

Enrolled Senate Bill 43

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CHAPTER

AN ACT

Relating to toxics use reduction; creating new provisions; amending ORS 465.003, 465.009, 465.012, 465.015, 465.018, 465.021 and 465.034; repealing ORS 465.024 and 465.031; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 465.003 to 465.034.

SECTION 2. An implementation summary submitted to the Department of Environmental Quality under ORS 465.018 shall be in a form determined by the department and shall include, but not be limited to:

- (1) A summary of how the toxics use reduction and hazardous waste reduction plan or environmental management system has been implemented;**
- (2) A description of specific successes that the toxics user has had in reducing the use of toxic substances or the generation of hazardous wastes;**
- (3) An estimate of the challenges and impediments to implementing and evaluating toxics use reduction and hazardous waste reduction opportunities; and**
- (4) A description of future plans for toxics use reduction and hazardous waste reduction.**

SECTION 3. ORS 465.003 is amended to read:

465.003. As used in ORS 465.003 to 465.034:

[(1) "Commission" means the Environmental Quality Commission.]

*[(2)] (1) "Conditionally exempt generator" means a generator [who] **that** generates less than 2.2 pounds of acute hazardous waste as defined by 40 C.F.R. 261[, or who] **and that** generates less than 220 pounds of hazardous waste in one calendar month.*

[(3) "Department" means the Department of Environmental Quality.]

[(4) "Director" means the Director of the Department of Environmental Quality.]

*[(5)] (2) "Facility" means all buildings, equipment, structures and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person or by any person [who] **that** controls, is controlled by or under common control with any person.*

*[(6)] (3) "Fully regulated generator" means a generator [who] **that** generates 2.2 pounds or more of acute hazardous waste as defined by 40 C.F.R. 261, or 2,200 pounds or more of hazardous waste in one calendar month.*

[(7)] (4) “Generator” means a person *[who]* **that**, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of hazardous waste.

[(8)] (5) “Hazardous waste” has the meaning given that term in ORS 466.005.

[(9)] (6) “Large user” means a facility required to *[report]* **submit a uniform toxic chemical release form** under *[section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499)]* **42 U.S.C. 11023**.

[(10)] (7) “Person” *[means individual, the United States, the state or a public or private corporation, local government unit, public agency, partnership, association, firm, trust, estate or any other legal entity.]* **includes person, public body, as defined in ORS 174.109, the federal government or any other legal entity.**

[(11)] (8) “Small-quantity generator” means a generator *[who]* **that** generates between 220 and 2,200 pounds of hazardous waste in one calendar month.

[(12)] (9) “Toxic substance” or “toxics” means any substance, **other than a substance used as a pesticide in routine commercial agricultural applications**, in a gaseous, liquid or solid state *[listed]* **specified on the list of toxic chemicals generated** pursuant to *[Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986]* **42 U.S.C. 11023**, or any substance added by the **Environmental Quality** Commission under ORS 465.009. *["Toxic substance" does not include a substance used as a pesticide or herbicide in routine commercial agricultural applications.]*

(10) “Toxics use” means use or production of a toxic substance.

[(13)(a)] (11) “Toxics use reduction” means in-plant changes in production or other processes or operations, products or raw materials that reduce, avoid or eliminate the use or production of toxic substances without creating substantial new risks to public health, safety and the environment, through the application of any of the following techniques:

[(A)] (a) Input substitution, *[which refers to]* **achieved by** replacing a toxic substance or raw material used in a production or other process or operation with a nontoxic or less toxic substance;

[(B)] (b) Product reformulation, *[which refers to]* **achieved by** substituting for an existing end product, an end product *[which]* **that** is nontoxic or less toxic upon use, release or disposal;

[(C)] (c) Production or other process or operation redesign or modifications;

[(D)] (d) Production or other process or operation modernization, *[which refers to]* **achieved by** upgrading or replacing existing equipment and methods with other equipment and methods;

[(E)] (e) Improved operation and maintenance controls of production or other process or operation equipment and methods, *[which refers to]* **achieved by** modifying or adding to existing equipment or methods including, but not limited to, techniques such as improved housekeeping practices, system adjustments, product and process inspections or production or other process or operation control equipment or methods; or

[(F)] (f) Recycling, reuse or extended use of toxics by using equipment or methods that become an integral part of the production or other process or operation of concern, including but not limited to filtration and other methods.

