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Sent via e-mail and first-class mail
(jon.heinrich@wisconsin.gov)

Mr. Jon Heinrich
Bureau of Air Management
Wisconsin Department of Natural Resources
Post Office Box 7921
Madison, Wisconsin 53707-7921

Subject: MGE's Comments on Board Order AM-32-05—Proposed Rules Amending NR 446 Relating to Control of Mercury Emissions

Dear Mr. Heinrich:

Madison Gas and Electric Company ("MGE") submits these comments regarding Natural Resources Board Order AM-32-05 ("AM-32-05") pertaining to proposed modifications of Wis. Admin. Code, Chapter NR 446—Wisconsin's administrative rules related to the control of mercury emissions from stationary sources. MGE operates, or otherwise has an ownership interest in, emission units that could be affected by the proposed rules. MGE appreciates the Department's willingness to consider these comments.

Ensure consistency with federal mercury rules

MGE supports maintaining consistency between the federal and state regulations that implement the emission control programs required by the Clean Air Act. Having divergent state and federal regulatory programs attempting to address the same issue adds confusion, uncertainty, and unneeded expense for both the regulated community and the regulators.

With respect to mercury emissions, WDNR has previously announced a policy to ensure state mercury emission requirements are consistent with their federal counterparts. Wis. Stat. § 285.27 also includes a legislative directive to maintain consistency between state and federal mercury emission requirements. Based on the foregoing, AM-32-05 should include a clear requirement and process for WDNR to modify NR 446 to be consistent with any federal mercury emission standard that may be promulgated hereafter.

Fuel switching

NR 446 should encourage sources to reduce the mercury in fuels that are combusted, rather than relying upon technology that recaptures mercury after it has been introduced into the combustion process. However, the proposed rule at Subchapter III sets forth mercury reduction requirements that are based upon the amount of mercury removed by a specific technology and not on the mercury content of the fuel entering the combustion unit. A source that combusts coal and a source that combusts coal mixtures (with an inherently lower mercury content) must both install control technology achieving a 90% reduction[1]. This discourages and effectively precludes a source from reducing its mercury emissions by fuel blending or fuel switching.

[1]The concentration-based option (i.e., 0.0080 lb/GWh) does not sufficiently address this issue. Coal-fuel mixtures cannot adequately meet this requirement without control technology. Furthermore, sources which merely have coal as a backup fuel would nonetheless be required to install control technology.

Similarly, the proposed rule at NR 446.12 requires small coal-fired electric generating units ("EGU") to control mercury emissions to a level that is determined by the department to be Best Available Control Technology ("BACT"). Small EGUs should be provided the option of switching or blending fuels instead of implementing BACT. Sources that chose this option could switch back to coal only by accepting a permit limitation that restricts mercury emissions from the unit to levels determined to be BACT.

Retired units

The proposed rule does not address emission reduction credits ("ERCs"), banking, trading, and unit-averaging associated with retired coal-fired units. The retirement of existing coal-fired plants should be encouraged by granting these units ERCs that can be banked, traded, or otherwise transferred to other units for unlimited compliance purposes. This would also increase compliance flexibility and reduce costs.

Mercury emission reduction credits

The proposed rule at NR 446.15 is overly restrictive in the use of ERCs. Less prescriptive requirements on ERC generation and usage would encourage voluntary reductions, create compliance flexibility, and reduce compliance costs. ERCs also provide an efficient mechanism to accommodate shortfalls in technology development and control equipment performance problems. Specific to this issue, MGE suggests that both small and large coal-fired EGUs be allowed to create and use ERCs, unlimited banking and unrestricted utilization be allowed, and entities generating ERCs should be allowed to use an ERC at any regulated facility in which the entity has an ownership or operational interest. MGE also suggests the following rule changes:

- The use of ERCs should be allowed amongst and between sources subject to different compliance options (i.e., the multi-pollutant control option of NR 446.13 and the mercury-only control option of NR 446.14).

- The ERC use restriction of "five percent of the annual allowed emission total" discourages early reductions by limiting the value of ERCs. This restriction also curtails the ability of ERCs to ease control technology shortfalls and performance limitations.

- Banking and trading provisions should be created allowing for small and large coal-fired EGUs to meet the requirements of Subchapter II of the proposed rule. Such provisions support technology development, encourage early emission reductions, provide for compliance flexibility, and reduce costs.

- Early reductions beyond the minimal requirements of Subchapter II should be afforded ERC status and those ERCs should be available for demonstrating compliance under Subchapter III.

- The proposed rule is confusing with respect to excess and early mercury ERCs.

There is confusion with respect to terminology. At NR 446.15, the proposed rule uses the terms "early emission reduction credit," "certified mercury emission reduction credits," "excess mercury reductions," and "emission reduction credits." These terms are not clearly defined, appear to be used interchangeably, and the use and value of each of these "credits" are not clearly defined.

