



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs0346/1
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**SENATE SUBSTITUTE AMENDMENT 2,
TO 1999 SENATE BILL 177**

March 7, 2000 – Offered by JOINT COMMITTEE ON FINANCE.

1 **AN ACT to amend** 16.957 (4) (c) 2., 20.505 (10) (s) and subchapter V (title) of
2 chapter 285 [precedes 285.41]; and **to create** 15.347 (5), 20.370 (2) (bj), 20.370
3 (2) (bk), 285.11 (19) and 285.50 of the statutes; **relating to:** a mercury control
4 program from certain sources, research concerning mercury emissions,
5 granting rule-making authority and making appropriations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 15.347 (5) of the statutes is created to read:

7 15.347 (5) MERCURY CONTROL COUNCIL. There is created in the department of
8 natural resources a mercury control council consisting of up to 12 members
9 appointed by the secretary of natural resources.

10 **SECTION 2.** 16.957 (4) (c) 2. of the statutes, as created by 1999 Wisconsin Act
11 9, is amended to read:

1 16.957 (4) (c) 2. ‘Energy conservation and efficiency and renewable resource
 2 funding.’ For fiscal year 1999–2000, a portion of the public benefits fee shall be in
 3 an amount that, when added to 50% of the estimated public benefits fees charged by
 4 municipal utilities and retail electric cooperatives under sub. (5) (a) for that fiscal
 5 year, shall equal \$20,000,000. In each fiscal year after fiscal year 1999–2000, a
 6 portion of the public benefits fee shall be the amount determined under this
 7 subdivision for fiscal year 1999–2000, except that if the department determines to
 8 reduce or discontinue a program under sub. (2) (b) 2., the department shall reduce
 9 the amount accordingly. If the department reduces the amount, the department
 10 shall ensure that sufficient funds are available to make the transfer from the
 11 appropriation account under s. 20.505 (10) (s) to the appropriation account under s.
 12 20.370 (2) (bk).

13 **SECTION 3.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
 14 the following amounts for the purposes indicated:

| | 1999-00 | 2000-01 |
|------------------------------------------------|-------------------------|----------------|
| 20.370 Natural resources, department of | | |
| (2) AIR AND WASTE | | |
| (bk) Air management — mercury con- | | |
| trol | PR-S A 500,000 | 500,000 |

20 **SECTION 4.** 20.370 (2) (bj) of the statutes is created to read:
 21 20.370 (2) (bj) *Air management — small source mercury reduction.* All moneys
 22 received under s. 285.50 (6) (a) 3. for conducting small source mercury reduction
 23 projects.

24 **SECTION 5.** 20.370 (2) (bk) of the statutes is created to read:

1 SUBCHAPTER V

2 SULFUR DIOXIDE AND NITROGEN

3 OXIDE EMISSION

4 RATES AND GOALS;

5 MERCURY CONTROL

6 SECTION 9. 285.50 of the statutes is created to read:

7 **285.50 Mercury control. (1) DEFINITIONS.** In this section:8 (a) “Allowance” means a limited authorization to emit one pound of mercury
9 in one year.10 (b) “Baseline mercury emissions” means the average annual mercury
11 emissions of a stationary source in 1997, 1998 and 1999, as determined under sub.
12 (1m).

13 (c) “Boiler” means a solid fossil fuel-fired combustion unit.

14 (d) “Electric utility” has the meaning given in s. 196.485 (1) (bs).

15 (dm) “Industrial boiler” means a boiler that is not owned by a municipality, this
16 state or an electric utility if the total annual mercury emissions from all stationary
17 sources that are located on the site on which the boiler is located exceed 10 pounds
18 in any year.19 (e) “Modify” means to make one or more physical changes in, or changes in the
20 method of operation of, a stationary source so that the annual mercury emissions of
21 the stationary source increase by 5 pounds or more over the baseline mercury
22 emissions of the stationary source.23 (f) “Nonboiler source” means a stationary source that emits mercury and that
24 is not a solid fossil fuel-fired combustion unit. “Nonboiler source” includes a
25 combustion unit that is fired with fossil fuel that is not solid.

1 (h) "Regulated electric utility boiler" means a boiler that is owned by an electric
2 utility if the total annual mercury emissions from all stationary sources that are
3 located on the site on which the boiler is located exceed 10 pounds in any year.

4 (i) "Regulated government-owned boiler" means a boiler that is owned by a
5 municipality or this state if the total annual mercury emissions from all stationary
6 sources that are located on the site on which the boiler is located exceed 10 pounds
7 in any year.

