

1999 ASSEMBLY BILL 366

June 1, 1999 – Introduced by Representatives KAUFERT, JOHNSRUD, J. LEHMAN, GOETSCH, BLACK, LA FAVE, PLALE, GUNDERSON, MILLER, BOYLE, HASENOHRL, GRONEMUS, SCHOOFF, HANDRICK and BOCK, cosponsored by Senators BURKE, DARLING, ROBSON, WIRCH, RISSER and CLAUSING. Referred to Committee on Natural Resources.

1 **AN ACT** *to amend* subchapter V (title) of chapter 285 [precedes 285.41]; and *to*
 2 *create* 20.370 (2) (bh), 29.024 (9m), 29.409, 196.854, 281.12 (4), 285.11 (18),
 3 285.48, 285.483, 285.49, 285.495, 285.497 and 287.07 (8) (a) 2m. of the statutes;
 4 **relating to:** mercury emissions from certain sources, reporting mercury
 5 emissions, mercury in medical waste sent to incinerators, fish advisories,
 6 granting rule-making authority, making an appropriation and providing a
 7 penalty.

Analysis by the Legislative Reference Bureau

This bill limits the amount of mercury that may be emitted into the air by major utilities beginning in 2001. Under the bill, in each year from 2001 to 2004 a major utility generally may not emit more than the amount of mercury that it emitted in the year 1999. For 2005 to 2009, the limit is 85% of the amount of mercury emitted in the year 1999, for 2010 to 2014, the limit is 70% of the amount of mercury emitted in the year 1999 and for 2015 and thereafter, the limit is 50% of the amount of mercury emitted in the year 1999. Under certain circumstances, the department of natural resources (DNR) may grant a variance from the mercury emission limits for a year, but DNR may not grant a major utility more than two variances in ten years.

This bill limits the amount of mercury that may be emitted into the air by certain incinerators and plants that use mercury to produce specified products

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(chlor-alkali plants) beginning in 2001. Under the bill, in each year from 2001 to 2004 these incinerators and chlor-alkali plants generally may not emit more than the amount of mercury that it emitted in the year 1999. For 2005 to 2009, the limit is 85% of the amount of mercury emitted in the year 1999, for 2010 to 2014, the limit is 70% of the amount of mercury emitted in the year 1999 and for 2015 and thereafter, the limit is 50% of the amount of mercury emitted in the year 1999. The bill requires DNR to promulgate rules under which it may grant a variance from the mercury emission limits for incinerators and chlor-alkali plants.

The bill imposes an assessment on major utilities for the costs of DNR's activities related to mercury emissions. The bill also requires persons who generate electricity to annually report the amount of mercury emitted in generating electricity, with certain exceptions.

This bill allows a person to sue DNR if the person believes that DNR is not performing an act under the mercury emission provisions created by the bill and the act is not discretionary with DNR. The bill also allows a person to sue another person who is alleged to be in violation of the mercury emission provisions created by the bill unless DNR has commenced a civil or criminal action concerning the alleged violation.

This bill requires DNR to ensure that a copy of a fish advisory is distributed to each person obtaining a sport fishing license. The fish advisory describes the risks to human health of eating sport fish that contain mercury. The bill also requires DNR to post signs about the fish advisory at public boat landings.

Finally, this bill requires persons who generate medical waste that is sent to a medical waste facility to develop policies to reduce the amount of mercury in medical waste.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

	1999-00	2000-01
3		
4	20.370 Natural resources, department of	
5	(2) AIR AND WASTE	
6	(bh) Air management — mercury	
7	deposition activities	PR A 500,000 500,000

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1 **SECTION 2.** 20.370 (2) (bh) of the statutes is created to read:

2 20.370 **(2)** (bh) *Air management — mercury deposition activities.* The amounts
3 in the schedule for mercury deposition studies and evaluation and monitoring
4 activities. All moneys received under s. 196.854 shall be credited to this
5 appropriation.

6 **SECTION 3.** 29.024 (9m) of the statutes is created to read:

7 29.024 **(9m)** INFORMATION WITH CERTAIN APPROVALS. The department shall
8 ensure that a copy of the fish advisory issued under s. 281.12 (4) is distributed to each
9 person being issued, under this chapter, an approval that authorizes sport fishing.

