Report to
Legislative Council Rules Clearinghouse
NR 440 and 446, Wis. Adm. Code
Natural Resources Board Order No. AM-32-05

Wisconsin Statutory Authority

ss. 227.11(2)(a), 227.14(1m), 285.11(1) and (9) and 285.27(1)(a), Stats., interpreting ss. 285.11(6) and (9), 285.27(1)(a) and 285.27(2)(b), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

Federal Authority

Section 112 of the Clean Air Act, 40 CFR part 75

Court Decisions Directly Relevant

None

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

Proposed revisions to ch. NR 440 adopt the federal New Source Performance Standards (NSPS) for mercury emission controls at coal-fired electric utility steam generating units that are constructed or reconstructed after January 30, 2004. Proposed revisions to ch. NR 446 repeal certain existing provisions and create new provisions to require each utility with coal-fired electrical generating units affected by the federal Clean Air Mercury Rule to meet an annual mercury emission cap. There are currently 48 such units in Wisconsin, operated by eight utilities.

The Clean Air Mercury Rule is a federal regulation promulgated by the EPA to reduce mercury emissions from new and existing coal-fired electrical generating units through a declining cap on mercury emissions in two phases. An initial reduction phase begins in 2010 and a second phase starts in 2018. The mercury caps were established by EPA and are expressed as annual state emission budgets that will not increase even if there are new coal-fired electrical generating units put into operation in the state. Wisconsin's budget during the first phase (2010 to 2017) is 1,780 pounds of mercury per year that declines to 702 pounds of mercury per year in the second phase (2018 and thereafter). The rule revisions being proposed do not include provisions allowing participation in EPA's national mercury emission trading program developed as an option for states to meet their emission budgets.

In these revisions, mercury emission caps are established for each electric utility in Wisconsin that owns or operates a coal-fired electrical generating unit affected by the federal rule. Beginning January 1, 2010, and every year thereafter, owners and operators of affected units must hold enough mercury emission allowances to equal or exceed calendar mercury emissions from their affected units. Owners and operators will be required to maintain annual records of the mercury emissions and held mercury allowances. A compliance report for the previous year is required to be submitted to the Department annually by March 1st.

Mercury emission caps are established for each electric utility system by summing unit specific mercury allowance allocations from a main allocation pool (for existing affected units) and a new unit set-aside (for new affected units). For the purpose of allowance allocation, a unit is considered new if it commenced operation after January 1, 2001. From 2010 to 2017, 95% of the state phase 1 emission budget of 1,780 pounds would be allocated to existing units in ounces of mercury (27,056 ounces). After 2018, 95% of the 702 pound per hour state phase 2 emission budgets would be allocated to affected units (10,670 ounces). The portion of the state emission budget remaining would be placed in a new unit set-aside accessible by owners and operators by request. For 2010 through 2017 the new unit set-aside is 1,424 ounces (89 pounds) and beginning in 2018 and thereafter 562 ounces (35 pounds). The new unit set-aside is 5% of the total state emission budget.

Within 60 days of the effective date of this rule the Department will notify owners and operators of the annual mercury allowance allocation from the main allocation pool for each of their affected units for 2010, 2011 and 2012. Beginning in 2009 and thereafter written notifications by October 31st would be provided of the Department's determination of mercury allowance allocations from the main allocation pool for the year four years in the future. The new unit set-aside allocations are available upon request. Annually, written notifications of new unit set-aside allocations will be provided by June 30th for those requests received by May 1st. Any mercury allowances remaining in the new unit set-aside that are not allocated in a given year would be retired. Within 45 days of providing written notifications for allocations from the main allocation poll or new unit set-aside the Department would issue administrative orders to owners and operators receiving allocations.

These proposed revisions also include a provision that requires the Department to adopt rules by June 30, 2010, that would require all coal-fired electrical steam generating units affected by the CAMR to reduce their mercury emissions by 90% by January 1, 2020.

The above proposed provisions are hereinafter referred to as "Option 1." Option 1 is the Department's primary proposal and is the only alternative that has been fully developed with specific rule language.

<u>Agency Procedures for Promulgation</u>

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

<u>Description of any Forms</u> (attach copies if available)

None

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