8 (j) "Regulated nonboiler source" means a nonboiler source if the total annual
9 mercury emissions from all stationary sources that are located on the site on which
10 the nonboiler source is located exceed 10 pounds in any year.

11 (k) "Site" means contiguous property that is under common ownership or
12 control.

13 **(1e) MERCURY CONTROL REPORT AND PROGRAM.** (a) No later than July 1, 2001,
14 the department shall submit to the legislature under s. 13.172 (2) and to the governor
15 a mercury control report that summarizes the department's review of mercury
16 emission sources in this state and methods for obtaining reductions in mercury
17 emissions from these sources and describes a comprehensive program that will be
18 administered by the department for addressing mercury in the environment.

19 (b) In the review under par. (a) of mercury emission sources in this state and
20 methods for obtaining reductions in mercury emissions from these sources, the
21 department shall include at least descriptions of all of the following:

22 1. Mercury emissions by sources in this state.

23 2. Each method for obtaining reductions in mercury emissions for the sources
24 identified under subd. 1., including an analysis of the method's effectiveness,
25 technical feasibility, cost, impact on emissions of other pollutants, unintended

1 environmental consequences and impact on the reliability of the supply of electricity
2 in this state or on the delivery of other goods and services.

3 (c) In its comprehensive program for addressing mercury in the environment,
4 the department shall include all of the following components:

5 1. Mercury-related research funded under s. 20.370 (2) (bk) and funded from
6 other sources.

7 2. Mercury deposition studies and monitoring activities.

8 3. Public information and education.

9 4. Technical assistance for stationary sources that emit mercury.

10 5. Methods for reducing mercury emissions, including the requirements under
11 sub. (2) and (3) and any goals under sub. (3m).

12 6. Cooperative activities under sub. (10).

13 7. Activities to eliminate the use of mercury by, or reduce mercury emissions
14 from, small sources.

15 8. Activities to address problems associated with long-term storage and
16 disposal of mercury.

17 9. Activities to evaluate the effectiveness of the program for addressing
18 mercury in the environment.

19 10. Any other components identified by the department.

20 (d) In its report under par. (a), the department may recommend legislation to
21 establish additional mercury emission limits.

22 (e) The department shall submit updates to the report under par. (a) to the
23 legislature under s. 13.172 (2) and to the governor no later than May 1, 2006, and
24 May 1, 2011, and shall include in the updates an analysis of the impacts of banking
25 and trading authorized under sub. (4) on water quality in specific locations and the

1 actions that the department will take to address any adverse impacts of banking and
2 trading on water quality in specific locations.

3 **(1m) DETERMINATION OF MERCURY EMISSIONS.** The department shall establish a
4 methodology for determining the annual mercury emissions of boilers and other
5 stationary sources that emit mercury. Using this methodology, the department shall
6 determine a baseline mercury emission level for each regulated electric utility boiler,
7 regulated government-owned boiler, regulated nonboiler source and industrial
8 boiler by averaging the annual mercury emissions of the boiler or the nonboiler
9 source in 1997, 1998 and 1999.

10 **(2) EMISSION LIMITS; ELECTRIC UTILITY AND GOVERNMENT-OWNED BOILERS.** (a) *New*
11 *and modified boilers.* 1. After the department establishes a methodology under sub.
12 (1m), no person may construct a new regulated electric utility boiler or a new
13 regulated government-owned boiler until the person obtains mercury emission
14 reductions, as provided in sub. (4), equal to 150% of the annual mercury emissions
15 from the new boiler.

16 2. After the department establishes a methodology under sub. (1m), no person
17 may modify a regulated electric utility boiler or regulated government-owned boiler
18 until the person obtains mercury emission reductions, as provided in sub. (4), equal
19 to 150% of the increased mercury emissions resulting from the modification of the
20 boiler.

21 (b) *Existing boilers.* 1. Beginning in the year after the year in which the
22 department establishes a methodology under sub. (1m), the annual mercury
23 emissions from a regulated electric utility boiler or regulated government-owned
24 boiler to which par. (a) does not apply may not exceed the baseline mercury emissions
25 of the boiler, except as provided in sub. (4) (b).

1 2. Except as provided under par. (c) 4. or sub. (3c), in 2005 to 2009, the owner
2 or operator of a regulated electric utility boiler or regulated government-owned
3 boiler to which par. (a) 1. does not apply shall annually obtain mercury emission
4 reductions, as provided in sub. (4), equal to 25%, or the percentage established under
5 par. (c) 1., of the baseline mercury emissions of the boiler.

