

**Maine Revised Statute Title 38, Chapter 26: TOXICS  
USE AND HAZARDOUS WASTE REDUCTION**

**Table of Contents**

<b>Section 2301. DEFINITIONS.....</b>	<b>3</b>
<b>Section 2302. TOXICS USE REDUCTION AND HAZARDOUS WASTE MANAGEMENT POLICY.....</b>	<b>5</b>
<b>Section 2303. TOXICS USE, TOXICS RELEASE AND HAZARDOUS WASTE REDUCTION GOALS.....</b>	<b>6</b>
<b>Section 2304. REGULATED COMMUNITY (REPEALED).....</b>	<b>7</b>
<b>Section 2304-A. REGULATED COMMUNITY.....</b>	<b>7</b>
<b>Section 2305. POLLUTION PREVENTION PLANS.....</b>	<b>8</b>
<b>Section 2305-A. PROGRESS REPORTS.....</b>	<b>9</b>
<b>Section 2306. EMPLOYEE AND HOST MUNICIPALITY NOTIFICATION.....</b>	<b>10</b>
<b>Section 2307. REPORTING REQUIREMENTS (REPEALED).....</b>	<b>11</b>
<b>Section 2307-A. AUTHORITY TO REVIEW; MODIFICATION.....</b>	<b>11</b>
<b>Section 2308. CROSS-MEDIA POLLUTION CONTROL.....</b>	<b>12</b>
<b>Section 2309. PROGRAM; POWERS AND DUTIES.....</b>	<b>13</b>
<b>Section 2310. TOXICS REDUCTION ADVISORY COMMITTEE (REPEALED).....</b>	<b>15</b>
<b>Section 2311. FEES (REPEALED).....</b>	<b>15</b>
<b>Section 2311-A. FEES.....</b>	<b>16</b>
<b>Section 2312. ENFORCEMENT; PENALTIES (REPEALED).....</b>	<b>16</b>
<b>Section 2313. PENALTIES.....</b>	<b>16</b>



## 38 §2301. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 929, §7 (NEW).]

**1. Commercial hazardous waste facility.** "Commercial hazardous waste facility" has the same meaning as in section 1303-C, subsection 4.

[ 1989, c. 929, §7 (NEW) .]

**2. Cross-media pollution.** "Cross-media pollution" means pollution that has an impact on or degrades more than one environmental resource.

[ 1989, c. 929, §7 (NEW) .]

**3. Disposal.** "Disposal" has the same meaning as in section 1303-C, subsection 12.

[ 1989, c. 929, §7 (NEW) .]

**4. Extremely hazardous substance.** "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.

[ 1989, c. 929, §7 (NEW) .]

**5. Facility.** "Facility" means the place of business or site where toxics are used, toxics are released or hazardous waste is generated.

[ 1989, c. 929, §7 (NEW) .]

**6. Generation.** "Generation" has the same meaning as in section 1303-C, subsection 13.

[ 1989, c. 929, §7 (NEW) .]

**7. Generator.** "Generator" means the owner or operator of a facility that generates hazardous waste.

[ 1991, c. 520, §6 (AMD) .]

**8. Hazardous waste.** "Hazardous waste" means those wastes determined by the Board of Environmental Protection to be hazardous pursuant to section 1319-O, subsection 1.

[ 1989, c. 929, §7 (NEW) .]

**9. Manifest.** "Manifest" has the same meaning as in section 1303-C, subsection 19.

[ 1989, c. 929, §7 (NEW) .]

**10. Pilot plant or pilot production unit.** "Pilot plant or pilot production unit" means a small scale model or a temporary change in the production process undertaken to test or develop a new technology.

[ 1989, c. 929, §7 (NEW) .]

**11. Practicable.** "Practicable" means available and capable of accomplishment after taking into consideration the existing state of technology and economic feasibility for the facility involved.

[ 1989, c. 929, §7 (NEW) .]

**11-A. Product.** "Product" means an output of a production process or a quantifiable service by a facility.

[ 1991, c. 520, §7 (NEW) . ]

**12. Production unit.** "Production unit" means a process, line, method, activity or technique, or a combination or series thereof, used to produce a product.

[ 1991, c. 520, §8 (RPR) . ]

**13. Recycle.** "Recycle" has the same meaning as in section 1303-C, subsection 21.

[ 1989, c. 929, §7 (NEW) . ]

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

[ 1989, c. 929, §7 (NEW) . ]

**15. Storage.** "Storage" has the same meaning as in section 1303-C, subsection 36.

[ 1989, c. 929, §7 (NEW) . ]

**16. Toxic substance or toxics.** "Toxic substance" or "toxics" 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 and any extremely hazardous substance as listed in 40 Code of Federal Regulations, Part 355.