10 **SECTION 4.** 29.409 of the statutes is created to read:

11 **29.409 Notice of fish advisory.** The department shall place a sign at each
12 public boat landing on a body of water if fish in that body of water are included in the
13 fish advisory issued under s. 281.12 (4). The sign shall describe the species and sizes
14 of fish included in the fish advisory.

15 **SECTION 5.** 196.854 of the statutes is created to read:

16 **196.854 Assessment for mercury deposition activities. (1)** The
17 commission shall annually assess against the major utilities, as defined in s. 285.48
18 (1) (f), the amount appropriated under s. 20.370 (2) (bh) for mercury deposition
19 studies and evaluation and monitoring activities conducted by the department of
20 natural resources.

21 **(2)** The commission, in consultation with the department of natural resources,
22 shall promulgate rules establishing a method for assessing each major utility an
23 amount that is proportionate to its fraction of the total amount of mercury emissions
24 from major utilities in this state.

25 **SECTION 6.** 281.12 (4) of the statutes is created to read:

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1 281.12 (4) The department, in consultation with the department of health and
2 family services, shall annually issue an advisory describing the risks to human
3 health of eating sport fish that contain mercury and that are taken from the various
4 waters of this state. The advisory may also describe the risks to human health of
5 eating sport fish that contain other contaminants.

6 **SECTION 7.** 285.11 (18) of the statutes is created to read:

7 285.11 (18) Conduct, or contract with other persons to conduct, research on the
8 effects of mercury emissions on human health and the environment and research on
9 methods for reducing those emissions.

10 **SECTION 8.** Subchapter V (title) of chapter 285 [precedes 285.41] of the statutes
11 is amended to read:

12 **CHAPTER 285**

13 SUBCHAPTER V

14 SULFUR DIOXIDE AND NITROGEN

15 OXIDE EMISSION

16 RATES AND GOALS;

17 MERCURY EMISSION LIMITS

18 **SECTION 9.** 285.48 of the statutes is created to read:

19 **285.48 Mercury emission limits; major utilities. (1) DEFINITIONS.** In this
20 section:

21 (a) “Annual mercury emissions” means the number of pounds of mercury
22 emissions from all boilers under the ownership or control of a person in a year.

23 (c) “Boiler” means a fossil fuel-fired boiler.

24 (d) “Commission” means the public service commission.

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1 (e) “Environmental dispatching” means the operation of the various units
2 under the ownership or control of a major utility in a manner that minimizes the
3 discharge of mercury emissions rather than minimizing the cost of operation.

4 (f) “Major utility” means a Class A utility, as defined in s. 199.03 (4), that
5 generates electricity or an electrical cooperative association organized under ch. 185,
6 if the total mercury emissions from all stationary air contaminant sources in this
7 state under the ownership or control of the utility or association exceeds 10 pounds
8 in 1999.

9 **(1m) DETERMINATION OF MERCURY EMISSIONS.** The department shall establish a
10 methodology for determining the annual mercury emissions of major utilities.

11 **(2) EMISSION LIMITS.** (a) Except as provided under sub. (4), in 2001 to 2004, the
12 annual mercury emissions of a major utility may not exceed the annual mercury
13 emissions of the major utility in the year 1999, as determined by the department
14 using the methodology under sub. (1m).

15 (b) Except as provided under sub. (4), in 2005 to 2009, the annual mercury
16 emissions of a major utility may not exceed 85% of the annual mercury emissions of
17 the major utility in the year 1999, as determined by the department using the
18 methodology under sub. (1m).

19 (c) Except as provided under sub. (4), in 2010 to 2014, the annual mercury
20 emissions of a major utility may not exceed 70% of the annual mercury emissions of
21 the major utility in the year 1999, as determined by the department using the
22 methodology under sub. (1m).

23 (d) Except as provided under sub. (4), beginning in 2015, the annual mercury
24 emissions of a major utility may not exceed 50% of the annual mercury emissions of

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1 the major utility in the year 1999, as determined by the department using the
2 methodology under sub. (1m).