6 3. Except as provided under par. (c) 4. or sub. (3c), in 2010 to 2014, the owner
7 or operator of a regulated electric utility boiler or regulated government-owned
8 boiler to which par. (a) 1. does not apply shall annually obtain mercury emission
9 reductions, as provided in sub. (4), equal to 50%, or the percentage established under
10 par. (c) 2., of the baseline mercury emissions of the boiler.

11 4. Except as provided under par. (c) 4. or sub. (3c), beginning in 2015, the owner
12 or operator of a regulated electric utility boiler or regulated government-owned
13 boiler to which par. (a) 1. does not apply shall annually obtain mercury emission
14 reductions, as provided in sub. (4), equal to 60%, or the percentage established under
15 par. (c) 3., of the baseline mercury emissions of the boiler.

16 (c) *Modifying emission limits.* 1. The department may by rule reduce the
17 requirement in par. (b) 2. from 25% to a percentage not less than 15% if the
18 department determines, based on the report under sub. (1e) (a), that it is not
19 technically and economically feasible to meet the 25% requirement in the period
20 2005 to 2009 using the methods for obtaining emission reductions authorized under
21 sub. (4). If the department decides to promulgate a rule under this subdivision, it
22 shall submit the rule in proposed form to the legislative council staff under s. 227.15
23 (1) no later than December 31, 2001.

24 2. The department may by rule reduce the requirement in par. (b) 3. from 50%
25 to a percentage not less than 35% if the department determines, based on the report

1 under sub. (1e) (a) and any updates to the report, that it is not technically and
2 economically feasible to meet the 50% requirement in the period 2010 to 2014 using
3 the methods for obtaining emission reductions authorized under sub. (4). If the
4 department decides to promulgate a rule under this subdivision, it shall submit the
5 rule in proposed form to the legislative council staff under s. 227.15 (1) no later than
6 December 31, 2006.

7 3. The department may by rule increase the requirement in par. (b) 4. from 60%
8 to a percentage not greater than 90% if the department determines, based on the
9 report under sub. (1e) (a) and any updates to the report, that it is technically and
10 economically feasible to meet the higher requirement using the methods for
11 obtaining emission reductions authorized under sub. (4). A rule promulgated under
12 this subdivision may not take effect fewer than 48 months after it is promulgated.

13 4. The department shall modify the amount of emission reductions that a
14 person is required to obtain under par. (b) 2. to 4. so that the person is not required
15 to obtain any additional emission reductions for stationary sources on a site once the
16 mercury emissions from all stationary sources on that site, less any mercury
17 emission reductions obtained under sub. (4) from sources that are not on that site to
18 satisfy the requirements under par. (b) 2. to 4. that apply to sources on that site,
19 equals 10 pounds per year.

20 **(3) EMISSION LIMITS; NONBOILER SOURCES.** (a) *New and modified nonboiler*
21 *sources.* 1. After the department establishes a methodology under sub. (1m), no
22 person may construct a new regulated nonboiler source until the person obtains
23 mercury emission reductions, as provided in sub. (4), equal to 150% of the annual
24 mercury emissions from the new nonboiler source.

1 2. After the department establishes a methodology under sub. (1m), no person
2 may modify a regulated nonboiler source until the person obtains mercury emission
3 reductions, as provided in sub. (4), equal to 150% of the increased mercury emissions
4 resulting from the modification of the nonboiler source.

5 (b) *Existing nonboiler sources.* 1. Beginning in the year after the year in which
6 the department establishes a methodology under sub. (1m), the annual mercury
7 emissions from a regulated nonboiler source to which par. (a) does not apply may not
8 exceed the baseline mercury emissions of the nonboiler source, except as provided in
9 sub. (4) (b).

10 2. Except as provided under par. (c) 4. or sub. (3c), in 2005 to 2009, the owner
11 or operator of a regulated nonboiler source to which par. (a) 1. does not apply shall
12 annually obtain mercury emission reductions, as provided in sub. (4), equal to 25%,
13 or the percentage established under par. (c) 1., of the baseline mercury emissions of
14 the nonboiler source.

15 3. Except as provided under par. (c) 4. or sub. (3c), in 2010 to 2014, the owner
16 or operator of a regulated nonboiler source to which par. (a) 1. does not apply shall
17 annually obtain mercury emission reductions, as provided in sub. (4), equal to 50%,
18 or the percentage established under par. (c) 2., of the baseline mercury emissions of
19 the nonboiler source.

