

1999 DRAFTING REQUEST

Bill

Received: **11/20/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Brian Burke (608) 266-8535**

By/Representing: **Keith Reopelle**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Environment - air quality**
Environment - water quality

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Limit mercury emissions

Instructions:

1997 SB 526 (97-5156)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc 02/9/99	ptellez 02/17/99		_____			State
/1			lpaasch 02/17/99	_____	lrb_docadmin 02/17/99		State
/2	traderc 03/11/99	ygeller 03/11/99	martykr 03/12/99	_____	lrb_docadmin 03/12/99		State
/3	traderc 04/22/99	ygeller 04/23/99	hhagen 04/26/99	_____	lrb_docadmin 04/26/99	lrb_docadmin 05/19/99	

5/19/99 12:03:58 PM

Page 2

FE Sent For:

5/25/99

<END>

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1/3 4/23 jlg *4/12/99* *4/12/99*

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FE Sent For:			<i>km 3/11</i>	<i>km 3/12</i>			<END>

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Environment - water quality

Extra Copies: MGG
MOK

Topic:

Limit mercury emissions

Instructions:

1997 SB 526 (97-5156) *plus all 1 to XB935*
plus cover other sources - 10 lbs or more

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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Sections Affected Post-Drafting-Check For 97-5156/1

Tuesday, February 9, 1999 1:34 pm

Current Wisconsin Statutes updated through 1997 Act 338

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
20.005(3)	r.cr. (vetoed in part)	Act 0027
30.74(title)(intro.)	r. effec. 5-1-99	Act 0198
29.091	am.rn.fr. 29.56 effec. 1-1-99	Act 0248
77.99577. to 77.99577.	cr. effec. 4-1-98	Act 0027

1999
1997 SENATE BILL 526

March 24, 1998 - Introduced by Senators BURKE and RISSER, cosponsored by Representatives BALDWIN, BAUMGART, J. LEHMAN, NOTESTEIN, BOCK, ROBSON, R. YOUNG, BLACK and HANDRICK. Referred to Committee on Agriculture and Environmental Resources.

1 AN ACT ^{regenerate} to amend subchapter V (title) of chapter 285 [precedes 285.41]; and to
2 create 20.370 (2) (bh), 29.09 (3u), 29.091, 196.854, 281.12 (4), 285.11 (18),
3 285.48, 285.49, 285.495 and 287.07 (8) (a) 2m. of the statutes; relating to:
4 mercury emissions from major utilities, reporting mercury emissions, mercury
5 in medical waste sent to incinerators, fish advisories and providing a 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 2005 a major utility generally may not emit more than ~~85%~~ the amount of mercury that it emitted in the year 2000. For 2006 to 2011, the limit is ~~70%~~ of the amount of mercury emitted in the year 2000, ²⁰⁰⁴ and for 2012 ^{and thereafter}, the limit is ~~50%~~ of the amount of mercury emitted in the year 2000. 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 ^{ten} ~~two~~ variances in ~~10~~ years.

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 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.

and for 2015 and thereafter, the limit is 50% of the amount of mercury emitted in the year 2000

SENATE BILL 526

1 fish advisory issued under s. 281.12 (4). The sign shall describe the species and sizes
2 of fish included in the fish advisory.

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

4 196.854 Assessment for mercury deposition activities. (1) The
5 commission shall annually assess against the major utilities, as defined in s. 285.48
6 (1) (f), the amount appropriated under s. 20.370 (2) (bh) for mercury deposition
7 studies and evaluation and monitoring activities conducted by the department of
8 natural resources.

9 (2) The commission, *in consultation with* ~~with the cooperation of~~ the department of natural
10 resources, promulgate rules establishing a method for assessing each major utility
11 an amount that is proportionate to its fraction of the total amount of mercury
12 emissions from major utilities in this state.

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

14 281.12 (4) The department, in consultation with the department of health and
15 family services, shall annually issue an advisory describing the risks to human
16 health of eating sport fish that contain mercury and that are taken from the various
17 waters of this state. The advisory may also describe the risks to human health of
18 eating sport fish that contain other contaminants.

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

20 285.11 (18) Conduct, or contract with other persons to conduct, research on the
21 effects of mercury emissions on human health and the environment and research on
22 methods for reducing those emissions.

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

25

CHAPTER 285

SENATE BILL 526

PROOF
w/STATS.