[ 1991, c. 520, §9 (AMD) . ]

**17. Toxics releaser.** "Toxics releaser" means an owner or operator of a facility that is required to report under the SARA, Title III, Section 313.

[ 1989, c. 929, §7 (NEW) . ]

**18. Toxics use reduction.** "Toxics use reduction" means front-end substitution, product reformulation or in-plant changes in production processes or raw materials that reduce, avoid or eliminate the use of toxics or the generation of toxic by-products per unit of product to reduce risks to the health of workers, consumers or the environment, without shifting risks among workers, consumers or parts of the environment.

[ 1991, c. 520, §9 (AMD) . ]

**19. Toxics user.** "Toxics user" means a person that is required to report the presence of extremely hazardous substances under the SARA, Title III, Section 312.

[ 1989, c. 929, §7 (NEW) . ]

**20. Treatment.** "Treatment" has the same meaning as in section 1303-C, subsection 39.

[ 1989, c. 929, §7 (NEW) . ]

**21. Waste assessment.** "Waste assessment" means a systematic planned procedure to identify ways to reduce or eliminate waste.

[ 1991, c. 520, §9 (AMD) . ]

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §§6-9 (AMD).

## **38 §2302. TOXICS USE REDUCTION AND HAZARDOUS WASTE MANAGEMENT POLICY**

It is the policy of the State to reduce the amount of the toxic substances used in the State, to reduce worker and environmental exposure to the release of toxic substances, to reduce the hazardous waste generated within the State and to minimize the transfer of toxic pollutants from one environmental medium to another. The State encourages an integrated approach to toxics use reduction, toxics release reduction and hazardous waste reduction based on the hierarchies of pollution prevention management strategies included in this section. It is further the policy of the State that the process of reducing the use and release of toxic substances and reducing the generation of hazardous waste through planning and analysis of manufacturing and commercial processes is ongoing and that the principles of continuous improvement in pollution prevention and open, public accountability must be applied to environmental quality management efforts in both public and private facilities. [1999, c. 348, §1 (AMD).]

**1. Toxics use reduction.** The State encourages reducing the use of toxic substances through changes in production or other processes or operations, in products or in raw materials that reduce, avoid or eliminate the use or production of toxic substances without creating substantial new or increased risks to public health, safety and the environment. These changes may be made through the application of any of the following techniques:

- A. Input substitution, which refers to replacing a toxic substance or raw material used in a production or other process or operation with a nontoxic or less toxic substance; [1989, c. 929, §7 (NEW).]
- B. Product reformulation, which refers to substituting for an existing end product an end product that is nontoxic or less toxic upon use, release or disposal; [1989, c. 929, §7 (NEW).]
- C. Production or other process or operation redesign or modification; [1989, c. 929, §7 (NEW).]
- D. Production or other process or operation modernization, which refers to upgrading or replacing existing equipment and methods; and [1989, c. 929, §7 (NEW).]
- E. Improved operation and maintenance controls of production or other process or operation equipment and methods including, but not limited to, improved housekeeping practices, system adjustments, product and process inspections or production or other process or operation control equipment or methods. [1989, c. 929, §7 (NEW).]

[ 1991, c. 520, §10 (AMD) .]

**2. Toxics release reduction.** The State encourages reducing the release of toxics during manufacturing and other processes through, in addition to encouraging the toxics use reduction techniques specified in subsection 1, in-plant changes in production or other processes or operations that reduce or avoid exposure of workers and the environment to toxics.

- A. [1991, c. 520, §10 (RP).]
- B. [1991, c. 520, §10 (RP).]

[ 1999, c. 348, §2 (AMD) .]

**3. Hazardous waste reduction.** The State encourages reducing the generation of hazardous waste through, in addition to any toxics use and release reduction techniques employed by the facility, the application of the following techniques:

- A. Recovery of toxics from production and other processes for reuse; [1989, c. 929, §7 (NEW).]

B. On-site recycling of hazardous waste; [1989, c. 929, §7 (NEW).]

C. Off-site recycling of hazardous waste; and [1991, c. 520, §10 (AMD).]

D. Treatment, other than incineration, of hazardous waste to reduce volume or toxicity or both. [1993, c. 732, Pt. A, §12 (AMD).]

E. [1991, c. 520, §10 (RP).]

[ 1999, c. 348, §3 (AMD) .]

**4. State facilities.** The Commissioner of Administrative and Financial Services, in consultation with the commissioner, shall lead the development of a pollution prevention system for state facilities by January 1, 2005 focusing on compliance with all relevant environmental regulatory and statutory requirements, improved environmental performance, reduction of toxics use and pollution prevention opportunities.