It is unclear whether a source must commit to permanently reduce mercury in order to generate a credit. At NR 446.15(3), excess emission reductions are certified annually on a retroactive basis based upon the mercury reductions from a regulated unit in the preceding calendar year. At NR 446.15(4) and NR 446.02(1n), these reductions must be made permanent in order to be certified. However, it is inappropriate to require a source to permanently commit to an emission reduction for the simple purpose of generating a credit for the preceding calendar year. Credits should be annually certified on a retroactive basis looking at the actual emission reductions from a unit in the preceding year—not based upon commitments to future reductions.

The rule also creates confusion by treating emission reductions differently depending upon the time frame in which they are generated. Credits generated between 2010 and 2014 may only be created by "major utilities" and only used for purposes of NR 446.05. All EGUs subject to NR 446 should be allowed to generate these credits and use them for purposes of compliance with the requirements of NR 446.05. These credits should also be capable of usage beyond 2014.

Likewise, at NR 446.15(2)(b) emission reductions achieved in calendar years 2015 to 2020 can be certified from all coal-fired EGUs. However, these credits can only be used for purposes of complying with the multi-pollutant option under NR 446.14. This restriction should be removed and ERCs generated during this time frame and should be available for demonstrating compliance at any regulated unit in the state at any time in the future.

Parity between compliance tracks

The proposed rule at Subchapter III sets forth two alternative compliance tracks. Track one requires a 90% mercury emission reduction by January 1, 2015. See, NR 446.13. Track two is a multi-pollutant reduction alternative. See, NR 446.14. The proposed rule should be modified to increase the regulatory parity between these two tracks. As currently drafted, sources that choose track one (i.e., the mercury-only option) are disadvantaged in the following areas:

- Track one sources are not allowed to generate and utilize ERCs. However, ERCs are important for these sources given that they must achieve the greatest mercury reduction in the shortest period of time. ERCs will likely be needed to compensate for limitations in technology development, control device performance, and new equipment start-up issues.

- Track one sources should have their own compliance extension provision (similar to NR 446.16) and be subject to the technology evaluation provisions in NR 446.19. If the report in NR 446.19 indicates that scientific and technological developments are not sufficient to achieve a 90% reduction for multi-pollutant sources, that same conclusion would apply to track one sources. In those circumstances, track one sources should qualify for a compliance extension or be allowed to choose an alternative compliance option.

Unit averaging

- The unit averaging provisions should clarify that compliance averaging can occur across units with multiple ownership scenarios. A unit under multiple ownership should be allowed to demonstrate compliance by averaging mercury, NO_X and/or SO_2 emission rates with any other facility owned or operated by one of the multiple co-owners of the plant at issue.

- Unit averaging should be allowed amongst and between units regulated under different compliance tracks (i.e., NR 446.12, .13, and .14). Averaging should also be allowed under Subchapter II.

Other issues

- The proposed rule at Subchapter III sets forth alternative mercury reduction requirements for small and large coal-fired EGUs. At NR 446.13 and .14, the rule would impose a 90% mercury emission requirement (or 0.0080 lb/GWh) applicable to all sizes of EGUs. However, the economics and technical feasibility of controlling mercury emissions will vary between differently sized EGUs. Minnesota reached this conclusion when establishing its mercury control requirements. As a consequence, the rule should create separate, lower emission reduction requirements for smaller EGUs. One possible approach would be to exempt units less than 25 MW and require a 70% reduction option for units between 25 and 200 MW.

- The proposed rule at NR 446.09 sets forth applicability criteria for Subchapter III requirements. These applicability provisions should clarify that a source can avoid regulation under Subchapter III by eliminating or curtailing the combustion of coal as late as the first compliance date under the proposed rule. This would provide greater compliance flexibility, allow for technology advancements, reduce compliance costs, and achieve the same mercury reduction goal.

- The proposed definition of "small coal-fired EGU" at NR 446.10(10) should be clarified to reflect that the definition only encompasses electric generating units that are "coal-fired." This clarification would avoid any ambiguity.

- The proposed rule at NR 446.17 requires small coal-fired EGUs to elect their compliance option within 24 months after the effective date of the rule revisions. This is unrealistic given the uncertainty associated with technology that is currently known to be capable of reasonably, consistently, and economically meeting the emission reduction levels that are proposed in the rule. Small EGUs should be given up until the first compliance date (December 31, 2014) to commit to a final compliance option.

- The proposed rule at NR 446.18(4) contains a formula for determining annual allowable emissions. This equation should be clarified with respect to how ERCs are factored into the compliance formula.

Thank you for seeking input on the proposed rule and for this opportunity to submit comments.

Sincerely,

Michael Ricciardi

Michael Ricciardi
Senior Director -
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