

## **REPORT TO LEGISLATURE**

NR 446, Wis. Adm. Code,  
Control of mercury emitted into the air by coal-fired electric generating units.

Clearinghouse Rule Number: 13-089  
Natural Resources Board Order Number: AM-19-13

### **BASIS AND PURPOSE OF THE PROPOSED RULE**

This rule is being proposed to allow electric utilities to focus planning and compliance efforts towards meeting mercury air emission standards under two federal rules instead of complying with both state and federal emission standards. This action will prevent undue compliance burden and costs that will otherwise result from the dual state and federal requirements. The state mercury emission requirements being addressed are in subch. III of ch. NR 446, Wis. Adm. Code.

Without this proposed rule, the state provisions under subch. III of ch. NR 446, Wis. Adm. Code, require EGU owners or operators to meet either 90% control or best available control technology (BACT) for mercury emissions, depending on source size, beginning on January 1, 2015. Mercury emission standards under the two federal rules, the Mercury and Air Toxics Standards (MATS) rule and the Industrial, Commercial and Institutional (ICI) Boiler rule, become effective on April 16, 2015 and January 31, 2016, respectively. In this case the federal emission standards are effective after the state rule subch. III requirements.

This proposed rule will delay the compliance date of the state rule mercury emission control requirements from January 1, 2015 to April 16, 2016. Under this proposed change, EGU owners or operators will become subject to the state rule requirements only if the federal rule compliance dates are delayed beyond April 16, 2016. This approach exempts EGUs from the state rule emission standards because s. 285.27(2) (d), Wis. Stats., requires that sources are exempt from state requirements once emission standards under a federal rule for the same hazardous pollutant are effective.

This proposed rule results in the same outcome that would have occurred regardless of the rule change. The EGUs would eventually be exempt from the state rule requirements once the federal emission standards are effective. This proposed rule, however, eliminates the cost and burden of complying with both the state subch. III and federal emission standards. As a note, under the proposed rule, EGUs will still be subject to current 40% control requirements under the state rule until the federal emission standards are effective.

### **SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE**

The Department received written comments from two utility companies supporting the proposed rule. No comments were received opposing or requesting changes to the proposed rule.

### **MODIFICATIONS MADE**

No modifications were made to the proposed rule in response to public comment received. (See previous section.)

### **PERSONS APPEARING OR REGISTERING AT THE PUBLIC HEARING**

The following persons appeared and registered at the public hearing:

In support: None

In opposition: None

As interest may appear: None

Joseph Hoch, representing Alliant Energy, 4902 N Biltmore Lane, Madison, WI, attended the public hearing but did not register a position.

**CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE**

The Department added s. 285.27 (2) (b), Wis. Stats., to section 1 of the rule analysis as a statute interpreted by the rule as recommended by the Legislative Council Rules Clearinghouse. No changes were made to the fiscal estimate or economic impact analysis.

**RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

The Legislative Council Rules Clearinghouse submitted comments regarding statutory authority and clarity, grammar, punctuation, and use of plain language. Changes to the proposed rule were made to address all recommendations.

**FINAL REGULATORY FLEXIBILITY ANALYSIS**

The proposed rule will only affect electric utilities generating electricity and will not affect small businesses. Therefore, a final regulatory flexibility analysis was not required or prepared.

**RESPONSE TO SMALL BUSINESS REGULATORY REVIEW BOARD REPORT**

The Small Business Regulatory Review Board did not send a report to the Department of any suggested changes or other information or comments on this proposed rule as provided for under s. 227.14 (2g), Wis. Stats.