SUBCHAPTER V

SULFUR DIOXIDE AND NITROGEN

OXIDE EMISSION

RATES AND GOALS;

MERCURY EMISSION LIMITS

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

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

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

(c) "Boiler" means a fossil fuel-fired boiler.

(d) "Commission" means the public service commission.

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

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

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

(2) EMISSION LIMITS. (a) Except as provided under sub. (4), in 2001 to 2005, the annual mercury emissions of a major utility may not exceed ~~the~~ the annual

24

SENATE BILL 526

1 mercury emissions of the major utility in the year 2000, as determined by the
2 department using the methodology under sub. (1m).

3 (b) Except as provided under sub. (4), in 2006 to 2011, the annual mercury
4 emissions of a major utility may not exceed ~~100%~~^{85%} of the annual mercury emissions of
5 the major utility in the year 2000, as determined by the department using the
6 methodology under sub. (1m).

7 (c) Except as provided under sub. (4), ~~beginning~~^{beginning} in 2012, the annual mercury
8 emissions of a major utility may not exceed ~~100%~~^{70%} of the annual mercury emissions of
9 the major utility in the year 2000, as determined by the department using the
10 methodology under sub. (1m).

Insert
5-10
11

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

- 16 1. The major utility's expected electricity demand.
- 17 2. The major utility's annual operation plan.
- 18 3. The expected operation characteristics of each boiler, including all of the
- 19 following:

- 20 a. The order to be used in placing the boilers into operational production.
- 21 b. The planned maintenance schedule for each boiler and how the maintenance
- 22 is expected to affect the methods of meeting electricity demands.

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

SENATE BILL 526

SECTION 9

1 5. The anticipated mercury emissions from each boiler.

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

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

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

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

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

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

20 2. A major fuel supply disruption.

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

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

SENATE BILL 526

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

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

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

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

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

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

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

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

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

24 (6) DETERMINATION OF COMPLIANCE. The department shall determine
25 compliance with sub. (2) using data submitted by the major utilities. Each major

SENATE BILL 526**SECTION 9**

1 utility shall provide the department with any information needed to determine
2 compliance.

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

6 SECTION 10. 285.49 of the statutes is created to read:

7 **285.49 Mercury emission reporting; generators of electricity.** (1)

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

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

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

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

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

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

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

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

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

SENATE BILL 526

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

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

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

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

(7) (d) ~~(d)~~ A generation unit with annual mercury emissions of 3 pounds ~~of~~ less. ^{or}

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

11 SECTION 11. 285.495[✓] of the statutes is created to read:

12 285.495 Mercury emission goal; report. (1) GOAL. It is the goal of this state
13 that in 2010 total annual mercury emissions in this state do not exceed 50%[✓] of the
14 total annual mercury emissions in this state in the year 2000.[✓]

15 (2) EXCESS MERCURY EMISSIONS; DEPARTMENT REPORT REQUIRED. (a) If the
16 department determines in 2011 that total annual mercury emissions in this state in
17 2010 exceeded 50% of the total annual mercury emissions in this state in the year
18 2000, the department shall, after consulting with the public service commission,
19 prepare a report containing recommendations for methods to reduce mercury
20 emissions. The department shall hold a public hearing on the report.

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

24 SECTION 12. 287.07 (8) (a) 2m.[✓] of the statutes is created to read:

**ASSEMBLY AMENDMENT 1,
TO 1997 ASSEMBLY BILL 985**

March 26, 1998 – Offered by Representative BALDWIN.

[Insert 5-10]

- 1 At the locations indicated, amend the bill as follows:
- 2 ✓ 1. Page 4, line 24: delete "85% of".
- 3 ✓ 2. Page 5, line 4: delete "70%" and substitute "85%".
- 4 ✓ 3. Page 5, line 7: delete "beginning in 2012" and substitute "in 2012 to 2014".
- 5 ✓ 4. Page 5, line 8: delete "50%" and substitute "70%".
- 6 ~~5. Page 5, line 10: after that line insert:~~

7 (d) Except as provided under sub. (4), beginning in 2015, the annual mercury
8 emissions of a major utility may not exceed 50% of the annual mercury emissions of
9 the major utility in the year 2000, as determined by the department using the
10 methodology under sub. (1m). ✓

11

END

[end of insert]

[D-NOTE]

-0989/ldn

[Drafter's note, p. 1]

RET. ppt:
Jg

¶ This draft is based on 1997 Senate Bill 526, as affected by the ^{introduced} assembly amendment to 1997 Assembly Bill 935, which was a companion bill to Senate Bill 526.

