State of Wisconsin
1999 – 2000 LEGISLATURE

LRBs0253/2
RCT:jlg:jf

# SENATE SUBSTITUTE AMENDMENT 1,

# TO 1999 SENATE BILL 177

January 25, 2000 – Offered by Senator BURKE.

AN ACT ***to amend*** subchapter V (title) of chapter 285 [precedes 285.41]; and ***to create*** 20.370 (2) (bh), 20.370 (2) (bj), 196.854, 285.11 (19) and 285.50 of the statutes; **relating to:** mercury emissions from certain sources, research concerning mercury emissions, granting rule–making authority and making appropriations.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

| | | | | **1999-00** | **2000-01** |
|---|---|---|---|---|---|
| **20.370 Natural resources, department of** | | | | | |
| (2) AIR AND WASTE | | | | | |
| (bh) Air management — mercury reduction | PR | A | | 500,000 | 500,000 |

**SECTION 2.** 20.370 (2) (bh) of the statutes is created to read:

20.370 **(2)** (bh) *Air management — mercury reduction.* The amounts in the schedule for mercury deposition studies and research, mercury evaluation and monitoring activities, activities to eliminate the use of mercury by or reduce mercury emissions from small sources, activities to address problems associated with long–term storage and disposal of mercury, activities to evaluate the effectiveness of the program under s. 285.50 and public information and education activities related to mercury. All moneys received under s. 196.854 shall be credited to this appropriation.

**SECTION 3.** 20.370 (2) (bj) of the statutes is created to read:

20.370 **(2)** (bj) *Air management — small source mercury reduction.* All moneys received under s. 285.50 (6) (a) 3. for conducting small source mercury reduction projects.

**SECTION 4.** 196.854 of the statutes is created to read:

**196.854 Assessment for mercury deposition activities. (1)** The commission shall annually assess against the major utilities, as defined in s. 285.50 (1) (d), the amount appropriated under s. 20.370 (2) (bh) for the purposes specified in s. 20.370 (2) (bh).

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

**SECTION 5.** 285.11 (19) of the statutes is created to read:

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

**SECTION 6.** Subchapter V (title) of chapter 285 [precedes 285.41] of the statutes is amended to read:

**CHAPTER 285**

SUBCHAPTER V

SULFUR DIOXIDE AND NITROGEN

OXIDE EMISSION

RATES AND GOALS;

MERCURY EMISSION LIMITS

**SECTION 7.** 285.50 of the statutes is created to read:

**285.50 Mercury emission limits. (1)** DEFINITIONS. In this section:

(a) "Allowance" means a limited authorization to emit one pound of mercury in one year.

(b) "Baseline mercury emissions" means the average annual mercury emissions of a stationary source in 1997, 1998 and 1999, as determined under sub. (1m).

(c) "Boiler" means a solid fossil fuel–fired combustion unit.

(d) "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.

(e) "Modify" means to make one or more physical changes in, or changes in the method of operation of, a stationary source so that the annual mercury emissions of the stationary source increase by 5 pounds or more over the baseline mercury emissions of the stationary source.

(f) "Nonboiler source" means a stationary source that emits mercury and that is not a solid fossil fuel–fired combustion unit. "Nonboiler source" includes a combustion unit that is fired with fossil fuel that is not solid.

(g) "Partially regulated boiler" means a boiler that is not owned by a municipality, this state or a major utility if the total annual mercury emissions from all stationary sources that are located on the site on which the boiler is located exceed 10 pounds in any year.

(h) "Regulated government–owned boiler" means a boiler that is owned by a municipality or this state if the total annual mercury emissions from all stationary sources that are located on the site on which the boiler is located exceed 10 pounds in any year.

(i) "Regulated major utility boiler" means a boiler that is owned by a major utility if the total annual mercury emissions from all stationary sources that are located on the site on which the boiler is located exceed 10 pounds in any year.

(j) "Regulated nonboiler source" means a nonboiler source if the total annual mercury emissions from all stationary sources that are located on the site on which the nonboiler source is located exceed 10 pounds in any year.

(k) "Site" means contiguous property that is under common ownership or control.