[ 1999, c. 348, §4 (NEW) .]

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §10 (AMD). 1993, c. 732, §A12 (AMD). 1999, c. 348, §§1-4 (AMD).

## 38 §2303. TOXICS USE, TOXICS RELEASE AND HAZARDOUS WASTE REDUCTION GOALS

The State's goals for reduction of the volume of toxics used and released and hazardous waste that is generated within the State are as follows. [1989, c. 929, §7 (NEW).]

**1. Toxics use reduction goals.** Using the amount of toxics used statewide in 1990 as a baseline figure, the statewide goals for toxics use reduction are a 40% reduction in the amount of toxic substances used in the State by January 1, 2002, a 50% reduction by January 1, 2004 and a 60% reduction by January 1, 2006.

[ 1999, c. 348, §5 (AMD) .]

**2. Toxics release reduction goals.** Using an average of the aggregate amounts of toxics released statewide in calendar years 1990 and 1991 as a baseline figure, the goals for reducing the aggregate amount of toxics released to the environment statewide are a 40% reduction by January 1, 2002, a 50% reduction by January 1, 2004 and a 60% reduction by January 1, 2006.

[ 1999, c. 348, §5 (AMD) .]

**3. Hazardous waste generation minimization goals.** The goals for minimizing the amount of hazardous waste generated statewide are a 40% reduction by January 1, 2002, a 50% reduction by January 1, 2004 and a 60% reduction by January 1, 2006. Reductions must be based on the average generation rate in the State for the years 1987 and 1989.

[ 1999, c. 348, §5 (AMD) .]

**4. Establishment of unit of product.** A facility must establish its own unit of product to aid the department in accounting accurately for changes in toxics use, toxics release and hazardous waste generation due to business growth or decline. Once established and accepted by the commissioner, a facility's unit of product remains constant from year to year. If a facility changes its products or services so that use of the previously accepted unit of product no longer accurately accounts for toxics use, toxics release and hazardous waste reductions, the facility may petition the commissioner to change its unit of product. The commissioner may establish guidelines to aid facilities in the establishment of unit of product.

[ 1991, c. 520, §12 (AMD) .]

**5. Progress evaluation; report.** Progress toward meeting the statewide toxics use, toxics release and hazardous waste reduction goals must be evaluated annually by the commissioner based on manifest data, progress reports submitted under section 2305-A, annual hazardous waste generator reports and other appropriate available information. To determine achievement of statewide reduction goals, the commissioner may adjust the baseline figure to account for changes in the statutory or regulatory definitions of toxic substances and hazardous wastes.

The commissioner shall report biennially on the progress toward meeting the statewide goals established in this section and the adequacy of the goals set by facilities. In evaluating the adequacy of facility goals, the commissioner may not consider the statewide goals. The report must include a listing of all facilities subject to the requirements of this chapter, the planning status of each facility, the goals set by each facility and the progress made by each facility, excluding any information entitled to protection as confidential information or a trade secret pursuant to section 1310-B; section 2307-A, subsection 5; or Title 37-B, section 800. The report must also include, for informational purposes, summaries of the use and release of toxic and hazardous materials not subject to the provisions of this chapter for which the department maintains informational, planning or regulatory programs. The commissioner shall submit the report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15th of each odd-numbered year.

[ 1999, c. 348, §5 (AMD) . ]

**6. New facilities.** Facilities constructed after the effective date of this chapter should be designed to minimize toxics use, toxics release and hazardous waste generation in accordance with the State's policies as set forth in section 2302 and may be evaluated on the basis of units of product for the amount of toxics used, toxics released and hazardous waste generated. New facilities that are described in section 2304-A are subject to the requirements of this chapter.

[ 1999, c. 348, §5 (AMD) . ]

**7. Petition.** A toxics releaser may petition the commissioner to eliminate a substance from the total volume of toxics release subject to the reductions under subsection 2 when the toxics releaser demonstrates that release of the substance does not pose an unreasonable threat to occupational health, public health or the environment.

[ 1999, c. 348, §5 (AMD) . ]

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §§11,12 (AMD). 1999, c. 348, §5 (AMD).

### **38 §2304. REGULATED COMMUNITY**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §13 (RPR). 1993, c. 355, §§63,64 (AMD). 1995, c. 493, §§16-18 (AMD). 1999, c. 348, §6 (RP).