¶ When he requested this draft on Senator Burke's behalf, Keith Reopelle asked me to expand the draft to cover ~~the~~ ^{other than utilities} sources of mercury emissions. As I told Keith, I will need more information to expand the draft in that way. Many of the provisions of the draft are focused on sources with boilers and on sources that generate electricity. Also, please note that the funding mechanism is currently an annual assessment on major utilities. If you want to expand this draft to cover other sources of mercury emissions, please ^{review} the draft and let me know how ^{the} draft should apply to those sources.

9/ Please also review the draft, ^{in particular proposed s. 285.495(1),} to determine whether any dates should be changed.

9/ Note that this draft does not appropriate any funds for DNR. When you know the dollar amounts that you want to provide, please contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.

RLT

[end of D-NOTE]

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0989/1dn
RCT:pgt&jlg:lp

February 17, 1999

This draft is based on 1997 Senate Bill 526, as affected by the introduced assembly amendment to 1997 Assembly Bill 935, which was a companion bill to Senate Bill 526.

When he requested this draft on Senator Burke's behalf, Keith Reopelle asked me to expand the draft to cover sources of mercury emissions other than utilities. As I told Keith, I will need more information to expand the draft in that way. Many of the provisions of the draft are focused on sources with boilers and on sources that generate electricity. Also, please note that the funding mechanism is currently an annual assessment on major utilities. If you want to expand this draft to cover other sources of mercury emissions, please review the draft and let me know how the draft should apply to those sources.

Please also review the draft, in particular proposed s. 285.495 (1), to determine whether any dates should be changed.

Note that this draft does not appropriate any funds for DNR. When you know the dollar amounts that you want to provide, please contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: Becky.Tradewell@legis.state.wi.us

Memorandum

March 8, 1999

TO: Becky Tradewell

FR: Keith Reopelle 251-7020, reopelle@itis.com

RE: Mercury Cap Bill Draft

In your Feb. 17th memo to Senator Burke, you raised several excellent questions. Thank you. After consulting with the Senator's staff we've come up with the following decisions:

- ✓ 1. We have decided that at this point it makes more sense to stick with the utilities for a mandated reduction schedule and to list the other specific sources in section 285.495 Mercury emission goal; report. For that purpose, the sources in addition to utility boilers would be:
 - "coal- and oil-fired commercial and industrial boiler units"
 - "solid waste incineration units"
 - "medical waste incineration units"
 - "chlor-alkali plants"

also, all of these should include "with 10 pounds of mercury emissions or more per year." We don't want to lose the "total annual mercury emissions" language in that section, we just want to say "including the following sources..." so that the DNR report will look at each of these sources if the 50% goal isn't reached.

There is no need to adjust the timing of this section (s285.495).

- ✓ 2. There are other timing issues. The intention was to achieve a 15% reduction by the year 2005. To achieve that I believe s285.48 (2) (b) should read: "Except...in 2005 to 2011, the annual mercury emissions.....85%....."

also, the DNR's recommendation of 50% reduction for all sources by 2010 indicates that they feel the non-chlor-alkali sources can reduce by 30% by 2010. We should reflect this by requiring the 30% reduction for utilities in 2010. So, s285.48 (2) c) should read: ".....Except as, in 2010 to 2014, the annual mercury.....may not exceed 70%.....".

- ✓ 3. On your question about the appropriation Becky, if we don't mandate reduction from other sources we don't need to assess anyone other than the utilities. The assessment in the draft is the Acid Deposition Research Council (ADRC) funding from the acid rain law, I assume. This funding went to ACRC which is located in DOA. Although ADRC is no longer funded, it does still exist by statute. I think its fine for the money to continue going there, or, it could go to the DNR. Let's leave it as drafted and ask

for the DNR's input. Then the only remaining funding issue is the amount. ADRC, I believe, was funded at a level of \$200,000 a year under the Acid Rain law. On the other hand, the PSC recommended \$2 million a year for environmental R&D in their Public Benefits docket, much of which would presumably be used for mercury research. Lets go with \$500,000 a year for now to reflect the PSC recommendations, the fact that the utilities have cut the mercury and acid dep. monitoring funding in the state and the fact that ADRC never felt it could look at health impacts due to budgetary restraints.

