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## **An Act To Improve Toxics Use Reduction and Reduce Energy Costs by Maine Businesses**

**Be it enacted by the People of the State of Maine as follows:**

### **PART A**

**Sec. A-1. 38 MRSA §1310-B, sub-§2**, as amended by PL 2009, c. 397, §1, is further amended to read:

**2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans.** Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16B, information relating to electronic devices submitted to the department under section 1610, subsection 6A or, information relating to mercury reduction plans submitted to the department under section 585B, subsection 6 or information related to priority toxic chemicals submitted to the department under chapter 27 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Food and Rural Resources and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

**Sec. A-2. 38 MRSA c. 26,** as amended, is repealed.

**Sec. A-3. 38 MRSA c. 27** is enacted to read:

## **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 16D.

#### **§ 2322. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**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.

**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

B. Located in the State.

**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.

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

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

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

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

**8. Toxic chemical.** "Toxic chemical" means a chemical that has been identified as a chemical of high 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.

**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.

### **§ 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.

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.

**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.

**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.

### **§ 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.

**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."

**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.

**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;
- 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;
- 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%;
- 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
- E. A statement that employees have been notified of and involved in the pollution prevention plan or environmental management system under section 2325.

**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 1310B and, if the information is so designated, the provisions of section 1310B apply.

### **§ 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.

- 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;
  - B. Identification, characterization and accounting of the types and amounts of all priority toxic chemicals used at the facility;
  - 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;

D. A strategy and schedule for implementing practicable reduction options for each priority toxic chemical;

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;

F. The facility's goal for reducing use of priority toxic chemicals and products and materials containing such chemicals;

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

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.

**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.

**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.

## **§ 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.

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.

## **§ 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.

### **§ 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.

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.

### **§ 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 2A.

### **§ 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.

**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.

**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.

**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.

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

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

**Sec. A-4. Fees report.** By January 5, 2013, the Department of Environmental Protection shall submit a report on a revised fee structure for facilities subject to the Maine Revised Statutes, Title 38, chapter 27 to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must include recommendations on a revised fee structure that furthers the policy and goals of Title 38, chapter 27. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit a bill regarding a revised fee structure to the First Regular Session of the 126th Legislature.

**Sec. A-5. Initial list of priority toxic chemicals.** In establishing the initial list of priority toxic chemicals pursuant to the Maine Revised Statutes, Title 38, chapter 27, section 2323, the Department of Environmental Protection and the Department of Health and Human Services, Maine Center for Disease Control and Prevention may consider, but are not limited to, the following:

1. Chemicals of concern identified by the United States Environmental Protection Agency under its enhanced chemical management program;

2. The list of persistent bioaccumulative toxins in Washington State Administrative Code, Chapter 173-333;

3. The "Five Chemical Alternatives Assessment Study," published by the Massachusetts Toxics Use Reduction Institute, June 2006;

4. Substances designated as higher hazard substances pursuant to the Massachusetts Toxics Use Reduction Act; and

5. Priority toxic chemicals identified pursuant to the Maine Revised Statutes, Title 38, section 1694.

**Sec. A-6. Effective date.** That section of this Part that repeals the Maine Revised Statutes, Title 38, chapter 26 takes effect July 1, 2012.

## PART B

**Sec. B-1. 37-B MRSA §797, sub-§6,** as enacted by PL 1989, c. 464, §3 and amended by c. 929, §2, is further amended to read:

**6. Information withholding.** An indication if the person is electing to withhold information from disclosure under section 800; and

**Sec. B-2. 37-B MRSA §797, sub-§7,** as amended by PL 2009, c. 252, §5, is further amended to read:

**7. Transportation.** A description of the manner in which the substance is shipped to the facility, including standard and alternate transportation routes taken through the State from point of origin or entry to the facility. Records held by the commission regarding standard and alternate transportation



routes are confidential records for the purposes of Title 1, chapter 13, subchapter 1. The commission may provide those records to state, county or local emergency management agencies or public officials, as the commission determines necessary, but shall require those agencies or officials to hold those records as confidential; and.

**Sec. B-3. 37-B MRSA §797, sub-§8**, as amended by PL 2009, c. 252, §5, is repealed.

**Sec. B-4. 37-B MRSA §799**, as amended by PL 2009, c. 252, §6, is further amended to read:

### **§ 799. Toxic chemical release reports**

Under this section, the owner or operator of every facility with 10 or more employees and within Standard Industrial Classification Codes 20-39 must file toxic chemical release reports for routine releases with the United States Environmental Protection Agency, the Department of Environmental Protection, the commission and the local emergency planning committee by October 1, 1989 and annually thereafter consistent with the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 313, and 40 Code of Federal Regulations, Part 372. Those reports must be made available to the public by the commission and the local emergency planning committee. ~~The owner or operator of every facility required to report under this section must also submit a report on the progress made by the facility toward meeting the toxics release reduction goals established in Title 38, section 2303.~~

**Sec. B-5. 38 MRSA §342, sub-§4, ¶B**, as amended by PL 1991, c. 804, Pt. C, §2, is further amended to read:

B. The Office of Pollution Prevention is established within the department to review department programs and make recommendations to the commissioner on means of integrating pollution prevention into department programs. The Office of Pollution Prevention has the following functions:

- (1) To establish pollution prevention priorities within the department;
- (2) To coordinate department pollution prevention activities with those of other agencies and entities;
- (3) To ensure that rules, programs and activities of the department are consistent with pollution prevention goals and do not hinder pollution prevention initiatives;
- (4) To provide technical assistance, training and educational activities to assist the general public, governmental entities and the regulated community with development and implementation of pollution prevention programs as funds allow;
- (5) To establish an award program to recognize businesses, local governments, department staff and others that have implemented outstanding or innovative pollution prevention programs, activities or methods;

- (6) To identify opportunities to use the state procurement system to encourage pollution prevention;
- (7) To develop procedures to determine the effectiveness of the department's pollution prevention programs and activities;
- (8) To assume responsibility for the administration and implementation of chapter ~~26~~ 27; and
- (9) To administer and evaluate the Technical and Environmental Assistance Program established in section 343B.

