



## WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

### DOCUMENT ID

AM-19-0006

### DOCUMENT TITLE

Variance Request Procedures for Industrial Sources Subject to Section NR 415.075(4), Wisconsin Administrative Code

### PROGRAM/BUREAU

Air Management

### STATUTORY AUTHORITY OR LEGAL CITATION

Sections 285.11, 285.13, 285.17, Wisconsin Statutes; Section NR 415.075(4), Wis. Adm. Code

### DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

August 19, 2019

### DATE FINALIZED

October 14, 2019

No comments were received during the comment period 09AUG2019 to 09SEP2019

### DNR CERTIFICATION

*I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.*

October 9, 2019

Signature

Date

## DNR GUIDANCE DISCLAIMER

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

**CORRESPONDENCE/MEMORANDUM**

DATE: February 22, 2016

TO: Air Management Permit Team  
Air Management Compliance Team  
Air Management Monitoring Section  
Kendra Fisher – LS/5  
Mike Szabo – LS/5

FROM: Andrew Stewart – AM/7

SUBJECT: Variance Request Procedures for Industrial Sources Subject to Section NR 415.075(4), Wisconsin Administrative Code<sup>1</sup>

**Background**

Industrial sources subject to NR 415.075, ledge rock quarries and industrial sand mines, are required to operate an air monitoring system, unless the facility requests a variance and is granted said variance by WDNR. Each request for a variance is handled on a case-by-case basis and is evaluated based on established criteria.

NR 415.075(4), Wis. Adm. Code, describes ambient air monitoring procedures and includes language allowing for facilities to apply for a variance from monitoring requirements. There is no obligation in the rule to provide a public comment period for variances reviewed under the rule. In the case of a permit required monitor, there is no legal obligation by WDNR to notify affected parties or to provide a public comment period when granting a variance because the public has an opportunity to comment on the facility's draft permit, which includes the relevant provisions of NR 415.075 (4), Wis. Adm. Code in it when the permit is proposed.

To ensure transparency by WDNR and the Air Management Program when issuing a variance to a facility, WDNR will include a copy of the variance approval letter in the air permit system, which is available to the public.

**New Sources – Variance Review Criteria**

In order to be granted a variance from particulate matter monitoring under NR 415.075 (4)(b) the applicant must:

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- Demonstrate that the general public will not be exposed to significant levels of particulate matter from the source. The applicant may include the following elements, which will be considered collectively by the Department, in their demonstration:
  - Proximity of nearest residents
  - Proximity to sensitive receptors (schools, hospitals, etc.)
  - Topography and ground cover (surrounding land topography, vegetative cover, other buffer to the wind)
  - Permit modeling results (predictive permit modeling for the applicable particulate matter standard)
  - Particulate data collection at other facilities that has demonstrated emissions below the applicable particulate ambient standard.
  
- Demonstrate that the source's particulate matter emissions units and processes will be controlled to a level which meets all applicable statutory, regulatory code and permit requirements. The applicant may include the following elements in their demonstration:
  - Stack testing results in order to demonstrate control of emissions units in accordance with the source's permit.
  - Records to demonstrate the facility meets requirements of their fugitive dust plan, including implementation of Best Management Practices (BMPs).

**Existing Sources with Approved Variance Requesting Revision to Permit – Variance Review Criteria**

If an existing source subject to NR 415.075, with a granted variance from monitoring, applies for a revision to a permit or a new construction permit, the source's variance should be reexamined utilizing the criteria evaluated in a new source variance request. If it is determined that one or more of the criteria have changed enough that the variance should no longer apply to the source, it will be revoked and a schedule for submittal of a monitoring plan will be communicated to the source. If it is determined that the criteria are not impacted significantly, the source will receive a letter indicating that their original variance is still applicable.

**Existing Sources Requesting Shutdown of Monitor – Variance Review Criteria**

In the case of an existing monitor, historical site-specific monitoring data is evaluated to determine the impact to air quality and to ensure that the criteria in NR 415.075(4)(b) are met. Specifically:

- The general public will not be exposed to significant levels of particulate matter from the source, and
- the source's emissions units and processes are controlled to a level which meets all applicable requirements.

For a facility that has been monitoring and would like to request a variance, the following elements may be considered for presumptive approval:

- Facility compliance history, including citizen and municipality complaints and WDNR compliance surveillance findings, indicate a facility operating without significant non-compliance issues.
- Ambient air monitoring system monitored particulate for two years (twenty four months) with greater than 75% valid data capture each quarter i.e., 3 of 4 quarters each year. This requirement is included because it is the standard air monitoring agencies are held to, as required under federal rule (40 CFR Part 58).
- Twenty four months of quality assured monitoring data that shows no cause of source-driven exceedances of the applicable National Ambient Air Quality Standard (NAAQS). This presumes at least 24 months of data collection that meet the data capture criteria specified above, as well as the successful completion of at least two annual audits.
- The source commits to follow appropriate ambient monitor shut-down processes:
  - Determination of final sampling event.
  - Final shutdown verification of the monitor.
  - Submission of final monitoring report. The variance may be revoked if the final report is not received by the department within 90 days of the variance approval letter.

### **Variance Tracking**

- Variance requests are to be sent to the facility's assigned WDNR compliance inspector via letter which can be mailed or emailed.
- Variance requests are reviewed by compliance inspector to ensure the information to make a decision is complete.
- Recommendations for approval, conditional approval, or disapproval are made to the regional supervisor and deputy bureau director within 30 days of receipt of request.
- Compliance inspector prepares determination letter for signature within 60 days of receipt of request. Determinations are signed by the deputy bureau director or designee.
- Compliance inspector enters key events into WARP, the WDNR's permit and compliance database system, on a timely basis, not to exceed 5 days from event. Key events include
  - Key event number 1048            Ambient Monitoring Variance Request Received
  - Key event number 3135            Ambient Monitoring Variance Approved
  - Key event number 3136            Ambient Monitoring Variance Denied
- Compliance inspector adds variance request document and approval/denial letter into WARP.
- Approval/denial letter is made available for public viewing through the permit search website.
- Decisions will be tracked and may be reviewed on a biennial basis.

### **Subsequent Evaluation of Approved Variances**

WDNR retains authority to rescind variance approval at any time as allowed by regulation.

WDNR will continue to rely on compliance evaluations of any source with a variance to make further determinations on variance status. Compliance evaluations include a full review of a source's obligation to meet and demonstrate compliance with any applicable air pollution regulation. The review may include stack testing results, recordkeeping, fugitive dust prevention measures, and complaint responses.