

REPORT TO LEGISLATURE

NR 446, Wis. Adm. Code
Control of mercury emissions to address the atmospheric deposition of mercury

Board Order No. AM-27-01
Clearinghouse Rule No. 01-081

Statement of Need

These rules are designed to reduce the atmospheric deposition of mercury by restricting emissions from major electric utilities. Mercury moves through the environment and can contaminate the food chain, posing a serious threat to ecosystem health. Mercury from natural and human sources is released to the atmosphere, where it is transported and may be deposited in terrestrial and aquatic ecosystems. Bacterial action in lakes and waterways converts mercury to a more toxic form, methylmercury, which bioaccumulates in fish. Bioaccumulation is the build-up of a substance in an organism from the surrounding air or water, or through the consumption of contaminated food.

Elevated methylmercury levels may lead to a decline in wildlife populations and may affect human health from the consumption of sufficient quantities of contaminated fish. Coal-fired boilers in the state do not have limitations on their mercury emissions at this time even though they are our largest source of mercury emissions. This initiative is being taken to reduce mercury emissions from the existing coal-fired boilers operated by the four major electric utilities in Wisconsin.

The proposed order will establish requirements that would reduce mercury emissions from major electric utilities, set procedures for calculating annual mercury emissions from other large stationary sources, and require new or modified stationary sources of mercury emissions to install best available control technology for mercury emissions. The order includes provisions for major electric utilities and large stationary sources to calculate their annual mercury emissions based on procedures in the rule. Major utilities will be subject to an emission cap on their mercury emissions as of January 1, 2008; and major utilities will be required to reduce their mercury emissions from their baseline amount by 40% beginning January 1, 2010 and by 80% beginning January 1, 2015. The baseline mercury level is determined assuming uncontrolled mercury emissions from calendar years 2002, 2003 and 2004.

The rule allows major utilities to comply with the emission limitations on a system-wide basis or through agreements with other utilities. In addition, the Department may approve a multi-pollutant reduction plan for a major utility as an alternative to compliance with the 40% emission reduction requirement.

The Department staff is required to submit periodic reports to the Natural Resources Board on the implementation of the rule in consideration of the scientific and technological developments related to control of mercury emissions. In addition, the Department staff must report to the Natural Resources Board within 6 months of the adoption of federal legislation or rules regulating mercury emissions. The reports must include recommendations for changes to the state's mercury control rules based on these developments and federal changes.

Modifications as a Result of Public Hearing

Following is an overview of the changes that have been made:

Major utility mercury reductions – The proposed rules have been changed to require major electric utilities in the state to reduce their baseline mercury emissions in two steps. An initial reduction of 40% is required by January 1, 2010. A final reduction of 80% from baseline emissions begins January 2, 2015.

Multi-pollutant alternative – A multi-pollutant reduction option is also included in the proposal. Under this option, owners and operators of major utilities may obtain relief from the initial reduction requirement of 40% upon Department approval of a multi-pollutant reduction proposal.

Base line emission determination – The baseline determination approach has changed substantially. In the rules proposed for hearing, the foundation for setting the baseline was a measurement of emissions leaving the stack after existing air pollution control equipment had achieved some reductions in mercury emissions. In place of this approach, the rules have been revised to establish a baseline that reflects the mercury emissions released when coal is burned without considering mercury reductions achieved by any existing air pollution control equipment.

This change addresses a significant objection made by the major utilities that the proposed rule did not recognize or account for the actions they have already taken to reduce their mercury emissions. Based on the air pollution control equipment the major utilities are operating today, 15% to 20% of the mercury from coal combustion is being captured. Thus, to meet the initial mercury reduction of 40%, the four major utilities, on average, need to achieve an additional 20 to 25% mercury reduction by January 1, 2010. To meet the final reduction requirement of 80% by January 1, 2015, baseline emissions need to be reduced an additional 60 to 65%.

Compliance alternatives for major utilities – Compliance with requirements in the proposed rule can be achieved through the application of surrogate control technology. Under the changes that have been made, major utilities will still be allowed to average their mercury emissions across their entire system to demonstrate compliance. Also, major utilities could enter into agreements with each other to use excess reductions to meet the proposed mercury reduction requirements. Therefore, the proposed rules will still have trading provisions to provide compliance flexibility and to help lower compliance costs.

Certified emission reductions – The trading provisions in the proposed rules have been substantially changed based on further analysis of the viability of these provisions. The opportunity to create certified emission reduction credits through a pollution reduction project or mercury-containing products reduction projects have been removed. In the initial proposal, certified emission reductions could be used by a major utility to meet a portion of their mercury reduction requirements or these credits could be used to provide emission offsets in the permitting of a new source.

Electric reliability waiver – The variance provisions in the proposed rules have been revised to distinguish between an inability to meet reduction requirements based on short-term electric reliability problems from those significant barriers that would prevent a major utility from implementing a plan to meet the phased reduction requirements in the rules. To address short-term reliability concerns a specific section has been added that provides opportunity for a major utility to request a waiver from meeting an annual mercury reduction requirement due to an operational event beyond the control of a major utility. This waiver is proposed to address the concern that the proposed variance provisions were not a good mechanism for addressing short-term electric reliability problems. The Public Service Commission would be consulted on each waiver request.

Industry role – In the rules taken to public hearing, major stationary sources (those with annual mercury emissions greater than 10 pounds) were required to establish an emission baseline, have an

annual emissions cap, and could opt to voluntarily reduce mercury emissions to create reduction credits to use or trade to others to meet requirements. These provisions have been eliminated in the revised rules. However, the rules still set uniform procedures for determining annual emissions from major stationary sources. A positive development from the dialogue on the industry role in mercury emission reduction was an interest in an energy efficiency improvement program for industrial and commercial combustion sources instead of an emission cap. Preliminary discussions have occurred with industry representatives on the elements of a voluntary program to reduce mercury emissions that would include an energy efficiency component.

Managing growth in mercury emissions – The requirement in the rules that went to public hearing that new and modified sources obtain mercury emission offsets has been replaced by a requirement for new or modified sources to have their mercury emissions controlled by best available control technology. Projects that could emit 10 or more pounds of mercury would be affected. New projects subject to a federal mercury requirement under section 112 of the Clean Air Act would be exempt from this requirement.

Periodic rule evaluations – A provision has been added that will require staff to provide the Natural Resources Board a reconciliation report within 6 months of the promulgation of a federal MACT (maximum achievable control technology) regulation or upon enactment of a federal law that would require mercury reductions from electric utility boilers in the state. The requirement for a reconciliation report is in addition to periodic reports to the Board that would comprehensively evaluate new developments in science and technology related to mercury reduction and control. The frequency of periodic evaluations to the Board has been reduced in the revised rules. A report is now required by January 1, 2009, and an updated report is due by January 1, 2013. An evaluation report is scheduled to occur in advance of each mercury reduction requirement to provide an update on mercury science and technology as well as to recommend any needed revisions to the rules.

Appearances at the Public Hearings and Their Position

See attached.

Response to Legislative Council Rules Clearinghouse Report

The Department modified the draft rules to incorporate the suggested changes and to address the comments provided in the Clearinghouse report, with one exception. The Rules Clearinghouse had recommended that the department modify the definition of "allowable emissions" in s. NR 446.02(1) to delete a phrase that was considered to include substantive material. However, the definition of "allowable emissions" is consistent with how that term is defined in s. 285.01(7), Stats., including the phrase that was recommended for deletion. The department will retain the definition as proposed, consistent with its statutory counterpart.

Final Regulatory Flexibility Analysis

Small business will not be directly affected by the proposed rules. The requirements in the proposed rule are anticipated to only apply to large businesses (i.e., greater than 25 employees or gross annual sales greater than \$2,500,000).

AM-27-01

September 26, 2001 – Eau Claire

In support:

James Eggert, Co-Chair, Town of Colfax Planning Committee, E9001 Hwy. N, Colfax, WI 54730
Sol Simon, Mississippi River Revival Environmental Organization, 3002 Waumandee Creek Road,
Fountain City, WI 54629
Sarah Welch, Izaak Walton League of America, Midwest Office, 1619 Dayton Avenue, Suite 202,
St. Paul, MN 55104
Will Fantle, Northern Thunder, 901 Platt, Eau Claire, WI 54703
Jay Tobin, 715 Marshall, Eau Claire, WI 54703
Melisa Bailey, 403 E. Lake Blvd., Winona, MN 55987

In opposition:

Bill Skewes, Wis. Utilities Association, 6110 Old Middleton Road, Madison, WI 53705
David Hoopman, Director of Deregulation Issues, Wis. Federation of Cooperatives, 131 W. Wilson,
Suite 400, Madison, WI 53703

As interest may appear:

Carl H. Gaulke, River Falls Municipal Utility, 221 W. Hamilton Drive, River Falls, WI 54022
James Wolfe, River Falls Municipal Utilities, 521 W. Main Street, River Falls, WI 54022
Paul Owecke, W25376 Sullivan Road, Trempealeau, WI 54661

September 27, 2001 – Rhinelander

In support:

Peter J. Davison, 4213 Lake Lucerne Drive, Crandon, WI 54520
John Schwarzmann, 8149 Denoyer Drive, Minocqua, WI 54548
Mark Yeager, 7760 County Road D, Eagle River, WI
Jack Hafner, Director, Wisconsin Association of Lakes, P.O. Box 617, Woodruff, WI 54568
Marc Looze, Wisconsin's Environmental Decade Institute, 122 State Street, Suite 200,
Madison, WI 53703
Llona Ney Clausen, 3204 Ike Walton Trail, Lac du Flambeau, WI 54538
Jim Wise, ECCOLA & Wisconsin Stewardship Network, W4385 Chase Hill Road, Irma, WI 54442
Cory Counard, Ecologist/ Environmental Educator, Sigurd Olson Environmental Institute,
Northland College, Ashland, WI 54806
Charles Schwartz, W11946 Maple Ridge Road, Gresham, WI 54128
Norm Poulton, Env. Concerned Citizens of the Lakeland Area (ECCOLA), 3287 N. County Road L,
Tomahawk, WI 54487

In opposition:

Cara Kurtenbach, Wausau-Mosinee Paper Corp., 1244 Kronenwetter Drive, Mosinee, WI 54455
Tim Hasbargen, Director of Engineering, Wausau-Mosinee Paper Company – Rhinelander Mill,
515 West Davenport Street, Rhinelander, WI 54501
Bill Amsrud, Wausau-Mosinee Paper Corp. – Mosinee Mill, 3915 Pine Cone Lane, Wausau, WI
54403

Jim Pauls, 118 Rainbow Lane, Wausau, WI 54401
Kevin Faber, 1100 Grand Avenue, Apt. 310A, Schofield, WI 54476
Jim Combs, 4470 E. Balsam Lane, Rhinelander, WI
Gary Renel, Wausau-Mosinee Paper – Brokaw Mill, 700 Squirrel Lane, Marathon, WI 54448
Edward N. Newman, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, WI 54307
Connie Lawniczak, 6146 Big Lake Road, Three Lakes, WI
Bill Skewes, Wisconsin Utilities Assn., 6110 Old Middleton Road, Madison, WI 53705
David Hoopman, Director of Deregulation Issues, Wis. Federation of Cooperatives, 131 W. Wilson,
Suite 400, Madison, WI 53703

As interest may appear:

Bonnie Bobnoch, Upper Michigan Environmental Defense, 120 Sec. 16 Road, Iron River, MI 49935

October 1, 2001 – Milwaukee

In support:

Russ Ruland, Musky Club of Wisconsin, Musky Clubs Alliance and Muskes, Inc.,
10615 W. Edgerton Avenue, Hales Corners, WI 53130
Jim Weishan, President, Wisconsin Wildlife Federation, 1753 Penal Avenue, Wabeno, WI 54566
Andy Buchshaven, National Wildlife Federation, 213 W. Liberty, Suite 200, Ann Arbor, WI 48104
Gustav Hauser, 143 113th Street, Pleasant Prairie, WI
Steven Skavroneck, 346 E. Wilson, Milwaukee, WI 53207
Jeanne B. Hewitt, Associate Professor, UWM School of Nursing, P.O. Box 413, Milwaukee, WI
Don L. Druckrey, 8395 N. Grandview Drive, Brown Deer, WI 53223
Ted Lind, President, Wisconsin Council of Sport Fishing Organizations, 4434 W. 52nd St.,
Milwaukee, WI 53218
John Iaffaldawo, S67 W12852 Empress Court, Muskego, WI 53150
Chris Thompson, Environmental Committee Chairman, Physicians for Social Responsibility, Medical
College of Wisconsin, 1853 N. 71st Street, Wauwatosa, WI 53213
Bill Moore, 4260 S. Victoria Circle, New Berlin, WI 53151

In opposition:

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Jeff Schoepke, WMC, 501 E. Washington Avenue, Madison, WI 53703
Louise Hermsen, P&H Mining Equipment, 2115 Stone Drive, Hartland, WI 53029
Patrick Goss, Metropolitan Milwaukee Association of Commerce, 732 N. Milwaukee Street,
Milwaukee, WI 53202

As interest may appear:

Greg Bird, 2230 South Woodward Street, Milwaukee, WI
Richard H. Osa, 11425 West Lake Park Drive, Milwaukee, WI 53224
Mary Ann Meyer, WISPIRG Campus Organizer, P.O. Box 34, Union Box 413, Milwaukee, WI 53211
Rachel Boaz, 3400 North Maryland Avenue, Box 277, Milwaukee, WI 53211
Mary Ryan, W58 N647 Columbia Court, Cedarburg, WI 53012
Kristi Hauser, 1204 E. Crawford Avenue, Milwaukee, WI 53207
Abby E. Rickmeier, 3042 N. Stowell Avenue, Milwaukee, WI 53211
David F. Seitz, RMT, Inc., 150 N. Patrick Blvd., Suite 180, Brookfield, WI 53045

Spencer Rogers, Physicians for Social Responsibility, 4903 N. 85th Street, Milwaukee, WI 53225
Dan Wolbrink, Physicians for Social Responsibility, 1452 S. 86th, West Allis, WI 53214
Bob Heitzer, 8022 W. Jackson Park Blvd., Milwaukee, WI 53213

October 3, 2001 – Appleton

In support:

Emily Kordus, 1188 Debra Court, Menasha, WI 54952
William G. Acker, President, Acker & Associates, P.O. Box 8695, Green Bay, WI 54308
Ron Vander Loop, Brown County Conservation Club, 2121 Orrie Lane, Green Bay, WI 54304
William J. Kordus, Twin City Rod and Gun Club, 1188 Debra Court, Menasha, WI 54952
Pete Petrouske, 1498 Ponderosa Avenue, Green Bay, WI 54313

In opposition:

Kathleen Standen, Wisconsin Energy, 22 E. Mifflin, Suite 850, Madison, WI 53703
Jeff Schoepke, 501 E. Washington Avenue, Madison, WI 53703
Bill Skewes, Wis. Utilities Association, 6110 Old Middleton Road, Madison, WI 53705
Scott Meske, Municipal Electric Utilities of Wisconsin, 725 Lois Drive, Sun Prairie, WI 53590
Ed Newman, WPSC, P.O. Box 19002, Green Bay, WI 54307
Barbara Nick, Manager, Corporate Services, WPS Resources, 3125 Crusade Lane, Green Bay, WI
Randy Sabel, W6604 Emerald Lane, Greenville, WI 54942

As interest may appear:

Donald Pashawer, Don's Weld & Auto Salvage, W1094 Cty. Tr. KK, Kaukauna, WI 54130
Bill West, Blue Iris Environmental, Inc., N5811 Twelve Corners Road, Black Creek, WI 54106
Ed Hiltunen, Minergy Neenah LLC, 231 Millview Drive, Neenah, WI 54956
Rob Bermke, Georgia Pacific – Green Bay West, 1919 South Broadway, Green Bay, WI 54304
Dan R. Mitchell, [no street address given] Appleton, WI 54915
Ed Lowe, Appleton Post-Crescent Reporter [no address given]

October 3, 2001 – Madison

In support:

Tyler A. Hulsey, 110 Merrill Crest, Madison, WI 53705
Brett Hulsey, Dane County Supervisor, 110 Merrill Crest, Madison, WI 53705
Richard Bagovich, Wisconsin's Environmental Decade and Wisconsin Interfaith Climate Change
Campaign, 122 State Street, #200, Madison, WI 53703
Todd Ambs, River Alliance of Wisconsin, 306 E. Wilson, Suite 2W, Madison, WI 53703
David Bender, UW Law School Environmental Law Society, 185 Broadway, Prairie du Sac, WI
David Zaber, PhD, 6103 Gateway Green, Monona, WI 53716
Ann Behrmann, Madison Physicians for Social Responsibility, 2209 Chamberlain Avenue, Madison,
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Keith Reopelle, Wis. Environmental Decade, 122 State Street, Madison, WI
Zubin Gagrath, 414 W. Gorham, #2, Madison, WI 53703
Sylvester Rodriguez, Jr., [no street address given] Milwaukee, WI 53224
Roger Anderson, 2880 S. Wentworth Avenue, Milwaukee, WI 53207

Kirk McVoy, 1406 W. Skyline Drive, Madison, WI 53705
Claire Schmidt, 2225 E. Lake Lawn Place, Madison, WI 53703
Sam Gieryn, 222 Crocker Street, Mazomanie, WI 53560
Kristen Larson, 109 N. Spooner Street, Madison, WI 53705
Dan Musser, 847A Jenifer Street, Madison, WI 53703
Eric Mueller, 408½ S. Mills Street, Madison, WI 53703
Gary A. Engberg, Environmental Decade, 10106 Hwy. Y, Mazomanie, WI
Kaelyn Stiles, 3526 Wyota Avenue, Madison, WI 53711
Maria Powell, 2329 Willard Avenue, Madison, WI 53704
Peter Prohaska, UW Law School, Environmental Law Society, 975 Bascom Hall, Madison, WI
53706

In opposition:

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Jeff Schoepke, WMC, 501 E. Washington Avenue, Madison, WI 53703
Bob Seitz, 566 S. Main Street, Monticello, WI 53570
Edward Marion, Public Service Commission, 610 N. Whitney Way, Madison, WI
Kerry Schumann, WI Public Interest Research Group, 1121 University Avenue, Madison, WI 53715
Robert Fassbender, Center of Energy & Economic Development, 10 E. Doty Street, Madison, WI
Joe Shefchek, Chief Environmental Officer, Alliant Energy, P.O. Box 192, Madison, WI 53701
Michele Pluton, Alliant Energy, 222 East Washington Avenue, Madison, WI