### **38 §2304-A. REGULATED COMMUNITY**

**1. Plans and reports required.** Owners or operators of the following facilities shall prepare pollution prevention plans and biennial progress reports consistent with the requirements of this chapter, unless exempted under subsection 2:

A. Facilities subject to reporting requirements for extremely hazardous substances under the SARA, Title III, Section 312; [1999, c. 348, §7 (NEW) . ]

B. Facilities required to report under the SARA, Title III, Section 313; and [1999, c. 348, §7 (NEW).]

C. Facilities that ship more than 2,640 pounds of hazardous waste in a calendar year. [2001, c. 212, §7 (AMD).]

[2001, c. 212, §7 (AMD).]

**2. Exemptions.** The following are exempt from the planning, reporting and fee requirements of this chapter:

A. Drinking water supply treatment facilities; [1999, c. 348, §7 (NEW).]

B. Municipal wastewater treatment facilities; [1999, c. 348, §7 (NEW).]

C. Wholesale distributors of chemicals; [1999, c. 348, §7 (NEW).]

D. Hazardous substance transporters; [1999, c. 348, §7 (NEW).]

E. Retail and wholesale distribution facilities of motor fuel, aviation fuel, heating oil or other refined petroleum products; [1999, c. 348, §7 (NEW).]

F. Agricultural activities; [1999, c. 348, §7 (NEW).]

G. Commercial hazardous waste treatment or storage facilities; [1999, c. 348, §7 (NEW).]

H. For purposes of the planning, reporting and fee requirements relating to hazardous waste generation only, pilot plants or pilot production units; [1999, c. 348, §7 (NEW).]

I. Hazardous waste transporters; [1999, c. 348, §7 (NEW).]

J. Hazardous waste generated as a result of remedial or corrective actions or facility closures required by law or undertaken to protect employee health and safety, public health and safety or the environment; [1999, c. 348, §7 (NEW).]

K. Households; [1999, c. 348, §7 (NEW).]

L. Zinc emissions from tire burning; [1999, c. 779, §4 (AMD).]

M. Sulfuric acid emissions from burning fuel that is approved by the department; and [1999, c. 779, §4 (AMD).]

N. Lamps, mercury-containing thermostats, polychlorinated biphenyl ballast and batteries defined as universal waste in 40 Code of Federal Regulations, Section 273.2. [1999, c. 779, §5 (NEW).]

[1999, c. 779, §§4, 5 (AMD).]

#### SECTION HISTORY

1999, c. 348, §7 (NEW). 1999, c. 779, §§4,5 (AMD). 2001, c. 212, §§7,8 (AMD).

## 38 §2305. POLLUTION PREVENTION PLANS

Owners or operators of facilities subject to the requirements of this chapter shall develop by January 1, 2000 and update at least every 2 years thereafter pollution prevention plans for their own use. The board may establish rules for toxics use, toxics release and hazardous waste reduction plans to be prepared pursuant to this section. A plan must include: [1999, c. 348, §8 (AMD).]

**1. Management policy.** A statement of facility-wide management policy regarding toxics use, toxics release and hazardous waste reduction;

[1989, c. 929, §7 (NEW).]

**2. Production unit analysis.** The following information for each production unit:

A. Identification, characterization and accounting of the types and amounts of all toxics used, toxics released and hazardous wastes generated at the facility; [1999, c. 348, §8 (AMD).]

B. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, equipment or production changes that may be utilized by the facility to reduce the amount or toxicity of toxics used, toxics released or hazardous wastes generated by that facility, including a financial analysis of the costs and benefits of reducing the amount of toxics used, toxics released and hazardous waste generated. This portion of the plan must employ the hierarchy of reduction techniques established under section 2302; [1999, c. 348, §8 (AMD).]

C. A strategy and schedule for implementing practicable reduction options for each production process utilized to meet reduction goals; [1989, c. 929, §7 (NEW).]

D. Identification of any reasonably available markets or recycling opportunities for hazardous waste generated by the facility; and [1989, c. 929, §7 (NEW).]

E. A program for maintaining records on toxics use, toxics release and hazardous waste generation rates and management costs; [1989, c. 929, §7 (NEW).]

[ 1999, c. 348, §8 (AMD) .]

**2-A. Facility goals.** The facility's 2-year numeric goals for reducing the aggregate amount of extremely hazardous substances used, the aggregate amount of toxic substances released and the aggregate amount of hazardous waste generated at the facility by 2002, 2004 and 2006. The goals must be established per unit of product to account for changes in the level of production activity from year to year;

[ 1999, c. 348, §8 (NEW) .]

**3. Internal plan approval.** The signature of a senior official with management responsibility for the person or persons completing the plan; and

[ 1999, c. 348, §8 (AMD) .]

**4. Employee involvement, awareness and training.** An employee awareness and training program consistent with the requirements of section 2306 to involve employees in toxics use, toxics reduction and hazardous waste reduction planning and implementation to the maximum amount feasible.

[ 1999, c. 348, §8 (AMD) .]

The plan may include a description of any pollution prevention strategies implemented at the facility after 1991 and before 1998. [1999, c. 348, §8 (NEW).]

Owners or operators of facilities shall keep a complete copy of the plan and any backup data on the premises of that facility for at least 5 years and make the copy and data available to the commissioner or the commissioner's designee upon request. [1999, c. 348, §8 (AMD).]

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §14 (AMD). 1999, c. 348, §8 (AMD).

## 38 §2305-A. PROGRESS REPORTS

Beginning in 2000, the owner or operator of a facility subject to the requirements of this chapter shall submit a biennial pollution prevention progress report to the department by July 1st of every even-numbered year. The progress report may be submitted to the department in an electronic format. A progress report must include the following: [1999, c. 348, §9 (NEW).]

**1. Facility goals.** Each of the facility's 2-year numeric goals established in the plan. If any of the goals has been revised since the previous progress report was submitted, the report must include an explanation of the revision;

[ 1999, c. 348, §9 (NEW) . ]

**2. Progress achieved.** A quantitative statement of the facility's progress toward achieving each of its 2-year goals and an identification, in absolute amounts and per unit of product, of the reduction or increase in the amount of each extremely hazardous substance used, toxics released and hazardous waste generated in comparison to the previous 2 years;

[ 1999, c. 348, §9 (NEW) . ]

**3. Method.** A description of the techniques used to achieve each reduction identified pursuant to subsection 2;

[ 1999, c. 348, §9 (NEW) . ]

**4. Explanation.** An explanation of why the facility's progress is greater than or less than that anticipated in the pollution prevention plan schedule for implementation;

[ 1999, c. 348, §9 (NEW) . ]

**5. Employee involvement.** A description of employee notification and involvement in the planning process;

[ 1999, c. 348, §9 (NEW) . ]

**6. Future pollution prevention methods.** A description, for each production unit, of the pollution prevention techniques that the owner or operator of the facility intends to undertake during the next 2 years to reduce the use of extremely hazardous substances, to reduce the release of toxic substances and to reduce the generation of hazardous waste and a schedule for the implementation of the techniques; and

[ 1999, c. 348, §9 (NEW) . ]

**7. Certification.** A written certification signed by a senior official with management responsibility for the person or persons completing the progress report that the owner or operator of the facility has prepared a pollution prevention plan and that the plan is available on site for the department's inspection.

[ 1999, c. 348, §9 (NEW) . ]

A progress report may exclude any information entitled to protection as confidential information or a trade secret pursuant to section 1310-B or Title 37-B, section 800. [1999, c. 348, §9 (NEW) . ]

#### SECTION HISTORY

1999, c. 348, §9 (NEW) .

### 38 §2306. EMPLOYEE AND HOST MUNICIPALITY NOTIFICATION

Six months prior to the date when a pollution prevention plan or update must be completed, the owner or operator of each facility shall notify all of its employees of the requirements for the plans, identify the toxic substances and hazardous wastes and production units for which plans must be developed and involve employees in developing the pollution prevention plan or update, including the identification of toxics use, toxics release and hazardous waste reduction options. In a facility in which employees are represented by a labor organization, employee representatives who work at the facility and who are selected by the

labor organization shall be involved in the development of the plan. In a facility in which employees are not represented by a labor organization, the employee involvement requirement must be met through employee representation on committees or groups formed to develop the plan. A description of the employee notification process and employee involvement must be included in the progress report submitted in accordance with section 2305-A. [1999, c. 348, §10 (AMD).]

The owner or operator of a facility shall notify the municipal officers of the municipality in which the facility is located of the facility's pollution prevention efforts and shall provide the municipal officers with a copy of the progress report when it is submitted to the department. [1999, c. 348, §10 (NEW).]

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §15 (AMD). 1999, c. 348, §10 (AMD).

### **38 §2307. REPORTING REQUIREMENTS**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §16 (AMD). 1999, c. 348, §11 (RP).

### **38 §2307-A. AUTHORITY TO REVIEW; MODIFICATION**

**1. Plan summary.** The commissioner may require the owner or operator of a facility to submit a summary of the pollution prevention plan required under section 2305 within 60 days when:

- A. A facility has not made sufficient progress in reducing toxics use, toxics release or hazardous waste generation as evidenced by the facility's progress report; or [1999, c. 348, §12 (NEW).]
- B. A new facility has toxics use, toxics release or hazardous generation rates that are significantly greater per unit of product than in similar facilities within the same standard industrial code category. [1999, c. 348, §12 (NEW).]