- ✓4. We need to change the baseline year to the year 1999. That's because EPA is conducting an information collection request (ICR) for mercury emissions from power plants in this year, and this year only (as of now). So, the DNR will have much better data for mercury emissions from power plants for the year 1999 than any year before or after. We should simply substitute 1999 for 2000 throughout the draft and leave the broad DNR rulemaking language in place to allow them to use other information as well.
- ✓5. The last issue is a new one. It has been brought to my attention that it would be very desirable to add a citizen suit provision to this bill. There are a couple of good existing examples to draw from. The citizen suit provision in the metallic mining statutes (s293.89) would work nicely—this can probably be used word-for-word, except for the cross references, of course.

I believe this covers all of the outstanding issues related to this bill. Please call me if you have any questions Becky.

C: Barry Ashenfelter



State of Wisconsin
1999 - 2000 LEGISLATURE

5000

LRB-0989/2
RCT: [unclear] jlg:lp

redraft
maker
run

1999 BILL

DNote

↓ regenerate

1 AN ACT to amend subchapter V (title) of chapter 285 [precedes 285.11]; and to
 2 create 20.370 (2) (bh), 29.024 (9m), 29.409, 196.854, 281.12 (4), 285.11 (18),
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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 2005 a major utility generally may not emit more than the amount of mercury that it emitted in the year 2000. For 2006 to 2011, the limit is 85% of the amount of mercury emitted in the year 2000, for 2012 to 2014, the limit is 70% of the amount of mercury emitted in the year 2000 and for 2015 and thereafter, the limit is 50% of the amount of mercury emitted in the year 2000. 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.

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 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

2005
2010
1999

2009

2004

✓ Analysis insert

BILL

1 **29.409 Notice of fish advisory.** The department shall place a sign at each
2 public boat landing on a body of water if fish in that body of water are included in the
3 fish advisory issued under s. 281.12 (4). The sign shall describe the species and sizes
4 of fish included in the fish advisory.

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

6 **196.854 Assessment for mercury deposition activities.** (1) The
7 commission shall annually assess against the major utilities, as defined in s. 285.48
8 (1) (f), the amount appropriated under s. 20.370 (2) (bh) for mercury deposition
9 studies and evaluation and monitoring activities conducted by the department of
10 natural resources.

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

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

16 281.12 (4) The department, in consultation with the department of health and
17 family services, shall annually issue an advisory describing the risks to human
18 health of eating sport fish that contain mercury and that are taken from the various
19 waters of this state. The advisory may also describe the risks to human health of
20 eating sport fish that contain other contaminants.

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

22 285.11 (18) Conduct, or contract with other persons to conduct, research on the
23 effects of mercury emissions on human health and the environment and research on
24 methods for reducing those emissions.

BILL

1 (2) EMISSION LIMITS. (a) Except as provided under sub. (4), in 2001 to ²⁰⁰⁷~~2005~~, the
2 annual mercury emissions of a major utility may not exceed the annual mercury
3 emissions of the major utility in the year ¹⁹⁹⁹~~2000~~, as determined by the department
4 using the methodology under sub. (1m).

5 (b) Except as provided under sub. (4), in ^{2005 2009}~~2006~~ to ~~2011~~, the annual mercury
6 emissions of a major utility may not exceed 85% of the annual mercury emissions of
7 the major utility in the year ¹⁹⁹⁹~~2000~~, as determined by the department using the
8 methodology under sub. (1m).

9 (c) Except as provided under sub. (4), in ²⁰¹⁰~~2012~~ to 2014, the annual mercury
10 emissions of a major utility may not exceed 70% of the annual mercury emissions of
11 the major utility in the year ¹⁹⁹⁹~~2000~~, as determined by the department using the
12 methodology under sub. (1m).

13 (d) Except as provided under sub. (4), beginning in 2015, the annual mercury
14 emissions of a major utility may not exceed 50% of the annual mercury emissions of
15 the major utility in the year ¹⁹⁹⁹~~2000~~, as determined by the department using the
16 methodology under sub. (1m).

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

- 22 1. The major utility's expected electricity demand.
- 23 2. The major utility's annual operation plan.
- 24 3. The expected operation characteristics of each boiler, including all of the
25 following:

BILL

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

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

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

7 5. The anticipated mercury emissions from each boiler.