3 **(3) ANNUAL COMPLIANCE PLAN REQUIRED.** (a) *Submission; contents.* On or before
4 October 1 of each year beginning with the year 2000, each major utility shall submit
5 to the department and the commission a plan for achieving compliance with the
6 emission limit under sub. (2). The plan shall include, at a minimum, all of the
7 following:

8 1. The major utility's expected electricity demand.

9 2. The major utility's annual operation plan.

10 3. The expected operation characteristics of each boiler, including all of the
11 following:

12 a. The order to be used in placing the boilers into operational production.

13 b. The planned maintenance schedule for each boiler and how the maintenance
14 is expected to affect the methods of meeting electricity demands.

15 4. The amount and mercury content of coal, other fossil fuel or other materials
16 to be used for each boiler in operational production. The mercury content shall be
17 expressed in pounds of mercury per million British thermal units of heat input.

18 5. The anticipated mercury emissions from each boiler.

19 6. Contingency plans for unexpected events or increased demand including a
20 summary of generation costs and the anticipated additional costs for reducing
21 mercury emissions under those circumstances.

22 7. The methods that will be used to achieve compliance with sub. (2) in the
23 following year.

24 8. The total anticipated annual mercury emissions from all boilers under the
25 ownership or control of the major utility for each of the next 3 years.

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1 (b) *Review.* The department shall review the adequacy of each compliance plan
2 and, after consulting with the commission, shall approve or disapprove the plan
3 within 90 days after its receipt.

4 **(4) VARIANCE.** (a) *Request; variance conditions.* A major utility may request
5 a variance from the emission limit under sub. (2) for a year by submitting the request
6 to the commission and the department. No request for a variance may be submitted
7 if the department has served the major utility with written notice under s. 285.83
8 that the major utility has violated sub. (2). Upon receipt of a request, the commission
9 shall, within 45 days, determine if any of the following variance conditions exists and
10 shall report its determination to the department:

11 1. A major electrical supply emergency within or outside this state.

12 2. A major fuel supply disruption.

13 3. An extended and unplanned disruption in the operation of a nuclear plant
14 or a boiler with low mercury emissions under the ownership or control of the major
15 utility.

16 4. The occurrence of an uncontrollable event not anticipated in the plan
17 submitted under sub. (3).

18 5. A plan by the major utility to install and place into operation new
19 technological devices that will enable it to achieve compliance with sub. (2).

20 (b) *Compliance plan required.* With the request for a variance, the major utility
21 shall submit its plan for achieving compliance with the emission limit. If the request
22 is based on a variance condition specified under par. (a) 1. to 4., the request shall
23 include an explanation of why the major utility cannot achieve or remain in
24 compliance by using fuel with a lower mercury content or by environmental
25 dispatching.

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1 (c) *Grant of variance.* The department shall grant a request for a variance if
2 all of the following apply:

3 1. The commission determines that a variance condition exists.

4 2. The department determines that the major utility's compliance plan under
5 par. (b) is adequate.

6 3. The major utility has not received more than one variance in the 9 years
7 preceding the year for which the major utility requests the variance.

8 (d) *Denial of variance.* The department shall deny a request for a variance if
9 the conditions in par. (c) 1. to 3. do not all apply.

10 (e) *Time limit for response.* The department shall grant or deny a request for
11 a variance within 90 days after its receipt of the request or the request is considered
12 to be denied.

13 **(5) NO IMPACT ON OTHER PROVISIONS.** Nothing in this section exempts a major
14 utility from any provision of ss. 285.01 to 285.39 or 285.51 to 285.87. Compliance
15 with this section is not a defense to a violation of any of those provisions.

16 **(6) DETERMINATION OF COMPLIANCE.** The department shall determine
17 compliance with sub. (2) using data submitted by the major utilities. Each major
18 utility shall provide the department with any information needed to determine
19 compliance.

20 **(7) PENALTY.** Notwithstanding s. 285.87, any major utility that exceeds the
21 annual emission limit under sub. (2) in violation of this section shall forfeit not less
22 than \$100,000 nor more than \$500,000 for each year of violation.