As interest may appear:

Richare Jamaron, 1345 Morrison Street, #1, Madison, WI 53703
Kathryn McKenzie, 202 North 58th Street, Superior, WI 54880
Chuck Rolfsmeyer, Wisconsin State Bass Federation, 6503 Lari Lane, McFarland, WI 53558
Todd Hanson, 3130 James Street, Madison, WI 53714
Jessica L. Garrels, 844 E. Gorham, #2, Madison, WI 53703
Eric Stanton, 430 W. Center Street, Whitewater, WI 53190
Ogden G. Kent, 1325 Bowen Court, Madison, WI 53711
Brian Gumm, Policy Assistant, Center on Wisconsin Strategy, 1180 Observatory Drive, 7122 Social
Sciences, Madison, WI 53706
Ben Lowenberg, 8797 Airport Road, Middleton, WI 53562
James D. Loock, Public Service Commission, 610 N. Whitney Way, Madison, WI 53707
Sarah Wyatt, AP [no address given]
Jeffrey Kowalchuk, 908 E. Johnson St., Madison, WI 53703
Nathan Tasso, 219 N. Brooks, #5, Madison, WI 53715
Jocelyn Rafferty, 1269 Wolfe Ogg E, 716 W. Dayton Street, Madison, WI 53706
Linda Bochert, Michael Best & Friedrich, P.O. Box 1806, Madison, WI 53701
Mark Tusler, BT², 2830 Dairy Drive, Madison, WI 53718

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MOTION ON CLEARINGHOUSE RULE 01-081

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Natural Resources to consider modifications to Clearinghouse Rule 01-081, relating to the control of mercury emissions.

If the Department of Natural Resources does not agree to this request to consider modifications to the rule, in a letter received by the Chairperson of the Senate Committee on Environment and Natural Resources by 5:00 p.m. on August 27, 2003, then the Senate Committee on Environment and Natural Resources objects to Clearinghouse Rule 01-081, pursuant to s. 227.19 (4)(d)6, Stats., on the grounds that the proposed rule is arbitrary and capricious, and imposes an undue hardship.

VOTE ON MOTION:

YES

NO

Signed:

Michael J. Kedzie

Date:

8/26/03

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

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VOTE ON MOTION:

YES _____

NO _____

Signed: Joe A. Pussen

Date: Aug 21, 2003

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MOTION ON CLEARINGHOUSE RULE 01-081

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VOTE ON MOTION:

YES _____

NO

Signed: Robert W. Wurch

Date: 8-21-03

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

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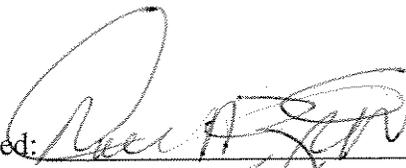
VOTE ON MOTION:

YES

NO

Signed: _____

Date: _____




SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MOTION ON CLEARINGHOUSE RULE 01-081

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VOTE ON MOTION:

YES X

NO _____

Signed: Cathy Stepp
Date: 8-20-2003

Johnson, Dan (Legislature)

From: Paul Kent [pkent@andersonkent.com]
Sent: Wednesday, April 28, 2004 11:53 AM
To: Johnson, Dan (Legislature)
Subject: FW: Builders Position on NR 341

Dan,

Your understanding is basically correct with one minor exception. There is also an issue on how the threatened and endangered species provision is handled. I am still trying to get some clarification on that issue. A letter that Jerry asked me to send to Todd is attached that summarizes our position. Please let me know if you need anything else.

Paul

Paul G. Kent
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-----Original Message-----

From: Paul Kent
Sent: Wednesday, April 28, 2004 10:07 AM
To: Ambs, Todd L
Subject: Builders Position on NR 341

Dear Todd,

I am writing as a follow up to our discussions on the provisions of NR 341 on behalf of the Wisconsin Builders Association. We have appreciated the efforts made by the Department and other stakeholders over the course of the last several weeks to develop a workable general permit for grading. We have made substantial progress in a very short timeframe and have resolved a number of contentious issues.

Nevertheless, we cannot support the proposed rule and general permit in its present form for two reasons. First the exclusion of all outstanding and exceptional resources waters (ORW/ERW) from general permit eligibility is not acceptable. Second, the procedures for addressing waters with threatened and endangered species needs to be revised.

1. ORW/ERW Waters.

During our meetings, we discussed at length the three tension points for grading general permits. The first was the list of waters in NR 1.05 that would trigger the 300 foot bank definition instead of the 75 foot bank definition. We do not believe that the list of waters in NR 1.05 meets either the language or the intent of the waters designated in Act 118 as "areas of special natural resource interest." The impact of this issue for grading is significant. Instead of a relatively small list of waters being subject to the 300 foot bank, somewhere between

04/28/2004

half and three fourths of the waters in the state appear to be on this list. For purposes of an emergency rule, we were willing to postpone that debate and allow the 300 foot bank and the concomitant department jurisdiction to attach. The second tension point was whether there would be any of these waters for which the bank could be reduced from 300 feet to some distance less than 300 feet. We articulated a variety of schemes to accomplish this. Again the Department preferred a simpler rule that provided broader jurisdiction. Again for purposes of the emergency rule we were willing to accept this approach.

The final tension point was eligibility for general permits. In our view, the Act 118 addresses the sensitivity of certain waters by creating the larger jurisdictional reach. It does not provide that the designated waters are ineligible for a general permit. Nevertheless, we were willing to acquiesce for the emergency rule in having some waters declared ineligible, or "kicked out". We also agreed to have other waters subject to a additional buffer requirements.

Having worked through all of these issues, we are not at this time willing to have the ORW/ERW waters declared wholly ineligible for general permits. We acknowledge that these waters are not a large percentage of waters state wide, but they are significant in a number of northern counties. Act 118 was not simply designed to provide permit streamlining to more urbanized counties, it was to be applied state wide. We also acknowledge that these waters need protection. That protection is provided by the terms of the general permit that will extend 300 feet from the banks of these waters. If for some reason these provisions are deemed inadequate for a particular circumstance, the Department has the ability to require individual permits on a case by case basis. In our view we have made concessions well beyond the original legislative intent, and are not in a position to support the exclusions of all ORW/ERW waters from general permit eligibility.

2. Threatened and Endangered Species

The general permit also has a provision that kicks out projects where there is a threatened or endangered species if the Department determines that the general permit conditions are not sufficient to address the concerns for that species. Again we acknowledge the need to protect these species, but do not agree that it requires a kick out from general permit eligibility. Our suggestion was to include a permit condition in the general permit to submit a plan acceptable to the department to address threatened and endangered species issues. This would seem to allow the Department's concerns to be addressed without encumbering the process with an individual permit. We would request additional consideration be provided to this item.

In conclusion, we want to reiterate that substantial progress has been made and acknowledge that the permit reflects a number of significant concessions from both sides. However, the Wisconsin Builders Association is not in a position to support the rule in its present form without addressing the issues set forth above. We look forward to working with the Department and other stakeholders to resolve these remaining issues, and would urge the Natural Resources Board to withhold adoption until such time as that additional discussion can take place.

Paul G. Kent
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WHEELER, VAN SICKLE & ANDERSON, S.C.
a Wisconsin Service Corporation

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(1905 - 1995)

July 1, 2004

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Dairyland Power Cooperative
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LaCrosse, WI 54602-0817

RE: WDNR Mercury Rules

Dear Brian:

We have reviewed the Natural Resources Board Order establishing new rules in Wis. Admin. Code § NR 446.06 for the reduction of mercury emissions from major electric utilities, as modified by additional language creating an exemption from those rules.

The proposed rule, as modified, provides:

“The mercury emissions from a facility owned or operated by a major utility may be exempt from the emission reduction requirements of sub. (2) or (3) [relating to percentage reductions from baseline mercury emissions] if the total annual mercury emissions from all stationary sources of 25 megawatts or greater at the facility are 25 pounds or less.”

We understand that the modifications to NR 446.06 were specifically proposed for the purpose of exempting Alma #4 and 5 from the emission reduction requirements of the Rule. However, definitions of the key terms set forth elsewhere in the Statutes and Wisconsin Administrative Code create some ambiguity in the application of the exemption.

Brian D. Rude
July 1, 2004
Page 2 of 2

The language of the new rule in Wis. Admin. Code § NR 446.06(5) defines a "facility" in terms of a location having one or more "stationary sources." A "facility" is defined in Wisconsin Administrative Code § NR 400.02(63) to mean an "establishment." A "stationary source" in turn is defined in Wis. Stat. § 285.01(41) as "a facility, building, structure or installation." Given the circularity of this definition, it is unclear how this exemption would be applied.

The preferred approach to eliminating the ambiguity and ensuring that the exemption accomplishes its intended purpose would simply be to substitute alternative language for the word "facility," since that word is also used to define a "stationary source." The following revision is suggested:

* The mercury emissions from a facility owned or operated by a major utility ~~may~~ shall be exempt from the emission reduction requirements of sub. (2) or (3) if the ~~total~~ annual mercury emissions from ~~all stationary sources~~ each generating unit of 25 megawatts or greater at the facility are 25 pounds or less.

Alternatively, the following language could be enacted as an interpretative note to the existing rule, in much the same fashion as NR 405.01(2) on page 2 of the Order:

NOTE: The term "facility" as used in s. NR 446.06(5) is defined as a generating station consisting of one or more stationary sources sharing fuel storage and loading facilities and having a single monitoring point for emissions.