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

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

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

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

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

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

BILL

1 2. A major fuel supply disruption.

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

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

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

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

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

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

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

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

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

BILL**SECTION 9**

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

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

7 **(6) DETERMINATION OF COMPLIANCE.** The department shall determine
8 compliance with sub. (2) using data submitted by the major utilities. Each major
9 utility shall provide the department with any information needed to determine
10 compliance.

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

14 **SECTION 10.** 285.49 of the statutes is created to read:

15 **285.49 Mercury emission reporting; generators of electricity. (1)**
16 **REQUIREMENT.** Except as provided in sub. (3), each person who generates electricity
17 in this state shall provide to the department by April 1, annually, a report of the
18 amount of mercury emitted in generating electricity by the person in the previous
19 calendar year.

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

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

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

BILL

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

- 3 1. The amount of electricity generated at the facility.
4 2. The amount of fuel used to generate electricity at the facility.
5 3. The amount of mercury emitted in generating that electricity, determined
6 using emission factors, stack tests, fuel analysis or other methods approved by the
7 department.
8 4. The mercury content of the fuel used to generate electricity if that content
9 is determined in conjunction with a stack test.

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

- 12 (a) A generation unit that is operated fewer than 240 hours per year.
13 (b) A generation unit with a fuel capacity input of less than 150,000,000 British
14 thermal units per hour.
15 (c) A generation unit with a maximum output of 15 megawatts or less.
16 (d) A generation unit with annual mercury emissions of 3 pounds or less.

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

20 **SECTION 11.** 285.495 of the statutes is created to read:

21 **285.495 Mercury emission goal; report.** (1) GOAL. It is the goal of this state
22 that in 2010 total annual mercury emissions in this state do not exceed 50% of the
23 total annual mercury emissions in this state in the year 2000.

24 (2) EXCESS MERCURY EMISSIONS; DEPARTMENT REPORT REQUIRED. (a) If the
25 department determines in 2011 that total annual mercury emissions in this state in

BILL

1 2010 exceeded 50% of the total annual mercury emissions in this state in the year
2 2000, the department shall, after consulting with the public service commission,
3 prepare a report containing recommendations for methods to reduce mercury
4 emissions. The department shall hold a public hearing on the report. *Insert 10-4 ✓*

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

✓
Insert
10-4

8 **SECTION 12.** 287.07 (8) (a) 2m. of the statutes is created to read:

9 287.07 (8) (a) 2m. Measures to reduce the amount of mercury in medical waste
10 that is sent to a medical waste incinerator.

11 (END)

Analysis insert

This bill generally allows a person to sue DNR if the person believes that DNR is not performing an act ~~created by~~ under ^{the} mercury emissions provisions and ~~the bill~~ the act is not discretionary with DNR. The bill also generally 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.

INSERT 10-4

NO
In preparing the report, the department shall consider methods to reduce mercury emissions from various sources, including ~~various sources~~ sources that emit ~~more than~~ 10⁵ pounds or more of mercury per year and

that are any of the following:

- # 1. Major utilities, as defined in s. 285.48(1)(f).
- # 2. Coal-fired or oil-fired commercial or industrial boilers.
- # 3. Solid waste incinerators.
- # 4. Medical waste incinerators.
- # 5. Plants that use mercury to produce chlorine gas, hydrogen alkali gas and alkali metal hydroxide.

Inset 10-7

-0989/2

~~Section # (293.89) of the statutes is amended to read:~~

→ Section #. CR 285.497 ✓
285.497 (B) mercury emissions

~~293.89~~ Citizen suits. (1) Except as provided in sub. (2), any ~~citizen~~ ^{person} may commence a civil action on his or her own behalf:

(a) Against any person who is alleged to be in violation of ~~this chapter~~ ^{s. 285.48 or 285.49}

(b) Against the department ^{if} ~~where~~ there is alleged to be a failure of the department to perform any act or duty under ^{ss. 285.48 to 285.495 that} ~~this chapter which~~ is not discretionary with the department.

(2) ^(a) No action may be commenced. ~~YAD~~

~~(a)~~ Under sub. (1) (a) ~~NO~~ ~~#~~

~~(a)~~ Prior to 30 days after the plaintiff has given notice of the alleged violation to the department and to the alleged violator ^{or} ~~or~~ ~~NO~~ ~~#~~

~~(a)~~ If the department has commenced and is diligently prosecuting a civil or criminal action, but in any such action any ~~citizen~~ ^{person} may intervene as a matter of right.