[(b) “Toxics use reduction” includes proportionate changes in the usage of a particular toxic substance by any of the methods set forth in paragraph (a) of this subsection as the usage of that toxic substance changes as a result of production changes or other business changes.]

[(14) “Toxics use” means use or production of a toxic substance.]

[(15)] (12) “Toxics user” means a large user, a fully regulated generator or a small-quantity generator.

[(16)(a)] (13) “Waste reduction” means:

(a) Any *[recycling or other activity applied]* **activity conducted** after hazardous waste is generated that is consistent with the general goal of reducing present and future threats to public health, safety and the environment and that results in:

(A) The reduction of total volume or quantity of hazardous waste generated that would otherwise be treated, stored or disposed of;

(B) The reduction of toxicity of hazardous waste that would otherwise be treated, stored or disposed of; or

(C) Both the reduction of total volume or quantity and the reduction of toxicity of hazardous waste.

[(b) "Waste reduction" includes proportionate changes in the total volume, quantity or toxicity of a particular hazardous waste in accordance with paragraph (a) of this subsection as the generation of that waste changes as a result of production changes or other business changes.]

[(c) (b) ["Waste reduction" may include either] On-site or off-site treatment where [such] the treatment can be shown to confer a higher degree of protection of the public health, safety and the environment than other technically and economically practicable waste reduction alternatives.

SECTION 4. ORS 465.009 is amended to read:

465.009. The Environmental Quality Commission by rule may:

(1) Add or remove any toxic substance or hazardous waste from the provisions of ORS 465.003 to 465.034; **and**

(2) Modify the definition of "large user" to coincide with the amounts specified in federal regulations for the reporting of toxic chemical releases.

SECTION 5. ORS 465.012 is amended to read:

465.012. (1) The Department of Environmental Quality shall provide technical assistance to toxics users and conditionally exempt generators. In identifying the users and generators to which the department shall give priority in providing technical assistance, the department shall consider at least the following:

(a) Amounts and toxicity of toxics used and amounts of hazardous waste disposed of, discharged and released;

(b) Potential for current and future toxics use reduction and hazardous waste reduction; and

(c) The toxics related exposures and risks posed to public health, safety and the environment.

(2) In providing technical assistance, the department shall give priority to assisting toxics users and conditionally exempt generators in *[developing]* **completing** and implementing an adequate toxics use reduction and hazardous waste reduction plan *[as established]* under ORS 465.015. The assistance may include but need not be limited to:

(a) Information clearinghouse activities;

(b) Telephone hotline assistance;

(c) Toxics use reduction and hazardous waste reduction training workshops;

(d) Establishing a technical publications library;

(e) The development of a system to evaluate the effectiveness of toxics use reduction and hazardous waste reduction measures;

(f) The development of a recognition program to publicly acknowledge toxics users and conditionally exempt generators *[who develop]* **that complete** and implement successful toxics use reduction and hazardous waste reduction plans; and

(g) Direct on-site assistance to toxics users and conditionally exempt generators in *[developing]* **completing** the plans.

(3) The department shall:

(a) Coordinate its technical assistance efforts with industry trade associations and local colleges and universities as appropriate.

(b) Follow up with toxics users *[who]* **that** receive technical assistance to determine whether the user or generator implemented a toxics use reduction and hazardous waste reduction plan.

(c) Coordinate and work with local agencies to provide technical assistance to businesses involved in the crushing of motor vehicles concerning the safe removal and proper disposal of mercury light switches from motor vehicles.

(4) Technical assistance services provided under this section shall not result in inspections or other enforcement actions unless there is reasonable cause to believe there exists a clear and immediate danger to the public health and safety or to the environment. The Environmental Quality Commission may develop rules to carry out the intent of this subsection.

SECTION 6. ORS 465.015 is amended to read:

465.015. (1) *[Not later than September 1, 1990, the Environmental Quality Commission shall establish guidelines for toxics use reduction and hazardous waste reduction plans.]* **Except as provided in subsection (2) of this section, a person shall, within 120 days after notification in writing by the Department of Environmental Quality that the person meets the definition of a toxics user, complete a toxics use reduction and hazardous waste reduction plan.** At a minimum, *[the guidelines]* **a plan** shall include:

(a) A written policy articulating *[upper management and corporate]* **organizational** support for the toxics use reduction and hazardous waste reduction plan and a commitment **by the organization** to implement plan goals.

