

The attached guidance<sup>1</sup> “Variance Request Procedures under NR 415.075(4), Wis. Adm. Code” was developed for use by Wisconsin Department of Natural Resources (WDNR) staff when making determinations on monitoring variance requests submitted under NR 415.075(4), Wis. Adm. Code, to ensure consistency during review and determinations. The guidance can also be used by industry and the public to understand the procedures used by WDNR staff.

Ambient air monitoring requirements apply to facilities subject to NR 415.075, Wis. Adm. Code. This particular portion of the code describes particulate matter emission limitations for ledge rock quarries and industrial sand mines. The regulation under NR 415.075 (4), Wis. Adm. Code, requires a source to operate an ambient air monitoring system. There is language in NR 415.075 (4)(b), Wis. Adm. Code, that allows the owner or operator of a source to apply for a variance from the monitoring requirements. The code instructs that the department may grant the variance from monitoring requirements “if the applicant demonstrates that the general public will not be exposed to significant levels of particulate matter from the source, and that the source’s emission units and processes are controlled to a level which meets all applicable requirements.”

The code allows WDNR the authority to review variances on a biennial basis, but does not specify time periods for review of denied variances. Nor does the code specify time frames for review of monitoring systems at facilities to determine whether they can be discontinued.

Where a facility requests a variance from monitoring associated with a construction permit, WDNR will evaluate the information provided by the company with respect to the criteria provided in this guidance document. The applicant must demonstrate that the general public will not be exposed to significant levels of particulate matter from the source and that the source’s emission units and processes are controlled to a level which meets all applicable requirements.

In the case of a facility with an existing monitor, WDNR will evaluate the data to understand the impact of the facility on air quality. If the applicant demonstrates that the general public will not be exposed to significant levels of particulate matter from the source and that the source's emissions units and processes are controlled to a level which meets all applicable requirements, a variance will be granted. Presumptive variance approval for sources with an existing ambient air monitoring system is outlined within this guidance document.

The Department is soliciting comments on the draft guidance for 21 days. Once the 21 day notice period is complete, all comments will be considered, revisions will be made to the guidance as appropriate, and the guidance will be finalized.

Comments related to this draft guidance document should be sent to Gail Good, [gail.good@wisconsin.gov](mailto:gail.good@wisconsin.gov); (608) 266-1058.

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<sup>1</sup> 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. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. 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.

DATE: **TBD**

TO: Air Management Permit Team  
Air Management Compliance Team  
Air Management Monitoring Section  
Kendra Fisher, LS/5  
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FROM: Andrew Stewart, AM/7

SUBJECT: Variance Request Procedures for Industrial Sources Subject to NR 415.075 (4), Wis. Adm. Code.

### **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:

- 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.
- 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.