

CHAPTER 201—H.F.No. 3712

An act relating to the environment; requiring disclosure regarding disposal of fluorescent lamps containing mercury; requiring mercury emissions reduction by public utilities; amending Minnesota Statutes 2004, sections 116.92, by adding a subdivision; 216B.1692, subdivision 8; proposing coding for new law in Minnesota Statutes, chapter 216B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **TITLE.**

This act may be cited as the Mercury Emissions Reduction Act of 2006.

Sec. 2. Minnesota Statutes 2004, section 116.92, is amended by adding a subdivision to read:

Subd. 7a. **Fluorescent lamps; residential applications.** Any information regarding fluorescent lamps containing mercury that is sent by a utility to a customer, present on a utility's Web site, or contained in a utility's print, radio, or video advertisement, must (1) state that the lamps contain mercury that is harmful to the environment and that it is illegal to place them in garbage and (2) provide a toll-free telephone number or Web site that customers can access to learn how to lawfully dispose of the lamps.

EFFECTIVE DATE. This section is effective October 1, 2006.

Sec. 3. **[216B.105] CUSTOMER SHARE OF MERCURY CONTROL COSTS.**

A utility selling electricity at retail shall report in a biannual bill insert the amount of the customer's total bill that represents the utility's capital and operating costs to control mercury emissions to the atmosphere as required under sections 216B.68 to 216B.688.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. Minnesota Statutes 2004, section 216B.1692, subdivision 8, is amended to read:

Subd. 8. **Sunset.** This section is effective until ~~June 30, 2006~~ December 31, 2013, and applies to plans, projects, and riders approved before that date and modifications made to them after that date.

Sec. 5. **[216B.68] DEFINITIONS; MERCURY EMISSIONS REDUCTION.**

Subdivision 1. **Scope.** Terms used in sections 216B.68 to 216B.688 have the meanings given them in this section and section 216B.02.

Subd. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subd. 3. **Dry scrubbed unit.** "Dry scrubbed unit" means a targeted unit at which pollution control technology that uses a spray dryer and fabric filter system to remove pollutants from air emissions is installed or will be installed by December 31, 2007.

Subd. 4. **Federal mercury regulations.** "Federal mercury regulations" means the federal clean air mercury rule as of January 1, 2006, published in Code of Federal Regulations, title 40, parts 60, 63, 70, and 72.

Subd. 5. **Mercury emissions reduction.** "Mercury emissions reduction" means the amount of mercury reduced from the emissions of a targeted or supplemental unit, relative to the emissions baseline from that unit established under section 216B.681, expressed as a percentage.

Subd. 6. **Qualifying facility.** "Qualifying facility" means an electric generating power plant in Minnesota that, as of January 1, 2006, had a total net dependable capacity in excess of 500 megawatts from all coal-fired electric generating units at the power plant.

Subd. 7. **Startup period.** "Startup period" means a period of one year after the date mercury control equipment is installed at a targeted unit under an approved mercury emissions reduction plan, or such longer period as the commission may approve after consultation with the Pollution Control Agency, if a longer period is necessary to optimize equipment performance for mercury reduction.

Subd. 8. **Targeted unit.** "Targeted unit" means a coal-fired electric generation unit greater than 100 megawatts at a qualifying facility.

Subd. 9. **Wet scrubbed unit.** "Wet scrubbed unit" means a targeted unit at which pollution control technology that uses water or solutions to remove pollutants from air emissions is installed.

Sec. 6. **[216B.681] MONITORING.**

By July 1, 2007, a public utility that owns or operates a qualifying facility shall install, maintain, and operate continuous mercury emission monitoring systems or other method of monitoring approved by the agency on each targeted unit and, where applicable, on each supplemental unit pursuant to section 216B.6851. The monitoring systems must use methods set forth in federal mercury regulations or such other methods as may be approved by the agency. The public utility shall report to the agency as public data the quality assured data produced from monitoring implemented pursuant to this section on a quarterly basis in a form prescribed by the agency. The data from at least six months' monitoring must be used to establish a baseline for mercury emissions reductions under sections 216B.68 to 216B.688.

Sec. 7. **[216B.682] MERCURY EMISSIONS REDUCTION PLANS.**

Subdivision 1. **Dry scrubbed units.** (a) By December 31, 2007, a public utility that owns a dry scrubbed unit at a qualifying facility shall develop and submit to the agency and the commission a plan for mercury emissions reduction at each such unit. At each dry scrubbed unit owned and operated by the utility, the plan must propose to employ the available technology for mercury removal that is most likely to result in the removal of at least 90 percent of the mercury emitted from the unit.

(b) A plan submitted under this subdivision must provide for mercury emissions reduction at each dry scrubbed unit to be implemented by December 31, 2010. A public utility that owns two dry scrubbed targeted units must submit a plan that provides for implementation at one unit by December 31, 2009, and at the other unit by December 31, 2010.

Subd. 2. **Wet scrubbed units.** (a) By December 31, 2009, a public utility that owns a wet scrubbed unit at a qualifying facility shall develop and submit to the agency and the commission a plan for mercury emissions reduction at each such unit. At each wet scrubbed unit owned by the utility, the plan must propose to employ the available technology for mercury removal that is most likely to result in the removal of at least 90 percent of the mercury emitted from the unit.

(b) A plan submitted under this subdivision must provide for mercury emissions reduction at each wet scrubbed unit to be implemented by December 31, 2014.

Subd. 3. **Mercury emissions plans generally.** (a) In each plan submitted under this section, a utility shall present information assessing that plan's ability to optimize human health benefits and achieve cost efficiencies. Each plan must provide the cost, technical feasibility, and mercury emissions reduction expected for the utility's preferred technology option and each alternative considered. The utility shall demonstrate that it has considered achieving the mercury emissions reduction required under this section through multiple pollutant control technology.

(b) A plan submitted under this section may also:

(1) provide measures to reduce the cost and maximize the flexibility of each option proposed or considered; and

(2) specify permit targets or conditions proposed by the public utility for each mercury emission control option proposed or considered, including, but not limited to, numeric emission targets, percent removal expectations, emission control technology installation and operation requirements or work practice standards, and potential changes in the performance of the mercury emissions reduction technology over time.

(c) The utility may submit an emissions rate rider to the commission under section 216B.683 to recover the costs associated with plans filed under this section.

Sec. 8. **[216B.683] COST RECOVERY AND FINANCIAL INCENTIVES.**

Subdivision 1. **Emissions reduction riders.** (a) A public utility required to file a mercury emissions reduction plan under sections 216B.68 to 216B.688 may also file for approval of emissions reduction rate riders pursuant to section 216B.1692, subdivision 3, for its mercury control and other environmental improvement initiatives under sections 216B.68 to 216B.688.

(b) In addition to the cost recovery provided by section 216B.1692, subdivision 3, the emissions reduction rate riders may include recovery of costs associated with (1) the purchase and installation of continuous mercury emission monitoring systems, (2) costs associated with the purchase and installation of emission reduction equipment, (3) construction work in progress, (4) ongoing operation and maintenance costs associated with the utility's emission control initiatives, including, but not limited to, the cost of any sorbent or emission control reagent injected into the unit, (5) any project costs incurred before plan approval that are demonstrated to the commission's satisfaction to be part of the plan, and (6) any studies undertaken by the utility in support of the emissions reduction plan.

(c) The utility may propose to phase in the emissions reduction riders to recover these costs over the development and life of the projects.

Subd. 2. **Performance-based incentives.** A mercury emissions reduction rider approved by the commission may include performance-based financial incentives if the commission determines that the incentives will increase the likelihood that the utility will exceed 90 percent mercury emissions reductions, provided the incentives do not impose excessive costs on the utility's consumers when added to the costs recovered under subdivision 1. These incentives may include increased returns on investments or other performance-based incentives. The commission may structure the financial incentives to escalate for each additional increment of mercury emissions reduction achieved by the utility above the 90 percent mercury emissions reduction.

Subd. 3. **Other provisions.** (a) Section 216B.1692 applies to plans and emissions control riders proposed under sections 216B.68 to 216B.688, except that:

(1) projects included in a plan approved under sections 216B.68 to 216B.688 are deemed to be qualifying projects for the purposes of section 216B.1692; and

(2) section 216B.1692, subdivisions 5, paragraph (c), and 6, do not apply to plans or riders submitted under sections 216B.68 to 216B.688.

(b) Commission approval of an emissions reduction plan under this section includes approval of an emissions reduction rider associated with that plan if submitted by the utility.

Sec. 9. **[216B.684] ENVIRONMENTAL ASSESSMENT.**

The Pollution Control Agency shall evaluate a utility's mercury emissions reduction plans filed under sections 216B.682 and 216B.6851 and submit its evaluation to the Public Utilities Commission within 180 days of the date the plan is filed with the agency and commission. In its review, the agency shall (1) assess whether the utility's plan meets the requirements of section 216B.682 or 216B.6851, as applicable, (2) evaluate the environmental and public health benefits of each option proposed or considered by the utility, including benefits associated with reductions in pollutants other than mercury, (3) assess the technical feasibility and cost-effectiveness of technologies proposed or considered by the utility for achieving mercury emissions reduction, and (4) advise the commission of the appropriateness of the utility's plan. In preparing its assessment, the agency may request additional information from the utility, especially with regard to alternative technologies or configurations applicable to the specific unit, and the estimated costs of those alternatives.

Sec. 10. **[216B.685] COMMISSION APPROVAL.**

Subdivision 1. **Commission review and evaluation.** The Public Utilities Commission shall review and evaluate a utility's mercury emissions reduction plans and associated emissions reduction riders submitted under section 216B.682 or pursuant to subdivision 2, paragraph (b). In its review, the commission shall consider the environmental and public health benefits, the agency's assessment of technical feasibility, competitiveness of customer rates, and cost-effectiveness of the utility's proposed mercury control initiatives in light of the Pollution Control Agency's report under section 216B.684.

Subd. 2. **Commission approval.** (a) Within 180 days of receiving the agency's report on a utility's plan filed under section 216B.682, subdivision 1 or 2, the commission shall order the implementation of a utility's mercury emissions reduction plan and associated emissions reduction rider that complies with the requirements of the applicable subdivision of section 216B.682, unless the commission determines that the plan as proposed fails to provide for increased environmental and health benefits or would impose excessive costs on the utility's customers.

(b) If the commission is unable to approve the utility's plan and associated emissions reduction riders as proposed, it shall direct the utility to amend and resubmit its proposed plan in light of the record developed on the proposed plan or, at the utility's option, to file a new plan consistent with the requirements of the applicable subdivision of section 216B.682.

Subd. 3. **Technical issues.** The commission shall give due consideration to the assessment of the Pollution Control Agency on compliance issues under sections 216B.68 to 216B.688, technical feasibility of emission control technology, and environmental and public health benefits associated with emissions reductions.

Subd. 4. **Other provisions.** (a) Unless the utility proposes to do so, the commission may not require the replacement of existing pollution control equipment at a targeted or supplemental unit as a condition for approving a plan pursuant to this section or section 216B.6851.

(b) The commission may allow a utility up to two extensions of any deadline established under sections 216B.68 to 216B.688 or commission order under those sections, if the utility demonstrates the unavailability of necessary equipment or other extraordinary circumstances. An extension under this

paragraph may last no longer than 12 months. The commission may not extend a deadline for final installation of pollution control equipment for longer than 12 months.

Subd. 5. **Equipment optimization required.** A commission order under this section must require the utility to optimize the operation of equipment installed under a plan approved under this section to obtain maximum mercury reductions and to report the utility's efforts and results annually to the Pollution Control Agency, until such time as the agency determines the reports to be no longer necessary.

Sec. 11. **[216B.6851] UTILITY OPTION.**

Subdivision 1. **Election.** A public utility with less than 200,000 customers subject to sections 216B.68 to 216B.688 that owns two wet scrubbed units at a qualifying facility may opt to be regulated under this section for those units in lieu of section 216B.682. Plans under this section are subject to section 216B.682, subdivision 3. Except where otherwise provided, all other provisions of sections 216B.68 to 216B.688 apply.

Subd. 2. **Supplemental unit.** "Supplemental unit" means a coal-fired electric generation unit at an electric generating power plant in Minnesota at which mercury emissions reduction measures are taken as part of an emissions reduction plan under this section.

Subd. 3. **Plan for 90 percent reduction required.** A public utility that elects to be regulated under this section must file a mercury emissions reduction plan that is designed to achieve total mercury reduction at targeted and supplemental units owned by the utility equivalent to a goal of 90 percent reduction of mercury emissions at the utility's targeted units by December 31, 2014.

Subd. 4. **Alternative plans.** The utility shall also submit one or more alternatives to the 90 percent reduction plan required under subdivision 3. Alternative plans must be designed to come as near as technically possible to achieving the goal established in subdivision 3 without imposing excessive costs on the utility's customers.

Subd. 5. **Early action; wet scrubbed units.** The utility electing for regulation under this section shall file an initial plan for mercury emissions reduction at one of its two wet scrubbed units on or before December 31, 2007. The plan must provide for mercury emissions reduction to be implemented at that unit by December 31, 2010. If the plan is approved by the commission, and implemented by the utility, the utility may have until July 1, 2011, to file its plans for reduction at its other wet scrubbed unit at the qualifying facility, and may have until December 31, 2014, to implement mercury emissions reduction at that unit.

Subd. 6. **Agency review and commission approval.** (a) The agency shall review the utility's plans as provided in section 216B.684.

(b) The Public Utilities Commission shall review and evaluate a utility's mercury emissions reduction plans submitted under this section. In its review, the commission shall consider the environmental and public health benefits, the agency's determination of technical feasibility, competitiveness of customer rates, and cost-effectiveness of the utility's proposed mercury control initiatives in light of the Pollution Control Agency's review under paragraph (a). Within 180 days of receiving the agency's report, the commission shall approve a utility's mercury emissions reduction plan that the commission reasonably expects will come closest to achieving total mercury reductions at targeted and supplemental units owned by the utility equivalent to a goal of 90 percent reduction of mercury emissions at the utility's targeted units by December 31, 2014, in a manner that provides for increased environmental and public health benefits without imposing excessive costs on the utility's customers. If the commission is unable to approve the utility's 90 percent reduction plan filed under subdivision 3, the commission, in consultation with the Pollution Control Agency, shall order the utility to implement the most stringent mercury control alternative proposed by the utility under this section that provides for increased environmental and public health benefits without imposing excessive costs on the utility's customers.

(c) At each targeted and supplemental unit included in a plan under this section, a utility shall propose to implement mercury emissions control measures that will result in the greatest reduction of mercury emitted from that unit that is technically feasible without imposing excessive costs.

Sec. 12. **[216B.686] OTHER ENVIRONMENTAL IMPROVEMENT PLANS.**

Subdivision 1. **Utility filing.** (a) In order to encourage a utility to address multiple pollutants, a utility required to submit mercury reduction plans under sections 216B.68 to 216B.688 may also propose plans for investments and related expenses in pollution control equipment to be installed at facilities in Minnesota needed to comply with state or federal emission control statutes or regulations that became effective after December 31, 2004.

(b) For each plan, the utility must show that the investments in pollution control equipment to be installed at facilities in Minnesota under the plan will provide for increased environmental and public health benefits, do not impose excessive costs on the utility's customers, and will achieve at least the pollution control required by applicable state or federal regulations.

Subd. 2. **Emission reduction riders.** A public utility that files a plan under this section may also file for approval of an emissions reduction rate rider under section 216B.683, subdivision 1.

Subd. 3. **Agency review.** (a) The Pollution Control Agency shall evaluate a utility's plans filed under this section and, within 180 days of receiving the filing, provide the commission with:

- (1) verification that the emissions reduction project qualifies under subdivision 1;
- (2) a description of the projected environmental benefits of the proposed project; and
- (3) its assessment of the appropriateness of the proposed plans.

(b) In preparing its review under this subdivision, the agency may request additional information from the utility, especially with regard to alternative technologies or configurations applicable to a specific unit, and the estimated costs of those alternatives.

Subd. 4. **Commission approval.** The commission shall review and evaluate a utility's plans and associated emissions reduction riders for other environmental improvement initiatives submitted under this section. The commission shall consider the overall environmental and public health benefits, total costs, and competitiveness of customer rates. Within 180 days of receiving the agency's report prepared under subdivision 3, the commission shall approve the plan and associated emissions reduction rider if the commission finds that it meets the requirements of subdivision 1, paragraph (b).

Sec. 13. **[216B.687] IMPLEMENTATION AND OPERATION.**

Subdivision 1. **Permit conditions for mercury reductions.** The agency shall establish the mercury emissions reduction for each targeted unit included in a plan approved under section 216B.685, or where applicable, for each targeted and supplemental unit included in a plan approved under section 216B.6851.

Subd. 2. **Enforcement by the agency.** (a) Except as required by federal regulation, any mercury reduction incorporated into the permit for a targeted unit as established under a plan approved under section 216B.685, or where applicable, for each targeted and supplemental unit included in a plan approved under section 216B.6851, must be a state-only condition of the permit and will not be enforced by the agency during the startup period.

(b) After the startup period ends, the Pollution Control Agency shall incorporate into the permit the mercury reduction reasonably expected to be achieved at each unit or facility as an enforceable state-only reduction. For a qualifying facility with multiple units that has one or more units included in approved plans, the agency may establish the mercury emissions reduction for the facility covering all targeted and

supplemental units at that facility after the startup periods for all units have concluded, and the actual mercury emissions for the units have been determined. In setting the reduction, the agency shall give due consideration to the results of monitoring before implementation of the plan, the results of monitoring during the startup period, and any factors that may impact the performance of the unit for the next five years.

Subd. 3. **Equipment optimization required.** The agency shall revise the unit's air permit every five years to ensure optimal mercury emissions reduction by equipment installed under an approved plan, in light of technical and operational advances made since the date of plan approval. In revising the unit's air permit, the agency may recommend, but shall not require, additional investments in pollution control equipment, or the removal of equipment installed pursuant to an approved plan. The utility may seek commission review of the costs associated with a permit requirement or request for equipment optimization proposed by the agency and, if review is requested, the revision is not effective until approved by the commission. The commission shall approve the revision unless the utility or other party shows that it will impose excessive consumer costs.

Sec. 14. **[216B.688] RELATIONSHIP TO STATE REGULATION.**

Except as otherwise provided for equipment optimization as specified in section 216B.687, a public utility implementing an approved mercury emissions reduction plan is not required to undertake additional investments or incur additional operating or maintenance costs to reduce mercury at a unit included in a plan approved under section 216B.685 or 216B.6851.

Presented to the governor May 8, 2006

Signed by the governor May 11, 2006, 11:10 a.m.