A plan summary submitted to the commissioner pursuant to this subsection must include the evaluation methods used, the findings and conclusions and the implementation schedule. An owner or operator may designate information in a plan summary as confidential under section 1310-B.

The commissioner may review a plan summary, pursuant to subsection 2, and require the owner or operator of a facility to make any modifications to the plan summary necessary for compliance with this chapter.

[ 1999, c. 348, §12 (NEW) .]

**2. Review of plan summary.** In reviewing the adequacy of a plan summary, the commissioner shall base a determination on whether the plan summary is complete and prepared in accordance with the facility goals and guidelines established pursuant to this chapter. In reviewing a plan summary, the commissioner has the authority to require the owner or operator of the facility to provide information the commissioner finds necessary to analyze the reviewed document.

If the commissioner determines that a plan summary is inadequate, the commissioner shall notify the owner or operator of the facility of the inadequacy, identifying the specific deficiencies. The commissioner may specify a reasonable time period of not less than 90 days within which the owner or operator of the facility must submit a modified plan summary addressing the specified deficiencies. The commissioner may, upon request, provide technical assistance, if available, to aid the owner or operator of the facility in modifying the plan summary.

If the commissioner determines that a modified plan summary is inadequate, the commissioner may either require further modification or assess fees as provided in section 2313. If a generator fails to submit a modified plan summary within the required time period, the commissioner may assess additional fees as established in section 1319-I, subsection 2-A.

[ 1999, c. 348, §12 (NEW) . ]

**3. Review of plan.** The commissioner shall review the pollution prevention plan of a facility when, in the commissioner's judgment, the plan summary indicates significant deficiencies in the pollution prevention efforts at the facility or when the facility fails to reach any of its reduction goals by more than 25%, as indicated in the plan summary. The commissioner may require the owner or operator of a facility to make any modifications to a pollution prevention plan necessary for compliance with this chapter. In reviewing a pollution prevention plan, the commissioner has the authority to require the owner or operator of the facility to provide information the commissioner finds necessary to analyze the reviewed document. If the commissioner requires the owner or operator of the facility to modify a pollution prevention plan, the commissioner shall allow a reasonable time period of not less than 90 days for the modifications to be made and shall consider the financial impact of the changes or modifications on the owner or operator of the facility. The owner or operator of a facility may appeal to the board a decision of the commissioner to require the owner or operator to modify a pollution prevention plan under this subsection or subsection 4.

[ 1999, c. 348, §12 (NEW) . ]

**4. Municipal petition for review of plan.** The commissioner shall review the pollution prevention plan of a facility upon receipt of a petition to review the plan submitted by the municipal officers in the municipality in which the facility is located. The commissioner shall make a written determination on whether the plan meets the facility goals and guidelines of this chapter and explain the reasons for the determination. If the commissioner determines that the plan is inadequate, the commissioner may require the owner or operator of the facility to make modifications pursuant to this section.

[ 1999, c. 348, §12 (NEW) . ]

**5. Confidentiality.** Upon a satisfactory showing to the commissioner by the owner or operator of a facility required to submit information under this chapter that a progress report or plan summary developed under this chapter, if made public, would divulge methods, processes or other information entitled to protection, the commissioner shall hold as confidential that progress report or plan summary or a portion of that progress report or plan summary pursuant to section 1310-B.

[ 1999, c. 348, §12 (NEW) . ]

#### SECTION HISTORY

1999, c. 348, §12 (NEW) .

## 38 §2308. CROSS-MEDIA POLLUTION CONTROL

**1. Prohibition.** A facility subject to regulation under this chapter is prohibited from using any change in a process or material that results in increased toxics release to meet the hazardous waste reduction goals as set forth in section 2303.

[ 1991, c. 520, §17 (AMD) . ]

**2. Exemptions.** A facility subject to regulation under this chapter may apply to the commissioner for an exemption from subsection 1 if the owner or operator demonstrates that the change resulting in the increased toxic release results in a long-term benefit to public health and the environment that outweighs the benefits of other reduction techniques and:

A. The increase in the toxic release does not cause a violation of the facility's existing wastewater discharge or air emission license or permit limits; or [1989, c. 929, §7 (NEW).]

B. If the toxics release is new to a facility's existing air or wastewater stream, or both, the facility possesses and complies with all necessary federal, state and local licenses or permits applicable for the release. [1989, c. 929, §7 (NEW).]

[ 1991, c. 520, §17 (AMD) .]