~~(a)~~ Under sub. (1) (b) prior to 30 days after the plaintiff has given notice of such action to the department. ^{No action may be commenced}

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

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

History: 1977 c. 421; 1995 a. 227 s. 797; Stats. 1995 s. 293.89.

(end ins)

Note

¶ This redraft is based on instructions from Keith Reppelle.

¶ Please note that the assessment in this draft is a new assessment and the Funds would go to DNR for

mercury deposition studies and evaluation and monitoring activities. Also, the redraft instructions ^{for \$ 285,495 ✓} preferred to several kinds of sources of mercury emissions. One of the ^{kind of} sources

¶ was "chlor-alkali plants". I have used a different way of describing that ^{kind of} source based on a definition in the DNR rules, Wis. Admin. Code NR 446.02 (7).

¶ Please let me know if you have questions or other redraft instructions.

RET

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0989/2dn
RCTjlg:km

March 12, 1999

This redraft is based on instructions from Keith Reopele. Please note that the assessment in this draft is a new assessment and the funds would go to DNR for mercury deposition studies and evaluation and monitoring activities. Also, the redraft instructions for s. 285.495 referred to several kinds of sources of mercury emissions. One of the kinds of sources was "chlor-alkali plants". I have used a different way of describing that kind of source based on a definition in the DNR rules, Wis. Admin. Code NR 446.02 (7).

Please let me know if you have questions or other redraft instructions

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: Becky.Tradewell@legis.state.wi.us

Memorandum

Reid 4/1

March 30, 1999

TO: Becky Tradewell
FR: Barry Ashenfelter

RE: Mercury Cap Bill Draft --LRB-0989

In response to the Department of Natural Resources, we have one last change needed before we introduce this bill, hopefully next week.

While "coal-fired or oil-fired commercial or industrial boilers" will appear only under **285.495 Mercury emission goal:report.**, "solid waste incinerators", "medical waste incinerators" and "Plants that use mercury.....(chlor-alkali)" should be subject to the limits under **285.48 Mercury emission limits; major utilities** (*municipal and medical waste incinerators and chor-alkali plants*). The requirements enumerated under **285.48 (1m)(2)(a through d)** would apply to each of the other three sources. Rather than try to describe the "annual compliance plan," compliance plan "review," "variance procedure," and "determination of compliance," in any detail, lets authorize the DNR to do rule making to include each of the above stated elements. Oh, and add "reporting" to that list. The penalty language and the citizen suit provision should apply to each as stated in the current draft.



Burke
Call Keith
Respelle (251-7020)
if you have questions
Manning
Barry

4/22/99 Per Keith Res pelle -

Use def of incinerator in s. 281.17(3)(a)
Change chlor-alkali plant def. by adding
sodium hydroxide and changing "and" to "or".
And require 10 lbs. annual emissions

Kit



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0989/3
RCT:jlg:km

soon

1999 BILL

DNote

1 AN ACT to amend ^{of regenerate} 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, 285.49, 285.495, 285.497 and 287.07 (8) (a) 2m. of the statutes; relating
 4 to: mercury emissions from ^{certain sources} ~~major utilities~~, reporting mercury emissions,
 5 mercury in medical waste sent to incinerators, fish advisories, ^{granting rule-making} making an
 6 appropriation and providing a penalty. authority

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.

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.

Analysis insert

BILL

1 29.024 (9m) INFORMATION WITH CERTAIN APPROVALS. The department shall
2 ensure that a copy of the fish advisory issued under s. 281.12 (4) is distributed to each
3 person being issued, under this chapter, an approval that authorizes sport fishing.

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

5 **29.409 Notice of fish advisory.** The department shall place a sign at each
6 public boat landing on a body of water if fish in that body of water are included in the
7 fish advisory issued under s. 281.12 (4). The sign shall describe the species and sizes
8 of fish included in the fish advisory.

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

10 **196.854 Assessment for mercury deposition activities.** (1) The
11 commission shall annually assess against the major utilities, as defined in s. 285.48
12 (1) (f), the amount appropriated under s. 20.370 (2) (bh) for mercury deposition
13 studies and evaluation and monitoring activities conducted by the department of
14 natural resources.