Please contact me if I can provide you with any further information or clarification.
Thank you.

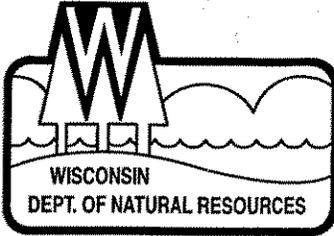
Very truly yours,

WHEELER, VAN SICKLE & ANDERSON, S.C.

Mary Beth Peranteau

/mbp

cc: Harold Frank
Eric Hennen



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

July 7, 2004

Mr. Brian Rude
Director, External Relations
Dairyland Power Cooperative
3200 East Avenue South
PO Box 817
La Crosse WI, 54602-0817

Dear Mr. Rude

I understand Dairyland Power's concern about one of the modifications approved by the Natural Resources Board to the NR 446 rules for controlling mercury emissions. Apparently, it relates to what the Department means by the term "facility" in section NR 446.06(5), Wis. Adm. Code, which allows the exemption of a facility emitting 25 pounds or less of mercury annually.

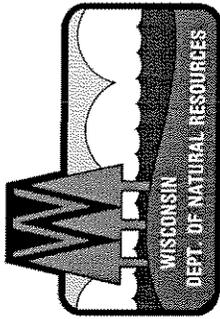
For the specific purpose of developing s. NR 446.06(5) and the 25 pound facility threshold for exemption, the Department considered Alma units 1, 2, 3, 4, 5 and JP Madget as two separate generating plants or facilities. Therefore, for implementation of this rule and specifically s. NR 446.06(5), Alma units 1, 2, 3, 4, & 5 are to be considered as one facility and the JP Madget plant as one facility. However, it should be noted that since Alma units 1, 2, & 3 are each less than 25 megawatts, only the mercury emissions from Alma units 4 and 5 would be counted toward the 25-pound threshold. Based on the department's information, Alma units 4 and 5 would likely be exempt under s. NR 446.06(5) from mercury emission limitations for major utilities.

I hope that this clarifies the intent of the rule provision in the short term and we intend to develop program guidance as we begin to implement NR 446 rules in Wisconsin. Please contact me at 608-266-0603 if you have any questions.

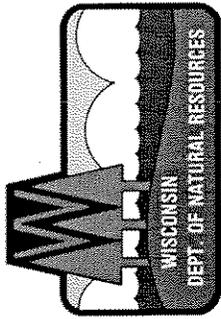
Sincerely,

Lloyd Eagan, Director
Bureau of Air Management

cc: Al Shea – AD/5
Tom Steidl – LC/5
Mary Carter, LaCrosse Service Center
Representative DuWayne Johnsrud, Room 323 North, State Capitol
Senator Neal Kedzie, Room 313 South, State Capitol

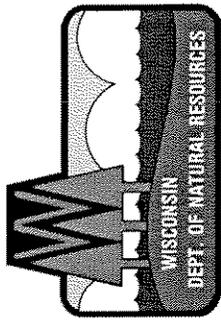


Mercury Rules Review Clean Air Act Task Force June 5, 2003



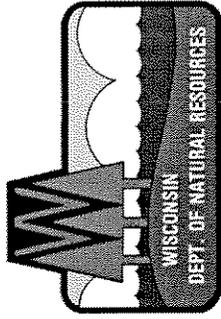
Key Changes in the Revised Rules

- Reduction Requirements
- Schedule
- Baseline Emission Determination
- Trading Provisions
- Compliance Determination
- Short-term Reliability Concerns
- Control of New Mercury Emissions



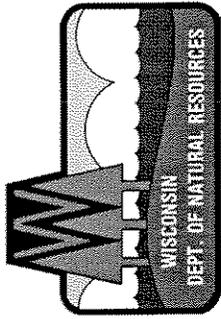
Overview of Provisions

- NR 446.027 Procedures for determining annual mercury emissions.
- Effective January 1, 2005.
- Establishes procedures for significant non-major utility sources to determine their annual mercury emissions.



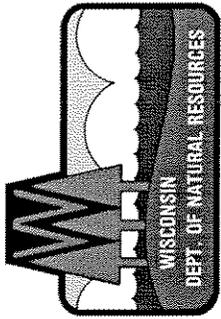
Overview of Provisions

- NR 446.03 Baseline mercury emissions for major utilities.
- By October 1, 2005 - major utilities submit report for combustion units in operation in 2002, 2003, and 2004.
- Default baseline is arithmetic average of these three years.
- Alternative years can be requested.
- By January 1, 2007 - written notification from WDNR establishing baseline emissions.



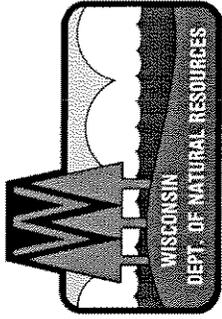
Overview of Provisions

- NR 446.04 Procedures for determining baseline mercury emissions for major utilities.
- In calendar year 2004 collect representative solid fossil samples and analyze them for mercury content.
- Separate procedure for non-solid fossil fuel.
- Apply mercury fuel content determination to consumption records for 2002 - 2004.



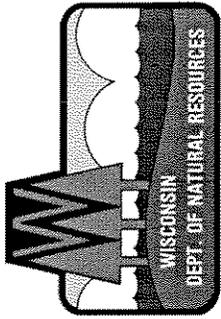
Overview of Provisions

- NR 446.05 Mercury emission limits for new or modified sources.
- Effective one month after promulgation.
- BACT for new or modified sources with allowable mercury emissions of 10 pounds or more.
- Does not apply to new or modified sources affected by Section 112 of the CAA.



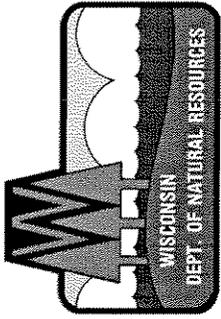
Overview of Provisions

- NR 446.06 Mercury emission limits for major utilities.
- January 1, 2008 - emission cap becomes effective. Cap is based on emission testing of combustion units performed before October 1, 2005.
- January 1, 2010 - 40% from baseline emissions.
- January 1, 2015 - 80% from baseline emissions.



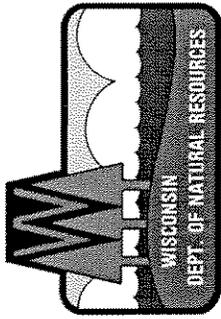
Overview of Provisions

- NR 446.07 Multi-pollutant reduction alternative.
- Request by October 1, 2007.
- Provides relief from 2010 reduction requirement if utility is pursuing a multi-pollutant reduction approach.
- Proposal must specify pollutants and reduction levels for the period 2010 - 2015.
- Public notice with public hearing opportunity.



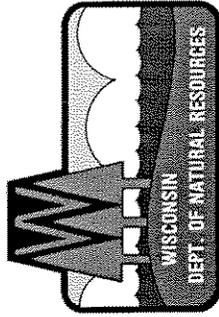
Overview of Provisions

- NR 446.08 Compliance and reporting requirements for major utilities.
- Compliance plans required for each reduction requirement October 1, 2007, and October 1, 2011, respectively.
- System-wide compliance and trades between major utilities are allowed to achieve annual compliance.
- Compliance certification required every March 1st beginning in 2009 using the procedures in NR 446.09.
- In case of exceedance of an annual requirement true-up in the following year is allowed.



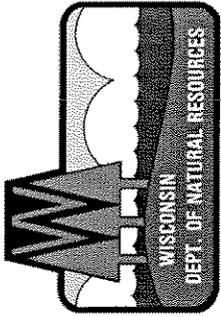
Overview of Provisions

- NR 446.09 Annual mercury emissions determination and reporting.
- Specifies method for determining annual mercury emissions that includes fuel use, fuel mercury content and performance test results.
- Identifies acceptable testing and sampling methods.
- Establishes periodic emission testing schedule.



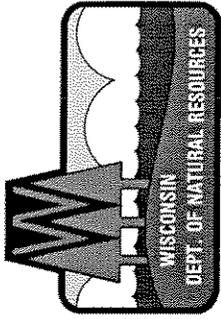
Overview of Provisions

- NR 446.10 Variance for major utilities.
- Must be requested by the date compliance plans are due for each reduction requirement, October 1, 2007, or October 1, 2011, respectively.
- Alternative schedule and alternative reduction level may be requested.
- Granted based on showing of economic or technological infeasibility.
- Consultation with PSC.
- Public notice and public hearing opportunity.



Overview of Provisions

- NR 446.11 Electrical supply reliability waiver.
- Provides ability to obtain waiver from meeting an annual requirement based on electrical supply emergency, fuel supply disruption or other unavoidable event.
- Written request within 60 days of annual reporting deadline, March 1st.
- Consultation with PSC.
- Public notice and public hearing opportunity.



Overview of Provisions

- NR 446.12 Periodic evaluation and reconciliation reports.
- Reports to the NRB required by January 1, 2009, and January 1, 2013, that examine scientific and technological developments associated with mercury control.
- In addition, a report to the NRB is required within 6 months of federal law or regulation that contains mercury reduction requirements.
- Recommendations for rule revisions or other actions.