23 **SECTION 10.** 285.483 of the statutes is created to read:

24 **285.483 Mercury emission limits; incinerators and chlor-alkali plants.**

25 **(1) DEFINITIONS.** In this section:

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1 (a) “Annual mercury emissions” means the number of pounds of mercury
2 emissions from a source.

3 (b) “Chlor-alkali plant” means a plant that uses mercury to produce chlorine
4 gas, hydrogen gas, sodium hydroxide or alkali metal hydroxide and that has annual
5 mercury emissions that exceed 10 pounds in 1999.

6 (c) “Solid waste incinerator” means a device that maintains a controlled process
7 by which solid waste is thermally altered into gases and residue containing little or
8 no combustible material and that has annual mercury emissions that exceed 10
9 pounds in 1999.

10 **(2) DETERMINATION OF MERCURY EMISSIONS.** The department shall establish a
11 methodology for determining the annual mercury emissions of solid waste
12 incinerators and chlor-alkali plants.

13 **(3) EMISSION LIMITS.** (a) Except as provided in rules promulgated under sub.
14 (4), in 2001 to 2004, the annual mercury emissions from a solid waste incinerator or
15 chlor-alkali plant may not exceed the annual mercury emissions from the solid
16 waste incinerator or chlor-alkali plant in the year 1999, as determined by the
17 department using the methodology under sub. (2).

18 (b) Except as provided in rules promulgated under sub. (4), in 2005 to 2009, the
19 annual mercury emissions from a solid waste incinerator or chlor-alkali plant may
20 not exceed 85% of the annual mercury emissions from the solid waste incinerator or
21 chlor-alkali plant in the year 1999, as determined by the department using the
22 methodology under sub. (2).

23 (c) Except as provided in rules promulgated under sub. (4), in 2010 to 2014, the
24 annual mercury emissions from a solid waste incinerator or chlor-alkali plant may
25 not exceed 70% of the annual mercury emissions from the solid waste incinerator or

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1 chlor-alkali plant in the year 1999, as determined by the department using the
2 methodology under sub. (2).

3 (d) Except as provided under sub. (4), beginning in 2015, the annual mercury
4 emissions from a solid waste incinerator or chlor-alkali plant may not exceed 50%
5 of the annual mercury emissions from the solid waste incinerator or chlor-alkali
6 plant in the year 1999, as determined by the department using the methodology
7 under sub. (2).

8 (4) **RULE MAKING.** The department shall promulgate rules for the submission
9 of annual compliance plans by persons operating sources subject to sub. (3), for
10 review and approval or disapproval of compliance plans, for granting variances from
11 emission limits under sub. (3) and for reporting by persons operating sources subject
12 to sub. (3).

13 (5) **NO IMPACT ON OTHER PROVISIONS.** Nothing in this section exempts a person
14 from any provision of ss. 285.01 to 285.39 or 285.51 to 285.87. Compliance with this
15 section is not a defense to a violation of any of those provisions.

16 (6) **DETERMINATION OF COMPLIANCE.** The department shall determine
17 compliance with sub. (3) using data submitted by persons operating sources subject
18 to sub. (3). Each person operating a source subject to sub. (3) shall provide the
19 department with any information needed to determine compliance.

20 (7) **PENALTY.** Notwithstanding s. 285.87, any person operating a source subject
21 to sub. (3) that exceeds the annual emission limit under sub. (3) in violation of this
22 section shall forfeit not less than \$100,000 nor more than \$500,000 for each year of
23 violation.

24 **SECTION 11.** 285.49 of the statutes is created to read:

ASSEMBLY BILL 366**1 285.49 Mercury emission reporting; generators of electricity. (1)**

2 REQUIREMENT. Except as provided in sub. (3), each person who generates electricity
3 in this state shall provide to the department by April 1, annually, a report of the
4 amount of mercury emitted in generating electricity by the person in the previous
5 calendar year.

6 **(2) CONTENT OF REPORT.** A report under sub. (1) shall include all of the following:

7 (a) A list of all generation facilities owned or operated by the person required
8 to report under sub. (1).

9 (b) Information about the amount of electricity purchased by the person
10 required to report under sub. (1) for use in this state.