**3. Exemption renewal.** If granted, the exemption is valid for a 3-year period. Renewal of the exemption may be granted only if the toxics releaser or generator meets the criteria set forth in subsection 2.

[ 1989, c. 929, §7 (NEW) .]

**4. Department authority.** This section does not diminish the existing authority of the Department of Environmental Protection, pursuant to any laws, to establish by rule, permit, license or order, any treatment technology standards, emission or discharge limits, operation and maintenance requirements or management practices for abating, controlling or preventing a release or threat of release of hazardous substances to the environment.

[ 1989, c. 929, §7 (NEW) .]

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §17 (AMD).

## 38 §2309. PROGRAM; POWERS AND DUTIES

The Toxics Use, Toxics Release and Hazardous Waste Reduction Program is established within the department in the office of the commissioner to assist toxics users, toxics releasers and hazardous waste generators to eliminate or reduce the amounts, toxicity and adverse environmental and public health effects of toxics used, toxics released and hazardous wastes generated. [1989, c. 929, §7 (NEW).]

**1. Data collection and dissemination.** The commissioner shall develop the necessary information base and data collection programs to establish program priorities; evaluate the progress of toxics use, toxics release and hazardous waste reduction goals; and fully inform the public of efforts made and progress achieved in reducing toxics use, toxics release and hazardous waste generation. By January 1, 2001, the commissioner shall organize and store the information submitted to the department in biennial progress reports in electronic form in a manner that facilitates public access including, without limitation, making the information available through the Internet. The commissioner shall ensure the confidentiality of any information designated as confidential or a trade secret. At a minimum, the commissioner shall ensure that the following information is readily available to the public:

A. The statewide goals and the progress made toward meeting them; [1999, c. 348, §13 (NEW) .]

B. The name, location and contact information for each facility subject to the requirements of this chapter; [1999, c. 348, §13 (NEW).]

C. An indication of the availability of the progress report for each facility; [1999, c. 348, §13 (NEW) .]

D. The 2-year goals established by each facility for the reduction of toxics used, toxics released and hazardous waste generated at the facility; and [1999, c. 348, §13 (NEW) .]

E. Each facility's progress made toward meeting each of its goals. [1999, c. 348, §13 (NEW) .]

[ 1999, c. 348, §13 (AMD) .]

**2. Technical services.** The commissioner shall disseminate information concerning toxics use, toxics release and hazardous waste reduction through various means including publications, the Internet, seminars, model plans, recommended waste assessment procedures and lists of consultants on toxics use, toxics release and hazardous waste reduction technologies. The commissioner shall establish a clearinghouse of technical information on best-of-class methods for toxics use reduction for each of the classes of facilities subject to the requirements of this chapter.

[ 1999, c. 348, §13 (AMD) . ]

**3. Grant program.** The commissioner shall evaluate the need for a grant program to provide financial and technical assistance for a facility subject to this chapter.

[ 1989, c. 929, §7 (NEW) . ]

**4. Information exchange.** The commissioner may participate in existing state, federal and industrial networks of individuals and groups actively involved in toxics use, toxics release and hazardous waste reduction. Subject to available funding, the commissioner may contract with technical information centers to assist the department in carrying out the provisions of this chapter.

[ 1989, c. 929, §7 (NEW) . ]

**5. Production units.**

[ 1991, c. 520, §18 (RP) . ]

**5-A. Unit of product.** The commissioner may develop guidelines to aid facilities in the establishment of units of product to account for changes in business activity. A facility's selection of or change in unit of product may be reviewed by the commissioner and rejected if it is not appropriated for the facility. If a facility fails to identify a unit of product, the commissioner may establish a unit of product for that facility based upon a review of units of product for similar facilities in the same standard industrial code category.

[ 1991, c. 520, §19 (NEW) . ]

**6. Contracts.** The commissioner may enter into contracts to carry out the purposes of this chapter.

[ 1989, c. 929, §7 (NEW) . ]

**7. Reports.** In addition to the biennial progress report submitted by the commissioner to the Legislature under section 2303 and after public review and comment, the commissioner shall submit the following reports to the joint standing committee of the Legislature having jurisdiction over natural resources matters:

A. By January 15, 2001, an evaluation of and recommendations for additional chemicals and classes of facilities to be added to planning and reporting requirements; [1999, c. 348, §14 (NEW).]

B. By January 15, 2001, an assessment of and recommendations for focusing use reduction and pollution prevention efforts on the most toxic chemicals and classes of chemicals. The commissioner shall base the assessment on existing toxicity information, and the recommendations may include changes to chemical lists and reporting thresholds; and [1999, c. 348, §14 (NEW).]

