



Wisconsin Utilities Association
44 East Mifflin Street, Suite 202

To: Wisconsin Natural Resources Board

**From: Wisconsin Utilities Association
Dairyland Power Cooperative**

Re: Comments on Mercury Rule

Date: May 2, 2008

On behalf of Wisconsin's investor-owned gas & electric utilities and Dairyland Power Cooperative, (DPC) the Wisconsin Utilities Association (WUA) offers the following comments regarding the proposed revisions to Wisconsin's mercury emission rules.

Ensure Consistency with Federal Mercury Regulation –

- Wisconsin's energy customers will be best served by a state policy that ultimately allows for alignment with Federal mercury regulations for coal-fired electric generating units (EGUs); this is required under Wisconsin statutes.
- WUA and DPC request this rule proposal recognize the statutory requirement by including provisions that support transition to Federal mercury regulations when they are adopted.
- The proposed rule at NR 446.19 should also include a requirement to conduct an evaluation of federal (EPA) mercury regulations when they are proposed in order to assess compatibility with the Wisconsin mercury rule.

Allow for Unrestricted Banking of Early Reductions –

- The proposed rule at NR 446.15 restricts use of early reduction credits (ERCs) to only "5% of the annual allowed emission total."
- Banking provisions support technology development and early emission reductions as well as provide for compliance flexibility and reduced costs.
- The ability to use 100% of banked mercury ERCs should be allowed for both small and large EGUs and all compliance options (mercury only or multi-emission approach).

Expand Electric Reliability Waiver –

- Even with the multi-emissions option the proposed rule accelerates the needed air pollution controls on compliance timeframes that are already difficult to achieve.
- WUA and DPC are encouraged that the proposed rule at NR 446.16 includes the option to request longer timelines through an "electric reliability waiver" under the multi-emission alternative. However, this request must be made within 24-months of

the rule's effective date and no compliance extensions are allowed beyond January 1, 2017.

- WUA and DPC recommend that this extension request also be made available for the 90% mercury-only compliance option. In addition, WUA and DPC believe that the timeframe during which a utility may request an electric reliability waiver should not be restricted and that an extension request should be allowed at any time as long as sufficient justification is available.

Provide Ability to Revise Emission Limitation Election -

- The proposed rules at NR 446.17(2) require that an emission limitation election must be made for coal-fired EGUs “within 24-months of the effective date of this subchapter.” These designations would then be used by the Department to establish permanent emission limitation requirements.
- Given the uncertainties of mercury control technology performance, WUA and DPC believe that the 24-month window in this provision is too short to make this significant of an emissions planning decision.
- WUA and DPC request that the proposed rule revision extend the decision timeframe to 48-months or, alternatively, provide the ability for a utility to request a revision of the election at any point as deemed necessary.

Public Health & Welfare Finding –

- As required by Wis. Stats. 285.27 (2)(b), the Finding does not substantiate that the standard is needed to provide adequate protection for public health or welfare nor provide an analysis showing that failing to promulgate the proposed emission standard will cause population groups to be subjected to levels of mercury that are above recognized environmental health standards.
- The Finding does not provide any documented connection between Wisconsin utility mercury emissions and mercury deposition in Wisconsin.
- The Finding does not provide a credible risk analysis nor explain how the proposed rule will reduce health risks to Wisconsin citizens.

Costs –

- WUA and DPC do not agree with the cost of compliance estimates contained in the rule because mercury control technology is still under development. Thus, the costs associated with the proposed emission limitation cannot be estimated at this time.