**(1m)** DETERMINATION OF MERCURY EMISSIONS. The department shall establish a methodology for determining the annual mercury emissions of boilers and other stationary sources that emit mercury. Using this methodology, the department shall determine a baseline mercury emission level for each regulated major utility boiler, regulated government–owned boiler, regulated nonboiler source and partially regulated boiler by averaging the annual mercury emissions of the boiler or the nonboiler source in 1997, 1998 and 1999.

**(2)** EMISSION LIMITS; MAJOR UTILITY AND GOVERNMENT–OWNED BOILERS. (a) *New and modified boilers.* 1. After the department establishes a methodology under sub. (1m), no person may construct a new regulated major utility boiler or a new regulated government–owned boiler until the person obtains mercury emission reductions, as provided in sub. (4), equal to 150% of the annual mercury emissions from the new boiler.

2. After the department establishes a methodology under sub. (1m), no person may modify a regulated major utility boiler or regulated government–owned boiler until the person obtains mercury emission reductions, as provided in sub. (4), equal to 150% of the increased mercury emissions resulting from the modification of the boiler.

(b) *Existing boilers.* 1. Beginning in the year after the year in which the department establishes a methodology under sub. (1m), the annual mercury emissions from a regulated major utility boiler or regulated government–owned boiler to which par. (a) does not apply may not exceed the baseline mercury emissions of the boiler, except as provided in sub. (4) (b).

2. In 2005 to 2009, the owner or operator of a regulated major utility boiler or regulated government–owned boiler to which par. (a) 1. does not apply shall annually

obtain mercury emission reductions, as provided in sub. (4), equal to 20% of the baseline mercury emissions of the boiler.

3. In 2010 to 2014, the owner or operator of a regulated major utility boiler or regulated government–owned boiler to which par. (a) 1. does not apply shall annually obtain mercury emission reductions, as provided in sub. (4), equal to 50% of the baseline mercury emissions of the boiler or equal to the difference between the baseline mercury emissions of the boiler and the average annual mercury emissions of the boiler during 2005 to 2009, whichever is greater.

4. Beginning in 2015, the owner or operator of a regulated major utility boiler or regulated government–owned boiler to which par. (a) 1. does not apply shall annually obtain mercury emission reductions, as provided in sub. (4), equal to 90% of the baseline mercury emissions of the boiler or equal to the difference between the baseline mercury emissions of the boiler and the average annual mercury emissions of the boiler during the preceding 5–year period, whichever is greater.

**(3)** EMISSION LIMITS; NONBOILER SOURCES. (a) *New and modified nonboiler sources.* 1. After the department establishes a methodology under sub. (1m), no person may construct a new regulated nonboiler source until the person obtains mercury emission reductions, as provided in sub. (4), equal to 150% of the annual mercury emissions from the new nonboiler source.

2. After the department establishes a methodology under sub. (1m), no person may modify a regulated nonboiler source until the person obtains mercury emission reductions, as provided in sub. (4), equal to 150% of the increased mercury emissions resulting from the modification of the nonboiler source.

(b) *Existing nonboiler sources.* 1. Beginning in the year after the year in which the department establishes a methodology under sub. (1m), the annual mercury

emissions from a regulated nonboiler source to which par. (a) does not apply may not exceed the baseline mercury emissions of the nonboiler source, except as provided in sub. (4) (b).

2. In 2005 to 2009, the owner or operator of a regulated nonboiler source to which par. (a) 1. does not apply shall annually obtain mercury emission reductions, as provided in sub. (4), equal to 20% of the baseline mercury emissions of the nonboiler source.

3. In 2010 to 2014, the owner or operator of a regulated nonboiler source to which par. (a) 1. does not apply shall annually obtain mercury emission reductions, as provided in sub. (4), equal to 50% of the baseline mercury emissions of the nonboiler source or equal to the difference between the baseline mercury emissions of the nonboiler source and the average annual mercury emissions of the nonboiler source during 2005 to 2009, whichever is greater.

4. Beginning in 2015, the owner or operator of a regulated nonboiler source to which par. (a) 1. does not apply shall annually obtain mercury emission reductions, as provided in sub. (4), equal to 90% of the baseline mercury emissions of the nonboiler source or equal to the difference between the baseline mercury emissions of the nonboiler source and the average annual mercury emissions of the nonboiler source during the preceding 5–year period, whichever is greater.