11 (c) All of the following information about each generation facility in this state
12 owned or operated by the person required to report under sub. (1):

13 1. The amount of electricity generated at the facility.

14 2. The amount of fuel used to generate electricity at the facility.

15 3. The amount of mercury emitted in generating that electricity, determined
16 using emission factors, stack tests, fuel analysis or other methods approved by the
17 department.

18 4. The mercury content of the fuel used to generate electricity if that content
19 is determined in conjunction with a stack test.

20 **(3) EXCEPTIONS.** A person is not required to report under sub. (1) for any of the
21 following:

22 (a) A generation unit that is operated fewer than 240 hours per year.

23 (b) A generation unit with a fuel capacity input of less than 150,000,000 British
24 thermal units per hour.

25 (c) A generation unit with a maximum output of 15 megawatts or less.

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1 (d) A generation unit with annual mercury emissions of 3 pounds or less.

2 (4) REPORT BY DEPARTMENT. By January 1, 2000, and biennially thereafter, the
3 department shall prepare and make available to the public, a report on the amount
4 of mercury emitted in the generation of electricity in this state.

5 **SECTION 12.** 285.495 of the statutes is created to read:

6 **285.495 Mercury emission goal; report. (1) GOAL.** It is the goal of this state
7 that in 2010 total annual mercury emissions in this state do not exceed 50% of the
8 total annual mercury emissions in this state in the year 2000.

9 (2) EXCESS MERCURY EMISSIONS; DEPARTMENT REPORT REQUIRED. (a) If the
10 department determines in 2011 that total annual mercury emissions in this state in
11 2010 exceeded 50% of the total annual mercury emissions in this state in the year
12 2000, the department shall, after consulting with the public service commission,
13 prepare a report containing recommendations for methods to reduce mercury
14 emissions. The department shall hold a public hearing on the report. In preparing
15 the report, the department shall consider methods to reduce mercury emissions from
16 various sources, including sources that emit 10 pounds or more of mercury per year
17 and that are any of the following:

- 18 1. Major utilities, as defined in s. 285.48 (1) (f).
- 19 2. Coal-fired or oil-fired commercial or industrial boilers.
- 20 3. Solid waste incinerators, as defined in s. 285.483 (1) (c).
- 21 4. Chlor-alkali plants as defined in s. 285.483 (1) (b).

22 (b) If the department is required to prepare a report under par. (a), the
23 department shall submit the report to the chief clerk of each house of the legislature,
24 for distribution to the appropriate standing committees under s. 13.172 (3).

25 **SECTION 13.** 285.497 of the statutes is created to read:

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1 **285.497 Citizen suits; mercury emissions. (1)** Except as provided in sub.

2 (2), any person may commence a civil action on his or her own behalf:

3 (a) Against any person who is alleged to be in violation of s. 285.48, 285.483 or
4 285.49.

5 (b) Against the department if there is alleged to be a failure of the department
6 to perform any act or duty under ss. 285.48, 285.483 to 285.495 that is not
7 discretionary with the department.

8 **(2)** (a) No action may be commenced under sub. (1) (a) prior to 30 days after the
9 plaintiff has given notice of the alleged violation to the department and to the alleged
10 violator or if the department has commenced and is diligently prosecuting a civil or
11 criminal action concerning the alleged violation, but in any such action any person
12 may intervene as a matter of right.

13 (b) No action may be commenced under sub. (1) (b) prior to 30 days after the
14 plaintiff has given notice of such action to the department.

15 **(3)** The court, in issuing any final order in any action brought under this
16 section, shall award costs of litigation including reasonable attorney and expert
17 witness fees to the plaintiff if he or she prevails, and the court may do so if it
18 determines that the outcome of the controversy is consistent with the relief sought
19 by the plaintiff irrespective of the formal disposition of the civil action. In addition,
20 the court shall award treble damages to any plaintiff proving damages caused by a
21 person mining without a permit or wilfully violating this chapter or any permits or
22 orders issued under this chapter.

23 **(4)** Nothing in this section restricts any right which any person or class of
24 persons may have under any other statute or common law.

25 **SECTION 14.** 287.07 (8) (a) 2m. of the statutes is created to read:

