

## CHAPTER 27

## PRIORITY TOXIC CHEMICAL USE REDUCTION

**§2321. Toxic chemical reduction policy; department duty**

It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens and the quality of the environment, to continually and as expeditiously as practicable reduce the use of toxic chemicals, particularly those identified by the State as being priority toxic chemicals, by commercial and industrial facilities through comprehensive environmental management practices, the use of inherently safer products, the use of materials and processes that are reasonably available and the more efficient use of resources. The department shall work with commercial and industrial facilities to establish goals to reduce the use of priority toxic chemicals based on the reasonable availability of safer alternatives and other factors. The policy represented in this chapter is consistent with the reduction of toxic chemicals in children's products under chapter 16-D. [PL 2009, c. 579, Pt. A, §3 (NEW).]

## SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

**§2322. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2009, c. 579, Pt. A, §3 (NEW).]

**1. Alternative.** "Alternative" means a substitute process, product, material, chemical, strategy or a combination of these that serves a purpose functionally equivalent to that of a priority toxic chemical used by a commercial and industrial facility.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**2. Commercial and industrial facility or facility.** "Commercial and industrial facility" or "facility" means an entity:

A. With an economic sector or industry code under the North American Industry Classification System of the United States Department of Commerce, United States Census Bureau; and [PL 2009, c. 579, Pt. A, §3 (NEW).]

B. Located in the State. [PL 2009, c. 579, Pt. A, §3 (NEW).]  
[PL 2009, c. 579, Pt. A, §3 (NEW).]

**3. Environmental management system.** "Environmental management system" means a part of an overall management system of a facility and includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the environmental policy of the facility through documented systematic procedures.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**4. Priority toxic chemical.** "Priority toxic chemical" means a chemical that has been identified by the department pursuant to section 2323.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**5. Reasonably available.** "Reasonably available" means practicable based on cost, efficacy, availability and other factors as determined by the department.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**6. Safer alternative.** "Safer alternative" has the same meaning as in section 1691, subsection 12.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**7. SARA.** "SARA" means the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**8. Toxic chemical.** "Toxic chemical" means a chemical that has been identified as a chemical of concern pursuant to section 1693 or a chemical the use or release of which is subject to reporting under the SARA, Title III, Section 312 or 313.

[PL 2011, c. 319, §12 (AMD).]

**9. Use.** "Use" means to manufacture, process or otherwise use a priority toxic chemical or to use a product or material that contains a priority toxic chemical if so designated by the department in rules adopted under this chapter.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

## SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW). PL 2011, c. 319, §12 (AMD).

### §2323. Identification of priority toxic chemicals

**1. Identification of chemicals.** By July 1, 2011, the department, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, shall establish by rule a list of no more than 10 priority toxic chemicals.

A. A chemical may be included on the list only if it has been identified on the basis of credible scientific evidence by an authoritative state or federal governmental agency, or on the basis of other scientific evidence considered authoritative by the department, as being known as or reasonably anticipated to be:

- (1) A carcinogen, a reproductive or developmental toxicant or an endocrine disruptor;
- (2) Persistent, bioaccumulative and toxic; or
- (3) Very persistent and very bioaccumulative. [PL 2009, c. 579, Pt. A, §3 (NEW).]

B. In determining whether to include a chemical on the list, the department may consider the following factors:

- (1) The risk of worker exposure to the chemical;
- (2) The threat posed to human health and the environment;
- (3) The threat to the health and safety of a community if the chemical is released accidentally;
- (4) The pervasiveness of the chemical's use in the State; and
- (5) The existence of a reasonably available safer alternative. [PL 2009, c. 579, Pt. A, §3 (NEW).]

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**2. Review and revision of list.** The department shall review and revise the list under subsection 1 every 3 years, except that the department may revise the list more frequently if it determines that the addition of a toxic chemical to the list of priority toxic chemicals is necessary to protect human health and the environment or if more credible and recent scientific evidence justifies deletion of a chemical from the list.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**3. Identification of products and materials containing priority toxic chemical.** The department, in consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, may identify by rule products and materials containing a priority toxic

chemical and may specify that use of those products and materials is subject to the requirements of this chapter.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

## SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

### §2324. Reporting use of priority toxic chemicals

Beginning July 1, 2013, a commercial and industrial facility that uses in excess of 1,000 pounds of a priority toxic chemical during any calendar year shall file a report with the department pursuant to this section. The department may establish a different reporting threshold for a particular priority toxic chemical. [PL 2009, c. 579, Pt. A, §3 (NEW).]

**1. Calculation of threshold.** In making the calculation of the threshold under this section, the facility is not required to include quantities of the priority toxic chemical in a mixture or trade name product at less than 1.0%, unless the chemical is a carcinogen as determined under 29 Code of Federal Regulations, Part 1910, Section 1200(d)(4) (2009). If the chemical is a carcinogen under 29 Code of Federal Regulations, Part 1910, Section 1200(d)(4) (2009), the facility is not required to include quantities of the chemical at less than 0.1%.

A. The identity of a priority toxic chemical in a mixture or trade name product must be determined using the specific name of the chemical with a corresponding chemical abstracts service registry number that appears on the material safety data sheet required under 29 Code of Federal Regulations, Part 1910, Section 1200 (2009) referred to in this subsection as "the material safety data sheet." [PL 2009, c. 579, Pt. A, §3 (NEW).]

B. To quantify the amount of a priority toxic chemical, a commercial and industrial facility may rely on the material safety data sheet or other information that is in the possession of the facility, unless the facility knows or it is generally known in the industry based on widely disseminated industry information that the material safety data sheet or other information is inaccurate or incomplete, based on existing reliable test data or other reliable published scientific evidence. A facility is not required to test or perform file searches to identify or quantify the amount of a priority toxic chemical in a mixture or trade name product. A facility is not required to evaluate a chemical unless the facility does not rely on the evaluation performed by the preparer of the material safety data sheet. [PL 2009, c. 579, Pt. A, §3 (NEW).]

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**2. Reports.** Reports required under this section must be filed annually by July 1st and must include information for the prior calendar year. The department may not require reports under this section less than 18 months after a priority toxic chemical has been identified pursuant to section 2323. The department shall prepare a reporting form that requires submission of the following information:

A. The amount of a priority toxic chemical used by the facility in its manufacture or production process during the reporting period; [PL 2009, c. 579, Pt. A, §3 (NEW).]

B. The increase or decrease in use of a priority toxic chemical by the facility since 2010, unless the facility has set another baseline year subsequent to the year 2005, which baseline year must be specified; [PL 2009, c. 579, Pt. A, §3 (NEW).]

C. Beginning with reporting year 2014, the increase or decrease in use of a priority toxic chemical by the facility since the prior reporting period and an explanation for any increase in use of any priority toxic chemical that exceeds 15%; [PL 2009, c. 579, Pt. A, §3 (NEW).]

D. A written certification signed by a senior official with management responsibility that the owner or operator of the facility has prepared a pollution prevention plan under section 2325 or has implemented an environmental management system and that the plan or environmental

management system is available on site for the department's inspection in accordance with section 2325; and [PL 2009, c. 579, Pt. A, §3 (NEW).]

E. A statement that employees have been notified of and involved in the pollution prevention plan or environmental management system under section 2325. [PL 2009, c. 579, Pt. A, §3 (NEW).]  
[PL 2009, c. 579, Pt. A, §3 (NEW).]

**3. Confidentiality.** Information submitted to the department pursuant to this section may be designated as confidential by the submitting party in accordance with the provisions in section 1310-B and, if the information is so designated, the provisions of section 1310-B apply.  
[PL 2009, c. 579, Pt. A, §3 (NEW).]

## SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

### §2325. Pollution prevention plans and reduction goals

Unless otherwise provided in this section, an owner or operator of a facility subject to the reporting requirements in section 2324 shall develop by July 1, 2012 and update at least every 2 years thereafter a pollution prevention plan. [PL 2009, c. 579, Pt. A, §3 (NEW).]

**1. Plan requirements.** A pollution prevention plan must include, at a minimum, the following:

A. A statement of facility-wide management policy regarding toxics use reduction; [PL 2009, c. 579, Pt. A, §3 (NEW).]

B. Identification, characterization and accounting of the types and amounts of all priority toxic chemicals used at the facility; [PL 2009, c. 579, Pt. A, §3 (NEW).]

C. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, chemical alternatives, equipment or production changes that may be used by the facility to reduce the amount or toxicity of priority toxic chemicals used including a financial analysis of the costs and benefits of reducing the amount of priority toxic chemicals used; [PL 2009, c. 579, Pt. A, §3 (NEW).]

D. A strategy and schedule for implementing practicable reduction options for each priority toxic chemical; [PL 2009, c. 579, Pt. A, §3 (NEW).]

E. A program for maintaining records on priority toxic chemical use and management costs, such as the costs of personal protection equipment, liability insurance, training, chemical storage and disposal; [PL 2009, c. 579, Pt. A, §3 (NEW).]

F. The facility's goal for reducing use of priority toxic chemicals and products and materials containing such chemicals; [PL 2009, c. 579, Pt. A, §3 (NEW).]

G. An employee awareness and training program that informs employees of the use of priority toxic chemicals by the facility and involves employees in achieving the established reduction goal under this subsection; and [PL 2009, c. 579, Pt. A, §3 (NEW).]

H. An assessment of alternatives explored to reduce use of priority toxic chemicals that is prepared according to standard methods or guidelines for conducting alternatives assessments made available by the department. [PL 2009, c. 579, Pt. A, §3 (NEW).]

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**2. Environmental management system.** A facility that has an environmental management system that is audited by a 3rd party or reviewed by the department and that includes a plan to reduce use of priority toxic chemicals and of products and materials containing priority toxic chemicals meets the planning requirements of this section.  
[PL 2009, c. 579, Pt. A, §3 (NEW).]

**3. Plan retention.** A pollution prevention plan must be finalized, approved and signed by a senior official with management responsibility. An owner or operator of a facility shall keep a complete copy of the pollution prevention plan or environmental management system and any backup data on the premises of that facility for at least 5 years and make the copy and data available to employees of the department for inspection during business hours upon request. The department may require the owner or operator of a facility to make any modifications to a plan or environmental management system to maintain consistency with the policy of this chapter.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

#### SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

### **§2326. Technical assistance and recognition programs**

The department shall develop a technical assistance program for commercial and industrial facilities that use priority toxic chemicals and products and materials containing priority toxic chemicals. The goal of a technical assistance program must be to reduce use of priority toxic chemicals by such facilities and to help these facilities achieve the reduction goals established in their environmental management systems or pollution prevention plans under section 2325. The department shall determine the facilities most in need of technical assistance and shall establish priorities based on a number of factors, including, but not limited to, the availability of safer alternatives, the toxicity of the chemical used by particular facilities, the size and resources of those facilities and the resources available to the department. [PL 2009, c. 579, Pt. A, §3 (NEW).]

The department may develop a recognition program to promote the reduction in use of priority toxic chemicals and to recognize commercial and industrial facilities in the State for their achievements in reducing their use of priority toxic chemicals. [PL 2009, c. 579, Pt. A, §3 (NEW).]

#### SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

### **§2327. Penalties**

The owner or operator of a facility subject to the requirements of this chapter that fails to meet any requirement of this chapter is subject to penalties under section 349. [PL 2009, c. 579, Pt. A, §3 (NEW).]

#### SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

### **§2328. Exemptions**

The department may exempt classes of facilities and specific uses of priority toxic chemicals by commercial and industrial facilities from the requirements of this chapter if the department determines that no reasonably available safer alternative exists, that the chemical is naturally occurring or that application of this chapter is unlikely to result in the reduction of the use of a priority toxic chemical. [PL 2009, c. 579, Pt. A, §3 (NEW).]

A facility subject to the requirements of this chapter may file an application for an exemption from some or all of the requirements of this chapter on a form developed by the department. The department shall rule on a request for an exemption within 120 days of receipt of an application. [PL 2009, c. 579, Pt. A, §3 (NEW).]

#### SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

### **§2329. Rules**

The department shall adopt rules to implement this chapter. Rules adopted by the department pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2009, c. 579, Pt. A, §3 (NEW).]

#### SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

#### §2330. Fees

The commissioner shall deposit all money received in payment of fees under this section in a separate nonlapsing account within the Maine Hazardous Waste Fund to cover expenses incurred by the department in the administration of this chapter. [PL 2009, c. 579, Pt. A, §3 (NEW).]

**1. Facilities subject to reporting under SARA, Title III, Section 312.** An owner or operator of a facility that is required to report the presence of extremely hazardous substances under the SARA, Title III, Section 312 shall submit \$100 for each extremely hazardous substance reported by the facility to the department annually by October 1st. For purposes of this subsection, "extremely hazardous substance" has the same meaning set forth in the SARA, Title III, Section 302 and listed in 40 Code of Federal Regulations, Part 355.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**2. Facilities subject to reporting under SARA, Title III, Section 313.** An owner or operator of a facility that is required to report the release of chemicals under the SARA, Title III, Section 313 shall submit \$100 for each toxic release inventory chemical reported by the facility to the department annually by October 1st. For purposes of this subsection, "toxic release inventory chemical" means any substance in a gaseous, liquid or solid state listed pursuant to the SARA, Title III, Section 313 and listed in 40 Code of Federal Regulations, Part 372.65.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**3. Hazardous waste generators.** Generators that ship 661 pounds or more of hazardous waste in a calendar year shall pay the following fees to the department annually by October 1st: for generators that ship 5,000 pounds or more of hazardous waste in a calendar year, the fee is \$1,000; for generators that ship between 2,640 pounds and 4,999 pounds per calendar year, the fee is \$500; and for generators that ship between 661 pounds and 2,639 pounds per calendar year, the fee is \$100. Generators that ship less than 661 pounds of hazardous waste in a calendar year are not required to pay fees under this section.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**4. Fee limitation.** A facility subject to fees under this section may not be assessed more than \$1,000 per year.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

**5. Effective date.** This section takes effect July 1, 2012.

[PL 2009, c. 579, Pt. A, §3 (NEW).]

#### SECTION HISTORY

PL 2009, c. 579, Pt. A, §3 (NEW).

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