**(3e)** INCREASE IN REQUIRED REDUCTIONS. Notwithstanding the mercury emission reductions required to be obtained in sub. (2) (b) 2. to 4. and (3) (b) 2. to 4., if the owner or operator of a stationary source subject to those requirements fails to obtain the required mercury emission reductions under sub. (2) (b) or (3) (b) in a year, the department shall increase the amount of mercury emission reductions that the owner or operator must obtain under sub. (2) (b) or (3) (b) for the next year by 5 times

the difference between the amount of emission reductions required and the amount of emission reductions obtained.

**(3m)** EMISSION REDUCTIONS AND GOALS; PARTIALLY REGULATED BOILERS. (a) *New and modified boilers.* 1. After the department establishes a methodology under sub. (1m), no person may construct a new partially regulated boiler until the person obtains mercury emission reductions, as provided in sub. (4), equal to 150% of the annual mercury emissions from the new boiler.

2. After the department establishes a methodology under sub. (1m), no person may modify a partially regulated boiler until the person obtains mercury emission reductions, as provided in sub. (4), equal to 150% of the increased mercury emissions resulting from the modification of the boiler.

(b) *Existing partially regulated boilers.* It is the goal of this state that annual mercury emissions from a partially regulated boiler do not exceed the following:

1. In the year after the year in which the department establishes a methodology under sub. (1m) to 2004, the baseline mercury emissions of the boiler.

2. In 2005 to 2009, 80% of the baseline mercury emissions of the boiler.

3. In 2010 to 2014, 50% of the baseline emissions of the boiler.

4. Beginning in 2015, 10% of the baseline mercury emissions of the boiler.

(c) *Report on emissions from partially regulated boilers.* If the department determines, in 2006 or 2011, that the goals in par. (b) are not being met, the department shall prepare a report describing the extent to which the goals are not being met and any measures that the department recommends should be taken because the goals are not being met. The department shall submit any report required under this paragraph to the chief clerk of each house of the legislature for

distribution to the appropriate standing committees of the legislature under s. 13.172 (3).

**(4)** COMPLIANCE. (a) A person who owns a stationary source that is subject to sub. (2) (a), (3) (a) or (3m) (a) may obtain the required emission reductions by one or more of the following methods:

1. Reducing the annual mercury emissions from another stationary source owned by the person if the reduction is permanent and enforceable and is not otherwise required by this section or other state or federal law.

2. Entering into an agreement under which another person reduces the annual mercury emissions from a stationary source owned by the other person if the reduction is permanent and enforceable and is not otherwise required by this section or other state or federal law.

(b) A person who owns a stationary source that is subject to sub. (2) (b) 1. or (3) (b) 1. may only increase the annual mercury emissions in a year above the baseline mercury emissions for that stationary source if the person reduces mercury emissions in that year from another stationary source on the same site by the amount of the increase and if the emission reduction is not otherwise required by this section or other state or federal law.

(c) Except as provided in par. (d) or (e), a person who owns a stationary source that is subject to sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. may obtain the required emission reductions by one or more of the following methods:

1. Reducing mercury emissions from that stationary source or another stationary source on the same site.

2. Using banked or traded allowances as provided under sub. (5).

3. Using small source mercury reduction allowances as provided under sub. (6).

(d) 1. A person who owns or operates a stationary source that is regulated under sub. (2) (b) 2. to 4. may not obtain more than 50% of the required emission reductions for that stationary source by using allowances from a stationary source that is regulated under sub. (3), by using small source mercury reduction allowances or by using a combination of those methods.

2. A person who owns or operates a stationary source that is regulated under sub. (3) (b) 2. to 4. may not obtain more than 50% of the required emission reductions for that stationary source by using allowances from a stationary source that is regulated under sub. (2), by using small source mercury reduction allowances or by using a combination of those methods.

(e) 1. In 2005 to 2009, a person who owns a stationary source that is regulated under sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. may not obtain more than 25% of the required emission reductions for that stationary source by using small source mercury reduction allowances.

2. In 2010 to 2014, a person who owns a stationary source that is regulated under sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. may not obtain more than 15% of the required emission reductions for that stationary source in 2010 to 2014 by using small source mercury reduction allowances.