20 4. Except as provided under par. (c) 4. or sub. (3c), beginning in 2015, the owner
21 or operator of a regulated nonboiler source to which par. (a) 1. does not apply shall
22 annually obtain mercury emission reductions, as provided in sub. (4), equal to 60%,
23 or the percentage established under par. (c) 3., of the baseline mercury emissions of
24 the nonboiler source.

1 (c) *Modifying emission limits.* 1. The department may by rule reduce the
2 requirement in par. (b) 2. from 25% to a percentage not less than 15% if the
3 department determines, based on the report under sub. (1e) (a), that it is not
4 technically and economically feasible to meet the 25% requirement in the period
5 2005 to 2009 using the methods for obtaining emission reductions authorized under
6 sub. (4). If the department decides to promulgate a rule under this subdivision, it
7 shall submit the rule in proposed form to the legislative council staff under s. 227.15
8 (1) no later than December 31, 2001.

9 2. The department may by rule reduce the requirement in par. (b) 3. from 50%
10 to a percentage not less than 35% if the department determines, based on the report
11 under sub. (1e) (a) and any updates to the report, that it is not technically and
12 economically feasible to meet the 50% requirement in the period 2010 to 2014 using
13 the methods for obtaining emission reductions authorized under sub. (4). If the
14 department decides to promulgate a rule under this subdivision, it shall submit the
15 rule in proposed form to the legislative council staff under s. 227.15 (1) no later than
16 December 31, 2006.

17 3. The department may by rule increase the requirement in par. (b) 4. from 60%
18 to a percentage not greater than 90% if the department determines, based on the
19 report under sub. (1e) (a) and any updates to the report, that it is technically and
20 economically feasible to meet the higher requirement using the methods for
21 obtaining emission reductions authorized under sub. (4). A rule promulgated under
22 this subdivision may not take effect fewer than 48 months after it is promulgated.

23 4. The department shall modify the amount of emission reductions that a
24 person is required to obtain under par. (b) 2. to 4. so that the person is not required
25 to obtain any additional emission reductions for stationary sources on a site once the

1 mercury emissions from all stationary sources on that site, less any mercury
2 emission reductions obtained under sub. (4) from sources that are not on that site to
3 satisfy the requirements under par. (b) 2. to 4. that apply to sources on that site,
4 equals 10 pounds per year.

5 **(3c) VARIANCE.** If the department determines that compliance with a
6 requirement under sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. would cause undue or
7 unreasonable hardship to any person, the department may issue a variance for up
8 to 2 years from part or all of the requirement as long as a variance will not result in
9 undue harm to human health or the environment.

10 **(3e) INCREASE IN REQUIRED REDUCTIONS.** Notwithstanding the mercury emission
11 reductions required to be obtained under subs. (2) (b) 2. to 4. and (3) (b) 2. to 4., if the
12 owner or operator of a stationary source subject to those requirements fails to obtain
13 the required mercury emission reductions in a year, the department shall increase
14 the amount of mercury emission reductions that the owner or operator must obtain
15 under sub. (2) (b) or (3) (b) for the next year by 5 times the difference between the
16 amount of emission reductions required and the amount of emission reductions
17 obtained unless the owner or operator obtains a variance under sub. (3c).

18 **(3m) STUDY OF EMISSION REDUCTION FEASIBILITY AND GOALS; INDUSTRIAL BOILERS.**

19 (a) The department shall, in cooperation with owners of industrial boilers, study
20 mercury emission reduction options that are technologically and economically
21 feasible and that have been successfully employed for the purposes of mercury
22 reduction for similarly situated industrial boilers.

23 (b) For each mercury reduction option that is determined to be technologically
24 and economically feasible under par. (a), the department shall estimate the potential

1 environmental benefit to fish and aquatic resources in this state from
2 implementation of the option.

3 (c) If technologically and economically feasible mercury reduction options are
4 available for industrial boilers that would result in significant environmental
5 benefits to fish and aquatic resources in this state, the department shall, in
6 cooperation with owners and operators, establish mercury emission reduction goals
7 and timetables for industrial boilers.

8 **(4) COMPLIANCE.** (a) A person who owns a stationary source that is subject to
9 sub. (2) (a) or (3) (a) may obtain the required emission reductions by one or more of
10 the following methods:

11 1. Reducing the annual mercury emissions from another stationary source
12 owned by the person if the reduction is permanent and enforceable and is not
13 otherwise required by this section or other state or federal law.

14 2. Entering into an agreement under which another person reduces the annual
15 mercury emissions from a stationary source owned by the other person if the
16 reduction is permanent and enforceable and is not otherwise required by this section
17 or other state or federal law.

