

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS  
AM-32-05

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11(2)(a), 227.14 (1m) and 285.11(1) and (6), Stats., interpreting ss. 285.11(6), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 440 and 446, Wis. Adm. Code, relating to the establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Mercury Rule promulgated by the U.S. Environmental Protection Agency (EPA). The State Implementation Plan developed under s. 285.11(6), Stats., is also being revised.

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 Chapter 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 31<sup>st</sup> 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 30<sup>th</sup> for those

requests received by May 1<sup>st</sup>. 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.

NOTICE IS HEREBY FURTHER GIVEN that the Department is also seeking comment on three alternative approaches (hereinafter referred to as "Option 2," "Option 3," and "Option 4") for reducing mercury emissions from coal-fired electrical steam generating units. Additional information on these options is available at <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order Number AM-32-05.) The first alternative approach ("Option 2") would require all coal burning electrical generating units to achieve a 90 to 95% reduction in mercury emissions by January 1, 2012. This alternative was proposed to the Department in a Citizen Petition received on January 22, 2007, and requires more mercury emission reductions from coal-fired electrical steam generating units to be achieved sooner than proposed in AM-32-05. Another alternative approach ("Option 3") would allow the mercury emission reductions outlined in AM-32-05 to be achieved through EPA's national mercury emission trading program. Under this compliance approach, Wisconsin electric utilities could obtain or sell mercury allowances nationwide. A final alternative approach (Option 4") would allow participation in EPA's national mercury emission trading as in Option 3, however participation would sunset January 1, 2015.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have a direct economic impact on small businesses. The Clean Air Mercury Rule imposes no reporting, compliance or performance standards on small businesses. The Clean Air Mercury Rule may increase the cost of electricity and therefore may have an indirect impact on small businesses through higher electricity costs. The Department's Small Business Regulatory Coordinator may be contacted at [Small.Business@wi.gov](mailto:Small.Business@wi.gov) or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the public hearings will be held on:

Tuesday, May 15, 2007	Green Bay State Office Building, Room 152-A, 200 N. Jefferson St. Green Bay, WI at 1:30 p.m.
Thursday, May 17, 2007	Portage County Annex Building, Conference Room 2, 1462 Strongs Avenue, Stevens Point, WI at 1:30 p.m.
Tuesday, May 22, 2007	DNR Office Building, Front Conference Room, 1300 W. Clairemont Ave., Eau Claire, WI at 1:30 p.m.
Wednesday, May 23, 2007	Room 041 (DPI's room in GEF III), 125 S. Webster St., Madison, WI at 1:30 p.m.

Thursday, May 24, 2007

DNR SER HQ, Room 141, 2300 N. Martin Luther King Jr. Dr.,  
Milwaukee, WI at 1:30 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please contact Robert Eckdale at (608) 266-2856 or by e-mail at Robert.Eckdale@Wisconsin.gov with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order Number AM-32-05.) If you do not have Internet access, a personal copy of proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale by calling (608) 266-2856 or by writing him at Bureau of Air Management, P.O. Box 7921, Madison, WI 53707.

Written comments on the proposed rule may also be submitted to Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Robert.Eckdale@Wisconsin.gov no later than June 11, 2007. Written comments will have the same weight and effect as oral statements presented at the public hearings.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
*Scott Hassett, Secretary*