Wisconsin Utilities Association
44 East Mifflin Street, Suite 202

To: Interested Parties

**From: Bill Skewes, Executive Director
Wisconsin Utilities Association**

Date: June 20, 2003

Re: DNR Mercury Rulemaking

On behalf of Wisconsin's investor-owned gas and electric utilities and Dairyland Power Cooperative (DPC), the Wisconsin Utilities Association (WUA) continues to support reductions in emissions of mercury by coal-fired utility boilers, as a "bridge" to pending federal rules and/or legislation, consistent with the DNR's stated intentions.

While WUA and DPC support mercury emission reductions, the following modifications to the rule need to be made related to the timing of reductions, federal consistency, baseline determinations, credit for early reductions and recognition of specific multi-emission cooperative agreements:

- 1.) Rather than specifying the exact years in which the reductions will take place, the rule should, instead, specify the number of years between implementation of the rule and the cap and phased reductions, such as five, 10 and 15-year increments.
- 2.) Consistent with statutory provisions that federal standards will control, clarify that the rule does not apply to sources subject to federal mercury emission standards. Specify that it is in effect only in the absence of a federal MACT or other mercury regulation.
- 3.) The multi-pollutant alternative should also be available in the second phase of the rule implementation, not just the first phase and should recognize existing cooperative agreements on multi-emission reductions.
- 4.) Establish the ability to receive and bank credits for reductions that occur after the baseline period and before the rule limits are in effect and bank credits for reductions that are in excess of the rule requirements.
- 5.) Credit should be given for early voluntary reductions in the determination of baselines.
- 6.) The determination of the second phase of reduction level should not be specified. Rather, it should be established based on a review of current technology after the first phase has been achieved, in consultation with affected utilities.
- 7.) Additional revisions are needed to provide more flexibility in addressing various technical issues and to reduce administrative burdens.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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June 28, 2004

Honorable Neal Kedzie, Chair
Senate Committee on Environment and Natural Resources
Room 313 South
State Capitol

Honorable DuWayne Johnsrud, Chair
Assembly Committee on Natural Resources
Room 323 North
State Capitol

Gentlemen:

In August, 2003, your committees requested the Department of Natural Resources to make modifications to Clearinghouse Rule No. 01-081 relating to the control of mercury emissions. At its June 25, 2004 meeting, the Natural Resources Board adopted the six rule modifications and four technical changes proposed by the Department staff as well as a modification proposed by the Natural Resources Board. The modifications pertained to the relation to federal mercury rules, the 80% emissions reduction goal, the banking and trading of emission reductions and the small source emission reduction program.

The technical rule changes will modify the period for the sampling of fuel mercury content required for determining the baseline from the calendar year of 2004 to the 12 months following rule promulgation, include a note following the rule provisions relating to multi-pollutant reduction alternatives to reference Environmental Cooperative Agreements as a potential basis for a multi-pollutant reduction alternative, add section 111 to the federal regulations that would be included in a reconciliation report and modify the periodic evaluation and reconciliation report provisions of the rule to include the legislative standing committees as recipients of the reports, providing the committees with an opportunity to monitor the rule's implementation and the appropriateness of the Department's response to mercury control technology developments.

In addition, the Natural Resources Board adopted modifications that created s. NR 446.06(5) to read:

NR 446.06(5) The mercury emissions from a facility owned or operated by a major utility may be exempt from the emission reduction requirements of sub. (2) or (3) if the total annual mercury emissions from all stationary sources of 25 megawatts or greater at the facility are 25 pounds or less.

Further, the Department has added the following germane drafting modifications:

1. On page 4, a drafter's note has been added the Section 8 to state that the proposed modification will be deleted because the change is no longer needed because of changes made in another Clearinghouse Rule.

2. On page 7, a citation to the Clean Air Act was added to s. NR 446.029.

3. On page 8, in s. NR 446.04(1), the phrase "...[revisor insert date]" was added after the words "the effective date of this rule".

4. On page 11, in s. NR 446.06(6), the numbering was corrected after the insertion of the modification proposed by the Natural Resources Board and a citation to the Clean Air Act was added.

5. On page 17, in s. NR 446.12(1) and (2), the words "presiding officer of each house of the legislature for referral to the appropriate" was added to precede the words "legislative standing committees" and a citation to the Clean Air Act was also added.

Attached are the modifications proposed by the Department, the modification proposed by the Natural Resources Board and a copy of the complete Natural Resources Board Order No. AM-27-01 with all modifications incorporated.

Under s. 227.19(4)(b)2., Stats., the Department of natural Resources refers this action to your Committees for an additional 10 working day review. If the Department does not hear from you within 10 working days of the receipt of this letter, the Department will continue processing this rule.

Sincerely,



Scott Hassett
Secretary

cc: Natural Resources Board
Lloyd Eagan – AM/7
Robert Eckdale – AM/7
Jon Heinrich – AM/7
Tom Steidl – LS/5
Carol Turner – LS/5

Attachment 2

Recommended Mercury Rule Language Changes

Representative DuWayne Johnsrud and Senator Neal Kedzie, the Chairs of the Assembly Natural Resources Committee and the Senate Environment and Natural Resources Committee, have requested changes to the mercury rule (AM-27-01, LRC 01-081) adopted by the Natural Resources Board at its June 2003 meeting. In response to the legislators' request, the following changes are recommended to the mercury rule.

1) Add a new section to the rule to recognize the statutory requirements regarding the impact of a subsequently adopted federal emission standard for mercury from major utilities under either section 111 or 112 of the federal Clean Air Act.

On page 7, after "NR 446(title) Subchapter II – Control of the Atmospheric Deposition of Mercury.", add the following section:

"NR 446.029 Adoption of federal mercury standard. If a federal emission standard limiting mercury emissions from a major utility is promulgated under section 111 or 112 of the federal clean air act, the department shall adopt a similar standard, including administrative requirements that are consistent with the federal administrative requirements. The standard adopted by the department may not be more restrictive in terms of emission limitations than the federal standard. The administrative requirements of the standard adopted by the department relating to baseline calculations, monitoring, recordkeeping and reporting shall be the same as the federal standard. No later than 18 months after the promulgation of a federal emission standard limiting mercury emissions from a major utility, the department shall revise this subchapter under the provisions of s. 227.10 or 227.24, Stats., as appropriate, to comply with the provisions of this section and s. NR 446.06(4)."

2) Modify the period for the sampling of fuel mercury content required for determining the baseline from the calendar year of 2004 to the 12 months following rule promulgation.

On page 7 and 8 of the rule change the following subsections of section NR 446.04 to read as follows:

"(1) No later than the first day of the 2nd month beginning after the effective date of the rule and continuing for a calendar twelve month period, a representative sample shall be collected weekly for each solid fossil fuel used in the emissions unit in that week. Each weekly sample of a fuel collected under this subsection shall be composited into a monthly sample that shall be analyzed for mercury content using ASTM D3684-01, incorporated by reference in s. NR 484.10(47m), or an equivalent method approved by the department"

"(4) The information gathered in subs. (1) and (2) shall be multiplied by the corresponding fuel consumption rates determined under sub. (3) to determine the total annual mercury contained in each fuel."

“(5) The mercury content for each fuel, on a mmBtu-basis, shall be computed by dividing the results of sub. (4) by the amount of each fuel burned, in mmBtus, during the twelve month sampling period.”

“(6) The mercury emissions for 2002, 2003, and the 12 months identified in sub. (1) shall be calculated by multiplying the results of sub. (5) times the annual fuel consumption for each of those years.”

“(7) The baseline mercury emissions shall be the 3-year arithmetic average of the mercury emissions determined under subs. (4) and (6) for 2002, 2003, and the 12 months identified in sub. (1)”

3) Include language in the mercury rule expressing the objective of reducing mercury emissions from major utilities by 80% by 2018 as measured from baseline mercury emission levels.

On page 9 of the rule, add the following section immediately after s. NR 446.05:

“**NR 446.055 Mercury emission reduction goal.** It is the goal of the department to encourage the major utilities to achieve the maximum amount of mercury emission reductions reasonably achievable from all stationary sources of the major utilities in the state. Specifically, the department’s objective is to work with the major utilities to achieve an 80% reduction in mercury emissions by 2018, as measured from the baseline mercury emissions for the major utilities’ stationary sources, as determined by the department under s. NR 446.03.”

4) Change the mercury emission reduction requirement, which becomes applicable on January 1, 2015 from 80% to 75%:

On page 9 of the rule, change section NR 446.06(3) to read as follows:

“(3) Beginning January 1, 2015, no owner or operator of a major utility may cause, allow or permit mercury emissions from all stationary sources of the major utility on an annual basis in an amount which exceeds 25% of the baseline mercury emission for the major utility’s stationary sources, determined by the department under s. NR 446.03.”

5) Include language that provides an option for a major utility to exempt units less than 25 MW from mercury reduction requirements. This option would apply to Dairyland Power Alma Units 1, 2, & 3 and WE Energies County Units 1, 2, & 3.

On page 9 of the rule change the following subsections of section NR 446.06 to read as follows:

“(1)(a) Except as provided in sub. (4), beginning January 1, 2008, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds the controlled mercury emissions for those units, determined by the department under par. (b).”

“(2) Except as provided in sub. (4), beginning January 1, 2010, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds 60% of the baseline mercury emissions for those units, determined by the department under s. NR 446.03.”

“(3) Except as provided in sub. (4), beginning January 1, 2015, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds 25% of the baseline mercury emissions for those units, determined by the department under s. NR 446.03.”

“(4) Stationary sources of less than 25 megawatts owned or operated by a major utility for which baseline emissions have been determined by the department under s. NR 446.03 and for which controlled emissions are determined by the department under par. (b), may be included by the major utility in meeting the emission limit requirements of sub. (1), (2), and (3). Mercury emissions for units included under this subsection shall be computed in the determination of controlled mercury emissions under par. (1) and the baseline emissions subject to the emissions limits under par. (2) and (3) and shall be subject to the compliance and reporting requirements of NR 446.08.”

6) Include a new subsection in the emission reduction requirements of the rule acknowledging the Department’s responsibility to meet the requirements of the s. 285.27, Wis. Stats., as affected by 2003 WI Act 118, to reconcile the rule with any federal standard regulating mercury emissions from electric utilities, including the requirement that the emissions limitations not be more restrictive than the federal standard.

On page 9 of the rule, add the following subsection (4) to section NR 446.06:

“(4) Pursuant to s. 285.27 (1)(a) and (2)(a), Wis. Stats., if an emission standard regulating mercury emissions from a major utility is promulgated under section 111 or 112 of the federal clean air act, the department shall promulgate a similar standard, including administrative requirements that are consistent with the federal administrative requirements. The department’s standard shall have the same mercury emission reductions as the federal standard.”

7) Include a note following the rule provisions relating to multi-pollutant reduction alternatives to reference Environmental Cooperative Agreements (such as that signed by the Department and WEPCO on September 30, 2002) as a potential basis for a multi-pollutant reduction alternative.

On page 11 of the rule, insert the following note after section NR 446.07:

“NOTE: Any Environmental Cooperative Agreement that the Department has signed with a major utility prior to the effective date of this rule and that includes multi-pollutant emission reductions may be used by the major utility as the basis of a request for a multi-pollutant reduction alternative under s. NR 446.07.”

8) Include a new section in the rule allowing for the generation of early emission reduction credits, which may be utilized by major utilities to achieve compliance with the emission limitations prior to 2018.

On page 11 of the rule, insert the following section after section NR 446.07

“NR 446.075 Early emission reduction credits. The owner or operator of a major utility that reduces mercury emissions from a stationary source of the major utility on or after (...the effective date of this rule...revisor inserts date...) and prior to January 1, 2015, may request that the department certify the emission reductions as early emission reduction credits. The department shall certify the emission reductions, in terms of pounds of mercury emissions reduced, as early emission reduction credits if the owner or operator demonstrates to the department that the reductions are actual, permanent mercury emission reductions that are not required under any state or federal law or air permit condition. Any mercury emission reduction credits may be used by the owner or operator of the major utility to meet the annual emission limitations in s. NR 446.06(2) and (3) during calendar years 2010 through 2017.”

9) and 10) Modify the periodic evaluation and reconciliation report provisions of the rule to include the legislative standing committees as recipients of the reports, providing the committees with an opportunity to monitor the rule’s implementation and the appropriateness of the Department’s response to mercury control technology developments. In addition, include a reference to section 111 as a potential source of federal mercury regulations.

On page 15-16, change s. NR 446.12 (1)(intro.) and (2)(intro.) to read as follows:

“(1) The department staff shall submit reports to the natural resources board and the legislative standing committees by January 1, 2006, by January 1, 2009 and by January 1, 2013. Each report shall include: “

“(2) In addition to the reports required under sub. (1), the department staff shall report to the natural resources board and the legislative standing committees within 6 months of the date of the promulgation of a federal regulation under section 111 or section 112 of the Act or the enactment of a federal law that has mercury reduction requirements for mercury emission sources affected by this subchapter. The report shall include:”

On page 9 of the rule change the following subsections of section NR 446.06 to read as follows:

“(1)(a) Except as provided in sub. (4), beginning January 1, 2008, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds the controlled mercury emissions for those units, determined by the department under par. (b).”

“(2) Except as provided in sub. (4) or (5), beginning January 1, 2010, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds 60% of the baseline mercury emissions for those units, determined by the department under s. NR 446.03.”

“(3) Except as provided in sub. (4) or (5), beginning January 1, 2015, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds 25% of the baseline mercury emissions for those units, determined by the department under s. NR 446.03.”

“(4) Stationary sources of less than 25 megawatts owned or operated by a major utility for which baseline emissions have been determined by the department under s. NR 446.03 and for which controlled emissions are determined by the department under ~~par.~~ sub. (1)(b), may be included by the major utility in meeting the emission limit requirements of subs. (1), (2), and (3). Mercury emissions for units included under this subsection shall be computed in the determination of controlled mercury emissions under ~~par.~~ sub. (1) and the baseline emissions subject to the emissions limits under ~~par.~~ subs. (2) and (3) and shall be subject to the compliance and reporting requirements of NR 446.08.”

“(5) The mercury emissions from a facility owned or operated by a major utility may be exempt from the emission reduction requirements of sub. (2) or (3) if the total annual mercury emissions from all stationary sources of 25 megawatts or greater at the facility are 25 pounds or less.”

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
RENUMBERING, RENumberING AND AMENDING,
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to renumber NR 446.02(1), 446.03(2) and (3), 446.04 and 446.05; to renumber and amend NR 446.03 (intro.) and (1); to amend NR 400.02(64), 405.01(2) Note, 405.02(22)(c), 406.04 (intro.), 408.02(2)(a) and (4), 408.04(1), 439.075(2)(b)1., 445.01(1)(a), 446.01(2) and Note and 484.05(9); and to create NR 446 Subchapter I (title), 446.02 (1), (1c), (1n), (1r), (1w), (6e), (6m), (6s), (8m) and (10s), 446.027, 446 Subchapter II, 446 Subchapter III (title), 446.14 (title) and (intro.), 484.04(20m) and (26m) and 484.10(47m) relating to the control of mercury emissions to address the atmospheric deposition of mercury.

AM-27-01

Analysis Prepared by the Department of Natural Resources

Authorizing Statutes: ss. 227.11(2)(a) and 285.11(9), Stats.

Statutes interpreted: s. 285.11(9), Stats.

The proposed order will establish requirements that would reduce mercury emissions from major electric utilities, set procedures for calculating annual mercury emissions from other large stationary sources, and require new or modified stationary sources of mercury emissions to install best available control technology for mercury emissions. The goal of these actions is to reduce the atmospheric mercury deposition to Wisconsin's environment and ultimately achieve a lowering of mercury concentrations in fish and wildlife.

The order includes provisions for major electric utilities and large stationary sources to calculate their annual mercury emissions based on procedures in the rule. Major utilities will be subject to an emission cap on their mercury emissions as of January 1, 2008; and major utilities will be required to reduce their mercury emissions from their baseline amount by 40% beginning January 1, 2010 and by 80% beginning January 1, 2015. The baseline mercury level is determined assuming uncontrolled mercury emissions from calendar years 2002, 2003 and 2004.

The rule allows major utilities to comply with the emission limitations on a system-wide basis or through agreements with other utilities. In addition, the Department may approve a multi-pollutant reduction plan for a major utility as an alternative to compliance with the 40% emission reduction requirement.

The Department staff is required to submit periodic reports to the Natural Resources Board on the implementation of the rule in consideration of the scientific and technological developments related to control of mercury emissions. In addition, the Department staff must report to the Natural Resources Board within 6 months of the adoption of federal legislation or rules regulating mercury emissions. The reports must include recommendations for changes to the state's mercury control rules based on these developments and federal changes.

The consent of the Attorney General and the Revisor of Statutes will be requested for the incorporation by reference of new test methods in ch. NR 484.

SECTION 1. NR 400.02(64) is amended to read:

NR 400.02 (64) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to ~~chs.~~ ch. NR 440, subch. III of ch. NR 446 and 446 chs. NR 447 to 449, and under sections 111 and 112 of the act (42 USC 7411 and 7412), requirements within

any applicable state implementation plan, any permit requirements established pursuant to ch. NR 405, requirements in construction permits issued under ch. NR 406 or 408 and requirements in operation permits issued pursuant to ch. NR 407 and title V of the act which are designated as federally enforceable.

SECTION 2. NR 405.01(2) Note is amended to read:

NR 405.01(2) Note: Throughout the proposed rule, changes have been made which result in the provisions of this PSD rule differing from 40 CFR 51.166, the federal regulation on which it is based. In this rule, the term "air contaminant" is substituted for the term "pollutant" in the federal regulation and "department" for "the State", "the Governor" and "reviewing authority". The federal definition for "building, structure, facility or installation" is applied to the phrase "facility, building, structure, equipment, vehicle or action" – a similar term which appears in Wisconsin's statutory provisions on air pollution. In addition, cross references in the federal regulation have been changed in the rule to comparable provisions in Wisconsin's rule (e.g., "40 CFR Parts 60 and 61" has been changed to "~~chs.~~ ch. NR 440, subch. III of ch. NR 446 and 446 chs. NR 447 to 449"). Eliminated from the rule are provisions of the federal regulations which do not apply to the state's PSD program (i.e., provisions governing EPA approval of plan revisions).

SECTION 3. NR 405.02(22)(c) is amended to read:

NR 405.02(22)(c) Volatile organic compounds exclude the compounds listed under s. NR 400.02(162) unless the compound is subject to an emission limitation under ch. NR 440, subch. III of ch. NR 446 or chs. NR 446 447 to 449.

SECTION 4. NR 406.04 (intro.) is amended to read:

NR 406.04 Direct sources exempt from construction permit requirements. This section does not provide an exemption from construction permit requirements for a source that is required to obtain a permit under ch. NR 405 or 408 or s. NR 446.05. For any direct source not required to obtain a permit under ch. NR 405 or 408 or s. NR 446.05, no construction permit is required prior to commencing construction, reconstruction, replacement, relocation or modification if the following conditions are met:

SECTION 5. NR 408.02(2)(a) and (4) are amended to read:

NR 408.02(2)(a) Any applicable standards in ~~chs.~~ ch. NR 440, subch. III of ch. NR 446 and 446 chs. NR 447 to 449.

(4) "Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each air contaminant subject to regulation under the act (42 USC 7401 to 7671q) which would be emitted from any proposed major source or major modification which the department, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including clean fuels, fuel cleaning or treatment or innovative fuel combination techniques for control of the air contaminant. In no event may application of best available control technology result in emissions of any air contaminant which would exceed the emissions allowed by any applicable standard under ~~chs. ch. NR 440, subch. III of ch. NR 446 and 446~~ chs. NR 447 to 449. Emissions from any source utilizing clean fuels or any other means to comply with this subsection may not be allowed to increase above the levels that would have been required prior to enactment of the 1990 clean air act amendments on November 15, 1990. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of a design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

SECTION 6. NR 408.04(1) is amended to read:

NR 408.04(1) A major source or major modification shall meet each applicable emission limitation under this chapter and each applicable emission standard or standard of performance under ~~chs. ch. NR 440, subch. III of ch. NR 446 and 446~~ chs. NR 447 to 449.

SECTION 7. NR 439.075(2)(b)1. is amended to read:

NR 439.075(2)(b)1. Compliance emission testing for mercury is required for an emission point ~~identified~~ in subject to s. NR 446.04(1), (2) or (3) 446.06(1)(b), 446.09(1) or 446.15(1), (2) or (3).

SECTION 8. NR 445.01(1)(a) is amended to read:

[Drafter's Note: Because of changes made to s. NR 445.01(1)(a) in AM-34-02 (CHR 02-097), the following amendments to s. NR 445.01(1)(a) are no longer required. It is the department's intent to delete the amendments indicated in this SECTION 8 prior to the promulgation of this rule.]

NR 445.01(1)(a) This chapter applies to all air contaminant sources which may emit hazardous pollutants and to their owners and operators. The emission limitations and control requirements of this chapter do not apply to a source of a hazardous air contaminant regulated under subch. III of ch. NR 446 or chs. NR ~~446~~ 447 to 449 for the specific hazardous air contaminants regulated under those chapters or to a source which must meet a national emission standard for a hazardous air pollutant promulgated under section 112 of the act (42 USC 7412) for the specific air pollutant regulated under that standard.

SECTION 9. NR 446 Subchapter I (title) preceding s. NR 446.01 is created to read:

NR 446 (title) **Subchapter I - General Provisions.**

SECTION 10. NR 446.01(2) and Note are amended to read:

NR 446.01(2) PURPOSE. This chapter is adopted under ss. 285.11, 285.13, 285.17 and 285.27, Stats., to establish emission limitations, stack sampling procedures and emission monitoring requirements for mercury emissions from air contaminant sources in order to protect air quality and reduce atmospheric mercury deposition.

Note: ~~Except for s. NR 446.03(1), this~~ Subchapter III of this chapter is based on the federal regulations contained in 40 CFR part 61, Subpart E, created October 14, 1975, as last revised September 23, 1988.

SECTION 11. NR 446.02(1) is renumbered 446.02(1g).

SECTION 12. NR 446.02 (1), (1c), (1n), (1r), (1w), (6e), (6m), (6s), (8m) and (10s) are created to read:

NR 446.02 (1) "Allowable emissions" means the annual mercury emissions of a stationary source, calculated using the maximum rated capacity of the source, and by accounting for enforceable limits which restrict the operating rate or hours of operation or both.

(1c) "Baseline mercury emissions" means the calculated level of annual mercury emissions from a major utility as determined under s. NR 446.04.

(1n) "Certified emission reduction" means a reduction of mercury emissions that has been certified by the department and made enforceable through a construction permit, operation permit or other appropriate means.

(1r) "Commission" means the public service commission.

(1w) "Controlled mercury emissions" means the calculated level of annual mercury emissions from a major utility as determined under s. NR 446.06(1)(b).

(6e) "Major stationary source" means a stationary source whose mercury emissions are 10 pounds per year or greater.

(6m) "Major utility" means a Class A utility, as defined under s. 199.03(4), Stats., that generates electricity or an electrical cooperative association organized under ch. 185, Stats., whose mercury emissions from all stationary sources under the common ownership and control of the utility or the association are 100 pounds per year or greater.

(6s) "Mercury" has the meaning given in s. NR 445.02 (9).

SECTION 13. NR 446.027 is created to read:

NR 446.027 Procedures for determining annual mercury emissions. Except as provided in s. NR 446.09, beginning on January 1, 2005, the owner or operator of a major stationary source shall calculate annual mercury emissions using the procedures and methods in this section.

(1) STATIONARY SOURCE COMBUSTION UNIT. (a) The owner or operator of a combustion unit at the source which is not subject to s. NR 446.09 shall calculate annual mercury emissions using the procedures of this subsection for each emissions unit and shall provide all associated data to the department.

(b) The owner or operator shall determine the mass mercury content of each fuel by multiplying the mercury content of the fuel times the amount of the fuel consumed. The mercury content of the fuel shall be determined either through testing according to the procedures in ASTM D3684-01, incorporated by reference in s. NR 484.10(47m), or an equivalent method approved by the department, or from published data which lists the mercury content of the specific fuel.

(c) The owner or operator shall calculate the removal efficiency of mercury by air pollution control equipment for each fuel used in one of the following ways:

1. Based on source performance tests on the equipment following the testing procedures in s. NR 446.09(3).

2. Based on information derived from performance testing of other combustion units which are similar in terms of the type of combustion unit, particulate control equipment, fuel characteristics, and operating parameters.

(d) The owner or operator shall determine the annual mercury emissions by subtracting the mass mercury removed by air pollution control equipment from the mass mercury in the fuel.

(e) Nothing in this section shall prohibit the department from requiring other methods of determining annual mercury emissions.

(f) The owner or operator of a combustion source subject to this subsection may request that the department approve alternative methods for determining annual mercury emissions

(2) STATIONARY SOURCE PROCESS UNIT. The owner or operator of a process unit at the source shall calculate and report annual mercury emissions from the process unit using the procedures and methods of this subsection and shall provide all associated data to the department. The calculations shall apply a mass balance approach, emission test data, or both, as follows:

(a) A separate mass balance shall be used to calculate the mercury contained in each applicable process stream by accounting for:

1. All process streams including: process raw materials, products and by-products; and pollution control equipment and control by-products.

2. The mercury concentration and throughput rate for each process stream.

3. The annual mass mercury content input and output of each process stream.

(b) Mercury emission test data and emission factors obtained during source performance testing for any applicable process stream may also be used.

(c) The owner or operator of the process units subject to this subsection may request that the department approve alternative methods for determining annual mercury emissions.

SECTION 14. NR 446.03 (title), (intro.) and (1) are renumbered 446.025 and amended to read:

NR 446.025 (title) Mercury ~~emission limits~~ ambient concentration limit. No person may cause, allow or permit emissions of mercury:

(1) ~~In~~ in such quantity and duration as to cause the ambient air concentration to exceed $1 \mu\text{g}/\text{m}^3$, averaged over a 30-day period.

SECTION 15. NR 446.03(2) and (3) are renumbered 446.14(1) and (2).

SECTION 16. NR 446.04 and 446.05 are renumbered 446.15 and 446.16.

SECTION 17. NR 446 Subchapter II is created to read:

NR 446 (title) Subchapter II - Control of the Atmospheric Deposition of Mercury.

NR 446.029 Adoption of federal mercury standard. If a federal emission standard limiting mercury emissions from a major utility is promulgated under section 111 or 112 of the federal Clean Air Act (42 USC 7411 or 7412), the department shall adopt a similar standard, including administrative requirements that are consistent with the federal administrative requirements. The standard adopted by the department may not be more restrictive in terms of emission limitations than the federal standard. The administrative requirements of the standard adopted by the department relating to baseline calculations, monitoring, recordkeeping and reporting shall be the same as the federal standard. No later than 18 months after the promulgation of a federal emission standard limiting mercury emissions from a major utility, the department shall revise this subchapter under the provisions of s. 227.10 or 227.24, Stats., as appropriate, to comply with the provisions of this section and s. NR 446.06(4).

NR 446.03 Baseline mercury emissions for major utilities. This section applies to the determination of baseline mercury emissions for major utilities.

(1) No later than October 1, 2005, the owner or operator of a major utility shall submit a report to the department that includes information to calculate the baseline mercury emissions of each combustion unit owned or operated by the major utility for calendar years 2002, 2003 and 2004, using the procedures in s. NR 446.04.

(2) After reviewing the report provided in sub. (1), the department shall determine the baseline mercury emissions for each combustion unit of the major utility. The baseline mercury emissions shall be the arithmetic average of the baseline emissions for 2002, 2003 and 2004, unless the department approves an alternative baseline requested by the major utility.