3. After 2014, a person who owns a stationary source that is regulated under sub. (2) (b) 2. to 4. or (3) (b) 2. to 4. may not obtain any of the required emission reductions for that stationary source by using small source mercury reduction allowances.

**(5)** EMISSION ALLOWANCE SYSTEM; BANKING AND TRADING EMISSION ALLOWANCES. (a) *Allowances.* The department shall promulgate rules for a mercury emission allowance system that assigns allowances to each stationary source that is subject

to sub. (2) (b) or (3) (b). Under the system, the department shall notify the owner or operator of a stationary source of the number of allowances for that stationary source for up to 5 years in advance, based on the requirements of sub. (2) (b) or (3) (b) and of sub. (3e).

(b) *Emission allowance banking and trading.* The department shall promulgate rules for quantifying and certifying reductions in mercury emissions from stationary sources that are subject to sub. (2) or (3) and for a system for banking and trading allowances. The department may allow owners and operators who reduce mercury emissions from partially regulated boilers to obtain allowances that may be banked and traded for, if the reductions are quantifiable, permanent and enforceable. The department may not allow the banking or trading of reductions in mercury emissions if those reductions are required by federal law or by state law other than this section.

**(6)** SMALL SOURCE MERCURY REDUCTION ALLOWANCES. (a) A person may obtain small source mercury reduction allowances in any of the following ways:

1. Conducting a small source mercury reduction project that is approved by the department.

2. Entering into an agreement under which another person conducts a small source mercury reduction project that is approved by the department.

3. Providing funds to the department for conducting a small source mercury reduction project.

(b) The department shall issue small source mercury reduction allowances to a person under this subsection in amounts equal to the amounts of reductions in emissions of mercury that are reasonably likely to occur because of the small source

mercury reduction project undertaken or sponsored by the person, as determined based on the rules promulgated under par. (c).

(c) The department shall promulgate rules for issuing small source mercury reduction allowances. In the rules, the department shall include criteria for determining the amounts of reductions in emissions of mercury that are reasonably likely to occur because of a small source mercury reduction project, including all of the following:

1. The ability of the department to determine the actual amounts of reductions in emissions of mercury resulting from a small source mercury reduction project, taking into consideration any proposed measurement, monitoring and evaluation of the project.

2. The degree of certainty that the predicted amounts of reductions in emissions of mercury will result from the small source mercury reduction project.

3. The extent to which the reductions in emissions of mercury would occur in the absence of the small source mercury reduction project.

4. The period during which the reductions in emissions of mercury resulting from the small source mercury reduction project will continue.

**(7)** STORAGE OR DISPOSAL. A person who is required to comply with sub. (2) or (3), who seeks to obtain an allowance under sub. (5) or who conducts a small source mercury reduction project under sub. (6) shall demonstrate to the department that mercury obtained in the course of taking those actions and disposed of or placed in storage will not be emitted into the atmosphere through reuse or recycling.

**(8)** REPORT. (a) The department shall prepare 2 reports assessing the effectiveness of the mercury emission reduction program under this section. The department shall prepare the first report by October 31, 2006, and the 2nd report by

October 31, 2011. In the reports under this subsection, the department may include an assessment of the effectiveness of any other mercury reduction or elimination programs in this state. In the reports under this subsection,the department shall include all of the following:

1. An analysis of the impacts of the trading program under sub. (5) on water quality in specific locations and a description of the actions that the department will take to address any adverse impacts of the trading program on water quality in specific locations.

2. An assessment of whether the 50% and 90% reductions in mercury emissions in 2010 and 2015 under subs. (2) (b) and (3) (b) are achievable, considering any scientific or technological developments.

3. Recommendations for any adjustments to the percentage reductions under subs. (2) (b) and (3) (b) that the department determines are appropriate.

(b) The department shall submit the reports required under this subsection to the chief clerk of each house of the legislature for distribution to the appropriate standing committees of the legislature under s. 13.172 (3).

**(9)** 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.

**(10)** COOPERATION. The department shall work with organizations, other states, the federal environmental protection agency and this state's congressional delegation to establish all of the following:

(a) Nationwide regulations of mercury emissions at least as stringent as those in this section.

(b) A nationwide ban on the reuse or recycling of mercury.

(c) A ban on the export of mercury.

(d) International regulations of mercury emissions at least as stringent as those in this section.

**(END)**