be adjusted. If the facility continues to dispute the fee, it may appeal the department's final decision pursuant to s. 285.81, Stats.

(b) The facility shall pay the amount of fee not in dispute within 30 days of receipt of the bill.

Reporting Exemption

If you believe none of the air pollutants emitted by your facility in 2013 exceeded the levels specified in Table 1 of [NR 438 .03, Wis. Adm. Code](#) [exit DNR], you are not required to report air emissions for 2013. If you believe this is the case call your regional air contact.

Reporting Requirements

[Section NR 438.03, Wis. Admin. Code \[exit DNR\]](#), requires any person owning or operating a facility which emits an air contaminant in quantities above the reporting levels listed in Table 1 of NR 438.03, Wis. Adm. Code, except indirect sources of air pollution, to annually submit an air emissions inventory report.

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