The commissioner shall designate an employee of the department to manage the functions of the Office of Pollution Prevention. That person may provide independent testimony to the Legislature, may make periodic reports to the administrator of the federal Environmental Protection Agency for transmittal to the United States Congress and may address problems or concerns related to the functions of the office, including the investigation of complaints concerning the Technical and Environmental Assistance Program.

The commissioner shall identify a staff person or persons in each bureau of the department whose primary responsibility is to provide guidance to any party through the permit review process.

**Sec. B-6. 38 MRSA §343-D, first ¶**, as enacted by PL 1991, c. 804, Pt. C, §3 and affected by §5, is amended to read:

The Pollution Prevention Advisory Committee, established by Title 5, section 12004I, subsection 22B and referred to in this section as the "committee," serves as a review body to assess the progress in the reduction of ~~toxics use, toxics release and hazardous waste~~ toxic chemicals and implementation of the provisions of chapter ~~26~~ 27, the Office of Pollution Prevention and the Technical and Environmental Assistance Program and may render advisory opinions to the commissioner on the effectiveness of each.

**Sec. B-7. 38 MRSA §343-D, sub-§8**, as enacted by PL 1991, c. 804, Pt. C, §3 and affected by §5, is amended to read:

**8. Duties; powers.** The committee may review and may render advisory opinions to the commissioner on the operation and effectiveness of the following programs:

~~A. Toxics Use, Toxics Release and Hazardous Waste Reduction Program, established in chapter 26. The committee may:~~

- ~~(1) Review program priorities for toxics use, toxics release and hazardous waste reduction and may identify user groups as priorities for department technical assistance activities;~~

~~(2) Review the criteria for the submission of toxics use, toxics release and hazardous waste reduction plans;~~

~~(3) Study and evaluate the practicability of achieving reductions in the use or release of specific substances through the use of substitutes, alternate procedures or processes or other means of achieving toxics use, toxics release and hazardous waste reduction;~~

~~(4) Recommend revisions to the department, if appropriate, to toxics use, toxics release and hazardous waste reduction goals and to the Toxics Use, Toxics Release and Hazardous Waste Reduction Program; and~~

~~(5) Evaluate existing programs related to chemical production and use, hazardous waste generation, industrial hygiene, worker safety and public exposure to toxics and toxics releases and recommend coordination of information and program changes or development;~~

A-1. The reduction of toxic chemicals pursuant to chapter 27;

B. The Technical and Environmental Assistance Program established under section 343-B. In reviewing that program, the committee may:

(1) Review information developed or distributed by the Technical and Environmental Assistance Program to ensure that the information is understandable to the general public; and

(2) Prepare periodic reports to the Governor on the compliance status of the Technical and Environmental Assistance Program. The reports must be forwarded to the federal Environmental Protection Agency complying with the requirements of the federal Paperwork Reduction Act of 1980, Public Law 96-511, as amended; the federal Regulatory Flexibility Act, 5 United States Code, Sections 601 to 612; and the federal Equal Access to Justice Act, Public Law 96-481, as amended; and

C. The Office of Pollution Prevention established under section 342, subsection 4, paragraph B.

In conducting its review under paragraphs ~~AA1~~ to C, the committee may submit recommendations for statutory changes to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters.

**Sec. B-8. 38 MRSA §358, sub-§3, ¶A**, as enacted by PL 1991, c. 520, §2, is amended to read:

A. Support the ~~Toxics Use, Toxics Release and Hazardous Waste Reduction Program established under chapter 26~~reduction of toxic chemicals under chapter 27; and

**Sec. B-9. 38 MRSA §361-A, sub-§3-B**, as enacted by PL 1991, c. 520, §3, is amended to read:

**3-B. Pollution prevention.** "Pollution prevention" means the application of the toxics use reduction principles and reduction hierarchies, which are established in chapter ~~26,27~~ to manufacturing, commercial and consumer chemical use and energy production and consumption.

**Sec. B-10. 38 MRSA §1319-E, sub-§1, ¶G**, as enacted by PL 1993, c. 355, §54, is amended to read:

G. Costs incurred in the administration of chapter ~~2627~~ or the provision of technical assistance under the toxics use, toxics release and hazardous waste reduction program established technical assistance and recognition programs described in chapter 26 section 2326.

**Sec. B-11. 38 MRSA §1319-I, sub-§2-A**, as amended by PL 1991, c. 520, §5, is repealed.

**Sec. B-12. 38 MRSA §1692**, as enacted by PL 2007, c. 643, §2, is amended to read:

### **§ 1692. Declaration of policy**

It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible. By enactment of this chapter, the Legislature confers upon the department the regulatory power to collect information on chemical use and prohibit the sale of children's products containing priority chemicals when safer alternatives are available. The policy represented in this chapter is in furtherance of the toxics use reduction policies under chapter ~~2627~~.

**Sec. B-13. Effective date.** This Part takes effect July 1, 2012.

Effective 90 days following adjournment of the 124th  
Legislature, Second Regular Session, unless otherwise indicated.