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

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

20 281.12 (4) The department, in consultation with the department of health and
21 family services, shall annually issue an advisory describing the risks to human
22 health of eating sport fish that contain mercury and that are taken from the various
23 waters of this state. The advisory may also describe the risks to human health of
24 eating sport fish that contain other contaminants.

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

BILL

1 285.11 (18) Conduct, or contract with other persons to conduct, research on the
2 effects of mercury emissions on human health and the environment and research on
3 methods for reducing those emissions.

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

CHAPTER 285**SUBCHAPTER V****SULFUR DIOXIDE AND NITROGEN****OXIDE EMISSION****RATES AND GOALS;****MERCURY EMISSION LIMITS**

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

13 **285.48 Mercury emission limits; major utilities.** (1) **DEFINITIONS.** In this
14 section:

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

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

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

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

22 (f) “Major utility” means a Class A utility, as defined in s. 199.03 (4), that
23 generates electricity or an electrical cooperative association organized under ch. 185,
24 if the total mercury emissions from all stationary air contaminant sources in this

BILL

1 state under the ownership or control of the utility or association exceeds 10 pounds
2 in 1999.

3 (1m) DETERMINATION OF MERCURY EMISSIONS. The department shall establish a
4 methodology for determining the annual mercury emissions of major utilities.

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

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

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

17 (d) Except as provided under sub. (4), beginning in 2015, the annual mercury
18 emissions of a major utility may not exceed 50% of the annual mercury emissions of
19 the major utility in the year 1999, as determined by the department using the
20 methodology under sub. (1m).

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

BILL

- 1 1. The major utility's expected electricity demand.
- 2 2. The major utility's annual operation plan.
- 3 3. The expected operation characteristics of each boiler, including all of the
- 4 following:
- 5 a. The order to be used in placing the boilers into operational production.
- 6 b. The planned maintenance schedule for each boiler and how the maintenance
- 7 is expected to affect the methods of meeting electricity demands.
- 8 4. The amount and mercury content of coal, other fossil fuel or other materials
- 9 to be used for each boiler in operational production. The mercury content shall be
- 10 expressed in pounds of mercury per million British thermal units of heat input.
- 11 5. The anticipated mercury emissions from each boiler.
- 12 6. Contingency plans for unexpected events or increased demand including a
- 13 summary of generation costs and the anticipated additional costs for reducing
- 14 mercury emissions under those circumstances.
- 15 7. The methods that will be used to achieve compliance with sub. (2) in the
- 16 following year.
- 17 8. The total anticipated annual mercury emissions from all boilers under the
- 18 ownership or control of the major utility for each of the next 3 years.
- 19 (b) *Review.* The department shall review the adequacy of each compliance plan
- 20 and, after consulting with the commission, shall approve or disapprove the plan
- 21 within 90 days after its receipt.
- 22 (4) **VARIANCE.** (a) *Request; variance conditions.* A major utility may request
- 23 a variance from the emission limit under sub. (2) for a year by submitting the request
- 24 to the commission and the department. No request for a variance may be submitted
- 25 if the department has served the major utility with written notice under s. 285.83

BILL

1 that the major utility has violated sub. (2). Upon receipt of a request, the commission
2 shall, within 45 days, determine if any of the following variance conditions exists and
3 shall report its determination to the department:

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

5 2. A major fuel supply disruption.

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

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

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

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

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

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

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

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

BILL

SECTION 9

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

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

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

9 (6) **DETERMINATION OF COMPLIANCE.** The department shall determine
10 compliance with sub. (2) using data submitted by the major utilities. Each major
11 utility shall provide the department with any information needed to determine
12 compliance.

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

Insert
8-15
16
17

→ **SECTION 10.** 285.49 of the statutes is created to read:

285.49 Mercury emission reporting; generators of electricity. (1)

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

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

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

BILL

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

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

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

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

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

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

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

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

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

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

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

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

22 **SECTION 11.** 285.495 of the statutes is created to read:

23 **285.495 Mercury emission goal; report.** (1) GOAL. It is the goal of this state
24 that in 2010 total annual mercury emissions in this state do not exceed 50% of the
25 total annual mercury emissions in this state in the year 2000.