(3) In the report required under sub. (1), an owner or operator may request that the department determine an alternative baseline if the 3 years are not representative of the source's normal operations and maintenance schedule. This request shall include sufficient information to demonstrate that an alternative baseline is appropriate, a proposed alternative baseline, and information sufficient to document how the proposed alternative baseline was determined.

(4) No later than January 1, 2007, the department shall provide written notification to each owner or operator who submitted a report under sub. (1) of the department's determination of the baseline mercury emissions for each combustion unit of the major utility.

NR 446.04 Procedures for determining baseline mercury emissions for major utilities. The owner or operator of a major utility shall calculate baseline mercury emissions of the combustion units of the major utility using the procedures of this section for each emissions unit and provide all associated data to the department in the report required under s. NR 446.03(1).

(1) No later than the first day of the 2nd month beginning after the effective date of the rule ... [revisor inserts date] and continuing for a calendar 12 month period, a representative sample shall be collected weekly for each solid fossil fuel used in the emissions unit in that week. Each weekly sample of a fuel collected under this subsection shall be composited into a monthly sample that shall be analyzed for mercury content using ASTM D3684-01, incorporated by reference in s. NR 484.10(47m), or an equivalent method approved by the department.

(2) The mercury content of each non-solid fossil fuel shall be determined either through testing according to the procedures in ASTM D3684-01, incorporated by reference in s. NR 484.10 (47m), or an equivalent method approved by the department or from published data which lists the mercury content of the fuel.

(3) The major utility shall determine the monthly consumption of each fuel in million British thermal units (mmBtu), using methods and procedures specified in Appendices A, B, C and F of 40 CFR part 75, incorporated by reference in s. NR 484.04(26m)(a) to (d). The major utility may apportion the fuel mmBtu to individual fuels for which the mercury content is determined under sub. (1) or (2), using consumption and delivery records for the fuels.

(4) The information gathered in subs. (1) and (2) shall be multiplied by the corresponding fuel consumption rates determined under sub. (3) to determine the total annual mercury contained in each fuel.

(5) The mercury content for each fuel, on a mmBtu-basis, shall be computed by dividing the results of sub.

(4) by the amount of each fuel burned, in mmBtus, during the 12 month sampling period.

(6) The mercury emissions for 2002, 2003 and the 12 months identified in sub. (1) shall be calculated by multiplying the results of sub. (5) times the annual fuel consumption for each of those years.

(7) The baseline mercury emissions shall be the 3-year arithmetic average of the mercury emissions determined under subs. (4) and (6) for 2002, 2003 and the 12 months identified in sub. (1).

(8) The major utility shall record and report the baseline determination data and calculations for each combustion unit, including the type or types of fuel, the monthly consumption of each fuel in mmBtus, and the mercury concentration in each fuel .

(9) The owner or operator of a major utility may request that alternative procedures for determining baseline mercury emissions be approved by the department.

NR 446.05 Mercury emission limits for new or modified sources. (1) No person may commence construction or modification of a stationary source that results in an increase in annual allowable emissions of mercury of 10 pounds or more from the new or modified source unless the person has obtained a permit under ch. NR 406. The department may not issue a permit under ch. NR 406 for the source unless the department finds that emissions of mercury will be controlled to a level which is best available control technology.

(2) New or modified stationary sources that are subject to an emission limit for mercury required under section 112 of the Act are exempt from the requirements of this section.

(3) Except as provided in sub. (2), this section applies to all new or modified sources for which an air permit application was submitted or should have been submitted to the department under sub. (1) on or after the first day of the calendar month following the effective date of this section....[revisor inserts date].

NR 446.055 Mercury emission reduction goal. It is the goal of the department to encourage the major utilities to achieve the maximum amount of mercury emission reductions reasonably achievable from all stationary sources of the major utilities in the state. Specifically, the department's objective is to work with the major utilities to achieve an 80% reduction in mercury emissions by 2018, as measured from the baseline mercury emissions for the major utilities' stationary sources, as determined by the department under s. NR 446.03.

NR 446.06 Mercury emission limits for major utilities. (1) (a) Except as provided in sub. (4), beginning January 1, 2008, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds the controlled mercury emissions for those units, determined by the department under par. (b).

(b) No later than October 1, 2005, the owner or operator of a major utility shall conduct a source performance test on each combustion unit to determine the control efficiency of any control equipment or emission reduction activity on the mercury emissions from the combustion unit. This control efficiency shall be applied to the baseline mercury emissions calculated under s. NR 446.03 for the unit, using the procedures in s. NR 446.09, to determine the controlled mercury emissions of the combustion unit.

(2) Except as provided in sub. (4) or (5), beginning January 1, 2010, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds 60% of the baseline mercury emissions for those units, determined by the department under s. NR 446.03.

(3) Except as provided in sub. (4) or (5), beginning January 1, 2015, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds 25% of the baseline mercury emissions for those units, determined by the department under s. NR 446.03.

(4) Stationary sources of less than 25 megawatts owned or operated by a major utility for which baseline emissions have been determined by the department under s. NR 446.03 and for which controlled emissions are determined by the department under sub. (1) (b), may be included by the major utility in meeting the emission limit requirements of subs. (1), (2), and (3). Mercury emissions for units included under this subsection shall be computed in the determination of controlled mercury emissions under sub. (1) and the baseline emissions subject to the emissions limits under subs. (2) and (3) and shall be subject to the compliance and reporting requirements of s. NR 446.08.

(5) The mercury emissions from a facility owned or operated by a major utility may be exempt from the emission reduction requirements of sub. (2) or (3) if the total annual mercury emissions from all stationary sources of 25 megawatts or greater at the facility are 25 pounds or less.

(6) Pursuant to s. 285.27 (1)(a) and (2)(a), Stats., if an emission standard regulating mercury emissions from a major utility is promulgated under section 111 or 112 of the federal Clean Air Act (42 USC 7411 or 7412), the department shall promulgate a similar standard, including administrative requirements that are consistent with the federal administrative requirements. The department's standard shall have the same mercury emission reductions as the federal standard.

NR 446.07 Multi-pollutant reduction alternative. (1) The owner or operator of a major utility may request the department to approve a multi-pollutant alternative that provides relief from meeting the mercury reduction requirement specified in s. NR 446.06(2).

(2) Requests for consideration of a multi-pollutant reduction alternative shall be submitted to the department by the date compliance plans to meet the mercury reduction requirement specified in s. NR 446.06(2) are required. Requests shall be in writing and include the following:

(a) The annual mercury emission reductions that will be achieved in each year from the compliance date in s. NR 446.06(2) to the compliance date in s. NR 446.06(3).

(b) The schedule and reductions levels for other air contaminants that will be achieved in the multi-pollutant alternative and explanation of how the reduction levels proposed will be greater than applicable requirements as listed in s. NR 400.02(26).

(3) In order to qualify for department approval, a multi-pollutant reduction alternative shall include:

(a) A commitment by the major utility to achieve and maintain mercury reductions from the baseline set in s. NR 446.06(1) during the period identified in sub. (2)(a).

(b) A commitment by the major utility to reduce system-wide emissions beyond applicable requirements for at least 2 of the following air contaminants: fine particulate matter, nitrogen oxides, sulfur dioxide or carbon dioxide.

(4) Within 60 days of the filing of a completed request, the department shall publish a public notice on each multi-pollutant reduction alternative and the department's preliminary determination to grant or deny the request. The public notice shall provide the opportunity for public comments including, where requested, a public hearing on the request. Following the public comment period, the department shall notify the applicant in writing of the

reasons for denying, granting or for granting in a modified form any request for a multi-pollutant reduction alternative.

(5) Owners and operators of major utilities receiving approval for a multi-pollutant reduction alternative shall still be required to meet the mercury reduction requirements in s. NR 446.06(3).

(6) Owners and operators of major utilities that receive approval for a multi-pollutant reduction alternative are not allowed to provide emission reduction credits to another major utility to meet the mercury reduction requirement in s. NR 446.06(2) or to trade the excess reduction increment of the pollutants identified in sub. (3)(b).

(7) Owners and operators may be required to meet any future applicable requirement for the pollutants identified in sub. (3)(b).

Note: Any environmental cooperative agreement that the department has signed with a major utility prior to the effective date of this rule [revisor inserts date] and that includes multi-pollutant emission reductions may be used by the major utility as the basis of a request for a multi-pollutant reduction alternative under s. NR 446.07.

NR 446.075 Early emission reduction credits. The owner or operator of a major utility that reduces mercury emissions from a stationary source of the major utility on or after the effective date of this rule [revisor inserts date] and prior to January 1, 2015, may request that the department certify the emission reductions as early emission reduction credits. The department shall certify the emission reductions, in terms of pounds of mercury emissions reduced, as early emission reduction credits if the owner or operator demonstrates to the department that the reductions are actual, permanent mercury emission reductions that are not required under any state or federal law or air permit condition. Any mercury emission reduction credits may be used by the owner or operator of the major utility to meet the annual emission limitations in s. NR 446.06(2) and (3) during calendar years 2010 through 2017.

NR 446.08 Compliance and reporting requirements for major utilities. (1) The owner or operator of a major utility shall include mercury emissions from all combustion units under the ownership or control of the major utility in the calculation of compliance with the emission limits of s. NR 446.06.

(2) Nothing in this section precludes the owner or operator of a major utility from achieving compliance with the emission limits of s. NR 446.06(2) and (3) by obtaining excess mercury emission reduction credits generated by another major utility.