18 (b) A person who owns a stationary source that is subject to sub. (2) (b) 1. or (3)
19 (b) 1. may only increase the annual mercury emissions in a year above the baseline
20 mercury emissions for that stationary source if the person reduces mercury
21 emissions in that year from another stationary source on the same site by the amount
22 of the increase and if the emission reduction is not otherwise required by this section
23 or other state or federal law.

1 (c) Except as provided in par. (d) or (e), a person who owns a stationary source
2 that is subject to sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. may obtain the required emission
3 reductions by one or more of the following methods:

4 1. Reducing mercury emissions from that stationary source or another
5 stationary source on the same site.

6 2. Using banked or traded allowances as provided under sub. (5).

7 3. Using small source mercury reduction allowances as provided under sub. (6).

8 (d) 1. A person who owns or operates a stationary source that is regulated under
9 sub. (2) (b) 2. to 4. may not obtain more than 50% of the required emission reductions
10 for that stationary source by using allowances from a stationary source that is
11 regulated under sub. (3), by using small source mercury reduction allowances or by
12 using a combination of those methods.

13 2. A person who owns or operates a stationary source that is regulated under
14 sub. (3) (b) 2. to 4. may not obtain more than 50% of the required emission reductions
15 for that stationary source by using allowances from a stationary source that is
16 regulated under sub. (2), by using small source mercury reduction allowances or by
17 using a combination of those methods.

18 (e) 1. In 2005 to 2009, a person who owns a stationary source that is regulated
19 under sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. may not obtain more than 25% of the
20 required emission reductions for that stationary source by using small source
21 mercury reduction allowances.

22 2. In 2010 to 2014, a person who owns a stationary source that is regulated
23 under sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. may not obtain more than 15% of the
24 required emission reductions for that stationary source in 2010 to 2014 by using
25 small source mercury reduction allowances.

1 3. After 2014, a person who owns a stationary source that is regulated under
2 sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. may not obtain any of the required emission
3 reductions for that stationary source by using small source mercury reduction
4 allowances.

5 **(5) EMISSION ALLOWANCE SYSTEM; BANKING AND TRADING EMISSION ALLOWANCES.** (a)
6 *Allowances.* The department shall promulgate rules for a mercury emission
7 allowance system that assigns allowances to each stationary source that is subject
8 to sub. (2) (b) or (3) (b). Under the system, the department shall notify the owner or
9 operator of a stationary source of the number of allowances for that stationary source
10 for up to 5 years in advance, based on the requirements of sub. (2) (b) or (3) (b) and
11 of sub. (3e).

12 (b) *Emission allowance banking and trading.* The department shall
13 promulgate rules for quantifying and certifying reductions in mercury emissions
14 from stationary sources that are subject to sub. (2) or (3) and for a system for banking
15 and trading allowances. The department may allow owners and operators who
16 reduce mercury emissions from industrial boilers to obtain allowances that may be
17 banked and traded for, if the reductions are quantifiable, permanent and
18 enforceable. The department may not allow the banking or trading of reductions in
19 mercury emissions if those reductions are required by federal law or by state law
20 other than this section.

21 **(6) SMALL SOURCE MERCURY REDUCTION ALLOWANCES.** (a) A person may obtain
22 small source mercury reduction allowances in any of the following ways:

23 1. Conducting a small source mercury reduction project that is approved by the
24 department.

1 2. Entering into an agreement under which another person conducts a small
2 source mercury reduction project that is approved by the department.

3 3. Providing funds to the department for conducting a small source mercury
4 reduction project.

5 (b) The department shall issue small source mercury reduction allowances to
6 a person under this subsection in amounts equal to the amounts of reductions in
7 emissions of mercury that are reasonably likely to occur because of the small source
8 mercury reduction project undertaken or sponsored by the person, as determined
9 based on the rules promulgated under par. (c).

10 (c) The department shall promulgate rules for issuing small source mercury
11 reduction allowances. In the rules, the department shall include criteria for
12 determining the amounts of reductions in emissions of mercury that are reasonably
13 likely to occur because of a small source mercury reduction project, including all of
14 the following:

15 1. The ability of the department to determine the actual amounts of reductions
16 in emissions of mercury resulting from a small source mercury reduction project,
17 taking into consideration any proposed measurement, monitoring and evaluation of
18 the project.

19 2. The degree of certainty that the predicted amounts of reductions in emissions
20 of mercury will result from the small source mercury reduction project.

21 3. The extent to which the reductions in emissions of mercury would occur in
22 the absence of the small source mercury reduction project.

23 4. The period during which the reductions in emissions of mercury resulting
24 from the small source mercury reduction project will continue.