BILL

SECTION 11

1 (2) EXCESS MERCURY EMISSIONS; DEPARTMENT REPORT REQUIRED. (a) If the
2 department determines in 2011 that total annual mercury emissions in this state in
3 2010 exceeded 50% of the total annual mercury emissions in this state in the year
4 2000, the department shall, after consulting with the public service commission,
5 prepare a report containing recommendations for methods to reduce mercury
6 emissions. The department shall hold a public hearing on the report. In preparing
7 the report, the department shall consider methods to reduce mercury emissions from
8 various sources, including sources that emit 10 pounds or more of mercury per year
9 and that are any of the following:

10 1. Major utilities, as defined in s. 285.48 (1) (f).

11 2. Coal-fired or oil-fired commercial or industrial boilers.

12 3. Solid waste incinerators, *as defined in s. 285.483 (1) (c)*

13 4. ~~Medical waste incinerators.~~

14 5. ~~Plants that use mercury to produce chlorine gas, hydrogen gas and alkali~~

15 ~~metal hydroxide~~ *as defined in s. 285.483 (1) (b)*

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

19 **SECTION 12.** 285.497 of the statutes is created to read:

20 **285.497 Citizen suits; mercury emissions.** (1) Except as provided in sub.

21 (2), any person may commence a civil action on his or her own behalf: *, 285.483*

22 (a) Against any person who is alleged to be in violation of s. 285.48 *or 285.49.*

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

BILL

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

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

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

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

18 **SECTION 13.** 287.07 (8) (a) 2m. of the statutes is created to read:

19 287.07 (8) (a) 2m. Measures to reduce the amount of mercury in medical waste
20 that is sent to a medical waste incinerator.

21

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0989/3
RCT:jlg:km

soon

1999 BILL

Note

certain incinerators and plants that use mercury to produce specified products (chlor-alkali plants)

1 **AN ACT to amend** ^{regenerate} 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, 285.49, 285.495, 285.497 and 287.07 (8) (a) 2m. of the statutes; **relating**
 4 **to:** mercury emissions from ^{certain sources} major utilities, reporting mercury emissions,
 5 mercury in medical waste sent to incinerators, fish advisories, making an
 6 appropriation and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill limits the amount of mercury that may be emitted into the air by ~~major utilities~~ ^{major utility} 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.

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.

Analysis insert

these incinerators and chlor-alkali plants

The bill requires DNR

to promulgate rules under which it

incinerators and chlor-alkali plants.

Insert 8-15

SECTION 1. 285.483^x of the statutes is created to read:

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

(1) DEFINITIONS. In this section:

(a) "Annual mercury emissions"[✓] means the number of pounds of mercury emissions from a source.

(b) "Chlor-alkali plant"[✓] means a plant that uses mercury to produce chlorine gas, hydrogen gas, sodium hydroxide or alkali metal hydroxide and that has annual mercury emissions that exceed 10[✓] pounds in 1999.

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

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

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

(b) Except as provided in rules promulgated under sub. (4)[✓], in 2005 to 2009, the annual mercury emissions from a solid waste incinerator or chlor-alkali plant may not exceed 85%[✓] of the annual mercury emissions from the solid waste incinerator or

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

(c) Except as provided in rules promulgated under sub. (4), in[✓] 2010 to 2014, the annual mercury emissions from a solid waste incinerator or chlor-alkali plant may not exceed 70%[✓] of the annual mercury emissions from the solid waste incinerator or chlor-alkali plant in the year 1999, as determined by the department using the methodology under sub. (2).[✓]

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

(4) ~~RULE~~^gMAKING. The department shall promulgate rules for the submission of annual compliance plans by persons operating sources subject to sub. (3), for review and approval or disapproval of compliance plans, for granting variances from emission limits under sub. (3)[✓] and for reporting by persons operating sources^{sources} subject to sub. (3).

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

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

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

RCT: jg

Note

This redraft adds mercury emission limits^s for solid waste incinerators and chlor-alkali plants.

Please note that the definition of "solid waste incinerators" includes medical waste incinerators.

Please also note that the funding in ^{the} bill is all from utilities.

Please let me know if you have questions or redraft instructions.

RCT

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0989/3dn
RCT;jlg:hmh

April 23, 1999

This redraft adds mercury emission limits for solid waste incinerators and chlor-alkali plants. Please note that the definition of "solid waste incinerators" includes medical waste incinerators. Please also note that the funding in the bill is all from utilities.

Please let me know if you have questions or redraft instructions.

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Please jacket 99-0989

for Senate