

2001 ASSEMBLY BILL 860

February 26, 2002 – Introduced by Representatives POCAN, BERCEAU, BLACK, BOCK, BOYLE, CULLEN, J. LEHMAN, MILLER and RICHARDS, cosponsored by Senator RISSER. Referred to Committee on Environment.

- 1 **AN ACT to create** 285.28 and 285.50 of the statutes; **relating to:** emissions of air
2 pollutants from certain power plants and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Current state law and the federal Clean Air Act require certain electric utilities to limit emissions of sulfur dioxide. This bill requires the department of natural resources (DNR) to promulgate rules to achieve, beginning in 2010, annual aggregate sulfur dioxide emissions from power plants that are no greater than 25% of the annual aggregate sulfur dioxide emissions authorized at full implementation of the current Clean Air Act provisions. The bill defines “power plant” to mean a facility for the generation of electricity for sale that uses combustion and that has a nameplate capacity of 15 megawatts or more.

Current federal law requires certain electric utilities to limit emissions of nitrogen oxide. This bill requires DNR to promulgate rules to achieve, beginning in 2010, annual aggregate nitrogen oxide emissions that are no greater than 25% of the aggregate nitrogen oxide emissions from power plants in 1997.

This bill also requires DNR to promulgate rules to achieve, beginning in 2010, annual aggregate carbon dioxide emissions from power plants that are no greater than aggregate carbon dioxide emissions from power plants in 1990.

The bill authorizes DNR to use mechanisms such as emissions trading in the rules that it is required to promulgate under the bill. The bill also imposes emission limitations on each power plant if DNR does not promulgate the required rules within two years after the bill takes effect.

The Clean Air Act requires the federal environmental protection agency (EPA) to set standards for emissions of air pollutants from categories of stationary facilities

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that emit air pollution that is likely to endanger public health or welfare. These standards are called standards of performance for new stationary sources or new source performance standards. A new source performance standard generally applies to sources on which construction or modification is begun after the date on which EPA proposes the standard. Under current state law, when EPA sets a new source performance standard, DNR is required to promulgate a rule setting a similar standard, which generally may not be more restrictive than the federal standard. The current new source performance standards that apply to certain electricity generating facilities regulate emissions of particulate matter, sulfur dioxide, and nitrogen oxide.

This bill requires the operator of a power plant that has been in operation for 30 years to comply with the most recently promulgated new source performance standards beginning on the day that is 30 years after the power plant began operating or, if that date is earlier than five years after this bill takes effect, beginning five years after this bill takes effect.

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.** 285.28 of the statutes is created to read:

2 **285.28 Standards applicable to certain power plants. (1)** In this section:

3 (a) “Affected power plant” means a power plant that has been in operation for
4 30 years or more.

5 (b) “Applicability date” means the later of the date that is 30 years after the day
6 on which a power plant began operating or the first day of the 60th month beginning
7 after the effective date of this paragraph [revisor inserts date].

8 (c) “Power plant” means a facility for the generation of electricity for sale that
9 uses a combustion device and that has a nameplate capacity of 15 megawatts or
10 more.

11 **(2)** Beginning on the applicability date for an affected power plant, the operator
12 of the affected power plant shall comply with the standards of performance for

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1 stationary sources that were promulgated under s. 285.27 (1) most recently before
2 the applicability date for the affected power plant.

3 **SECTION 2.** 285.50 of the statutes is created to read:

4 **285.50 Sulfur dioxide, nitrogen oxide, and carbon dioxide emissions**
5 **from power plants. (1) DEFINITION.** In this section, “power plant” means a facility
6 for the generation of electricity for sale that uses a combustion device and that has
7 a nameplate capacity of 15 megawatts or more.

8 **(2) EMISSION LIMITATIONS.** The department shall promulgate rules to achieve
9 all of the following beginning in 2010:

10 (a) Annual aggregate sulfur dioxide emissions from power plants no greater
11 than 25% of the annual aggregate sulfur dioxide emissions authorized at full
12 implementation of the requirements under 42 USC 7651d.

13 (b) Annual aggregate nitrogen oxide emissions from power plants no greater
14 than 25% of the aggregate nitrogen oxide emissions from power plants in 1997.

15 (c) Annual aggregate carbon dioxide emissions from power plants no greater
16 than aggregate carbon dioxide emissions from power plants in 1990.

17 **(3) CONTENT OF RULES.** (a) The department shall promulgate rules under sub.
18 (2) to achieve the specified emission levels in a manner that the department
19 determines will allocate required emission reductions equitably, taking into account
20 emission reductions achieved before the effective date of this paragraph [revisor
21 inserts date], and other relevant factors.

22 (b) The department may include mechanisms such as emissions trading in the
23 rules promulgated under sub. (2), but the department shall prevent localized adverse
24 effects on public health and the environment from the use of those mechanisms and
25 shall ensure that significant reductions are achieved throughout this state.

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1 (c) The department shall include in the rules under sub. (2) incentives to
2 increase energy efficiency and to use renewable energy to achieve the requirements
3 in the subsection and provisions to reduce the rate of growth of natural gas
4 consumption.

5 (d) The department may promulgate rules that require lower levels of
6 emissions than those specified in sub. (2) if the department determines that the
7 levels specified in sub. (2) are not reasonably anticipated to protect public health or
8 welfare.

9 **(4) EFFECT OF FAILURE TO PROMULGATE RULES.** If the department does not
10 promulgate the rules required under sub. (2) by the first day of the 25th month
11 beginning after the effective date of this subsection [revisor inserts date], all of
12 the following apply beginning on January 1, 2010:

13 (a) Annual sulfur dioxide emissions from a power plant may not exceed 25% of
14 the annual sulfur dioxide emissions authorized for that power plant at full
15 implementation of the requirements under 42 USC 7651d.

16 (b) Annual nitrogen oxide emissions from a power plant may not exceed 25%
17 of the nitrogen oxide emissions from that power plant in 1997.

18 (c) Annual carbon dioxide emissions from a power plant may not exceed carbon
19 dioxide emissions from that power plant in 1990.

20 **(5) NO IMPACT ON OTHER PROVISIONS.** Nothing in this section exempts a person
21 from any other provision in this chapter.

22 (END)