

Report to
Legislative Council Rules Clearinghouse
NR 446, Wis. Adm. Code
Natural Resources Board Order No. AM-19-13

Wisconsin Statutory Authority

Statutory authority: Sections 227.11 (2) (a), 285.11 (9), Wis. Stats.

Statutes interpreted: Sections 227.11 (2) (a), 285.11 (9), Wis. Stats.

Federal Authority - Not applicable

Court Decisions Directly Relevant - None

Analysis of the Rule - Rule Effect - Reason for the Rule

Mercury emitted by coal-fired electric utility units (EGUs) is regulated by the state under subchs. II and III of ch. NR 446, *Wis. Adm. Code*. This administrative code is commonly referred to as the “state mercury rule” with subchapter II referred to as phase 1 and subchapter III as phase 2. The action proposed in this Board Order will delay the initial compliance date for emission reductions required under phase 2 of the state mercury rule until April 16, 2016.

Under phase 2 of the original state mercury rule, 31 EGUs are required to achieve 90 percent control of mercury by January 1, 2015. Currently, these EGUs are subject to a 40 percent control requirement under phase 1 of the state mercury rule. Phase 2 of the state mercury rule will also require four smaller EGUs not affected under phase 1 to begin operating best available control technology (BACT) by January 1, 2015.

The same coal-fired EGUs subject to the state mercury rule will also be subject to mercury emission limits under one of two recently promulgated federal rules: the Mercury and Air Toxics Standards (MATS) rule or the Industrial, Commercial and Institutional (ICI) Boiler rule. EGUs subject to the MATS rule must demonstrate compliance by April 16, 2015. The EGUs subject to the ICI Boiler rule must demonstrate compliance by January 31, 2016. However, individual EGUs may request a one-year extension to any federal rule regulating hazardous air pollutant emissions as allowed under section 112 of the Clean Air Act.

Under the current schedule of compliance dates, EGUs will be subject to phase 2 of the state rule three and a half months before compliance is required under the MATS rule and thirteen months before compliance is required under the ICI Boiler rule. However, according to s. 285.27 (2) (d), *Wis. Stats.*, EGUs will be exempt from state mercury rule requirements when mercury emissions are regulated under the federal rules. Therefore, under the current compliance schedules, EGUs would comply with phase 2 of the state mercury rule for only a short period of time.

The Department has concluded that requiring compliance with phase 2 of the state mercury rule for a short period of time is not warranted for a number of reasons. First, state law directs that mercury emissions will be regulated in the long-term by any promulgated federal requirement. Second, the Department believes that meeting requirements of both the state and federal rules adds complexity, cost, and compliance burden for the affected EGUs. Lastly, with the federal rules becoming effective on April 16, 2015 and January 31, 2016 and the state rule no longer applicable after those dates, delaying the state mercury rule requirements will not result in higher levels of mercury emissions

compared to implementing only the state rule.

Therefore, the Department is proposing to delay the compliance date for phase 2 of the state mercury rule from January 1, 2015 to April 16, 2016. The Department is proposing this date to accommodate individual EGUs subject to the MATS rule that may require a one-year extension. It is the Department's opinion that EGUs affected by the ICI Boiler rule will not request a one-year extension and therefore will not require the compliance date for phase 2 of the state mercury rule to be one year after the ICI Boiler rule's compliance date.

In summary, this rule change will achieve the following objectives:

- Allows EGUs to comply with only the federal rules and not phase 2 of the state mercury rule at this time, thus simplifying administrative requirements, compliance planning, and installation of equipment which will avoid undue cost.
- Maintains the existing state mercury rule requirement for 40 percent mercury control, as provided under subch. II of ch. NR 446, *Wis. Adm. Code*, until the affected EGUs regulate mercury emissions in accordance with the federal standards.
- Maintains state mercury rule phase 2 emission standards, under subch. III of ch. NR 446, *Wis. Adm. Code*, in the event that the federal rules are delayed or rescinded. Maintaining the state mercury rule in a backup position will ensure that the state health and welfare finding requiring mercury control is fulfilled on a practical time-frame.
- Accommodates EGUs that may require a one-year extension to the MATS rule compliance date of April 16, 2015 as allowed under section 112 of the CAA. As stated above, it is the Department's opinion that EGUs will not require an extension for meeting requirements of the ICI Boiler rule. Therefore the compliance date in this rulemaking is only extended to April 16, 2016 in order to address a possible extension that may be requested by EGUs affected by the MATS rule.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

Governor's Approval of Scope, Board Order AM-19-13, and Fiscal Estimate and Economic Impact Analysis.

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