C. For the preceding 2-year period, a listing of those facilities that have exceeded their goals by more than 25% and those that have failed to meet their goals by at least 25%. This report must be submitted on October 1, 2002 and every 2 years thereafter. [1999, c. 348, §14 (NEW).]

[ 1999, c. 348, §14 (NEW) . ]

**8. Additional facilities; planning requirements.** The commissioner may make a finding that participation by a class of facilities in toxics reduction planning pursuant to this chapter could reduce the threat to public health, safety, occupational exposure and risk to the environment. Such a finding must follow public notice and be based on the past performance of that class of facilities and the extent to which that class of facilities contributes to the total amount and overall toxicity of toxics used, toxics released or hazardous waste generated in the State or a region of the State. If the commissioner makes such a finding, the board may by rule designate that class of facilities as subject to this chapter. Such a rule is a major substantive rule under Title 5, chapter 375, subchapter II-A.

[ 1999, c. 348, §14 (NEW) .]

**9. Future statewide goals.** By January 1, 2007, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters with recommendations regarding new statewide goals for reducing the amount of toxics used, toxics released and hazardous waste generated consistent with the principles of continuous improvement in environmental management. The commissioner shall base the proposed new goals on the extent of progress achieved by facilities throughout the State, the availability of new reduction methods and the degree of risk and hazard to occupational health, public health and safety and environmental quality posed by the use or release of toxic substances in the State and by the generation of hazardous waste in the State. At the expiration of the time periods for the goals established under this subsection, the commissioner shall repeat the process.

[ 1999, c. 348, §14 (NEW) .]

**10. Performance recognition program.** The commissioner shall establish a biennial recognition program for facilities achieving a minimum reduction of 40%, 50% and 60% in toxics use, toxics release or hazardous waste generation by 2002, 2004 and 2006, respectively.

[ 1999, c. 348, §14 (NEW) .]

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §§18,19 (AMD). 1999, c. 348, §§13,14 (AMD).

### **38 §2310. TOXICS REDUCTION ADVISORY COMMITTEE**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 377, §22 (AMD). 1991, c. 520, §§20,21 (AMD). 1991, c. 824, §A89 (AMD). 1991, c. 804, §C4 (RP). 1993, c. 349, §72 (AMD). 1993, c. 226, §A3 (RP).

### **38 §2311. FEES**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §§22,23 (AMD). 1993, c. 309, §1 (AMD). 1993, c. 732, §A13 (AMD). 1995, c. 493, §19 (AMD). 1997, c. 643, §L1 (AMD). 1999, c. 348, §15 (RP).

**38 §2311-A. 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. [1999, c. 348, §16 (NEW).]

**1. Toxics users.** Toxics users shall submit \$100 for each extremely hazardous substance reported by the facility under this chapter to the department annually by October 1st.

[ 2001, c. 212, §8 (AMD) .]

**2. Toxics releasers.** Toxics releasers shall submit \$100 for each toxic substance reported by the facility under this chapter to the department annually by October 1st.

[ 2001, c. 212, §8 (AMD) .]

**3. Hazardous waste generators.** Generators that ship 300 kilograms, or 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 2,268.0 kilograms, or 5,000 pounds, or more of hazardous waste in a calendar year, the fee is \$1,000; for generators that ship between 1,197.5 kilograms and 2,267.5 kilograms, or 2,640 pounds and 4,999 pounds, per calendar year, the fee is \$500; and for generators that ship between 300 kilograms and 1,197.0 kilograms, or 661 pounds and 2,639 pounds, per calendar year, the fee is \$100. Generators that ship less than 300 kilograms, or 661 pounds, of hazardous waste in a calendar year are not required to pay fees under this section.

[ 2001, c. 212, §8 (AMD) .]

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

[ 1999, c. 348, §16 (NEW) .]

## SECTION HISTORY

1999, c. 348, §16 (NEW).

**38 §2312. ENFORCEMENT; PENALTIES**

*(REPEALED)*

## SECTION HISTORY

1989, c. 929, §7 (NEW). 1991, c. 520, §§24,25 (AMD). 1999, c. 348, §17 (RP).

**38 §2313. PENALTIES**

**1. General.** 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 and, as applicable, fees assessed under section 1319-I, subsection 2-A.

[ 1999, c. 348, §18 (NEW) .]

**2. Trade secrets; unlawful disclosure.** It is unlawful to disclose any information designated as confidential or a trade secret under this chapter to an unauthorized person. A person who violates this subsection is subject to the penalties specified in section 1310-B, subsection 6.

[ 1999, c. 348, §18 (NEW) . ]

SECTION HISTORY

1999, c. 348, §18 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 124th Legislature, and is current through December 31, 2009, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.