(b) *[Plan]* **A description of its** scope and objectives, including the evaluation of technologies, procedures and personnel training programs to *[insure]* **ensure** unnecessary toxic substances are not used and unnecessary waste is not generated. *[Specific reduction goals are not required but may be used as a tool for implementing a reduction plan.]*

(c) Internal analysis **and periodic assessment of individual processes for toxics use and hazardous waste generation.** *[of toxic substance usage and hazardous waste streams, with periodic toxics use reduction and hazardous waste reduction assessments, to review individual processes or facilities and other activities where toxic substances are used and waste may be generated and identify]*

(d) Identification of opportunities to reduce or eliminate *[toxic substance usage and]* **toxics use and hazardous** waste generation. *[Such assessments shall evaluate data on the types, amount and hazardous constituents of toxic substances used and waste generated, where and why those toxics were used and waste was generated within the production process or other operations, and potential toxics use reduction and hazardous waste reduction and recycling techniques applicable to those toxic substances and wastes.]*

[(d)] **(e)** Employee awareness and training programs*[, to]* **that** involve employees in toxics use reduction and hazardous waste reduction planning and implementation *[to the maximum extent feasible]*.

[(e)] **(f)** Institutionalization of the plan *[to insure an ongoing effort as demonstrated by incorporation of]* **by incorporating** the plan into management practices and procedures.

[(f)] Implementation of technically and economically practicable toxics use reduction and hazardous waste reduction options, including a plan for implementation. This shall include a description of options considered and an explanation of why options considered were not implemented. The plan shall distinguish between toxics use reduction options and waste reduction options, and the analysis of options considered shall demonstrate that toxics use reduction options were given priority wherever technically and economically practicable.]

(2) A person is not required to complete a plan if the person has implemented an environmental management system, as defined in ORS 468.172.

[(2)] **(3)** A toxics user *[may identify and]* **shall** incorporate into the *[user's]* plan and **associated** decision-making process, the costs *[associated with the use of toxic chemicals and the generation of hazardous waste including management costs, liability, compliance and oversight costs.]* **of using toxic substances and generating hazardous waste. The costs may represent, among other things, the costs of management, liability insurance, regulatory compliance and oversight.**

[(3)] **(4)** As part of each plan *[developed under ORS 465.018]*, a toxics user shall evaluate **technically and economically practicable** toxics use reduction and hazardous waste reduction opportunities *[in the following categories]* **for:**

(a) Any toxic substance *[used in quantities in excess of 10,000 pounds a year;]* **for which the toxics user reports as a large user; and**

[(b)] Any toxic substance used in quantities in excess of 1,000 pounds a year that constitutes 10 percent or more of the total toxic substances used; and]

[(c)] **(b)** *[For fully regulated generators,]* Any **hazardous** waste representing 10 percent or more by weight of the cumulative **hazardous** waste stream generated per year.

[(4)] **(5)** *[Each]* **A** toxics user shall explain the rationale for each toxics use reduction and waste reduction opportunity **specified in the plan, including** *[. This rationale shall address]* any imped-

iments, **such as technical or economic barriers**, to toxics use reduction and hazardous waste reduction.], *including but not limited to the following:*]

[(a) The availability of technically practicable toxics use reduction and hazardous waste reduction methods, including any anticipated changes in the future.]

[(b) The economic practicability of available toxics use reduction and hazardous waste reduction methods, including any anticipated changes in the future. Examples of situations where toxics use reduction or hazardous waste reduction may not be economically practicable include but are not limited to:]

[(A) For valid reasons of prioritization, a particular company has chosen to first address other more serious toxics use reduction or hazardous waste reduction concerns;]

[(B) Necessary steps to reduce toxics use and hazardous waste are likely to have significant adverse impacts on product quality; or]

[(C) Legal or contractual obligations interfere with the necessary steps that would lead to toxics use reduction or hazardous waste reduction.]

[(5) All large users and large quantity generators shall complete annually a toxics use reduction and hazardous waste reduction progress report.]

[(6) An annual progress report shall:]

[(a) Analyze progress made, if any, in toxics use reduction and hazardous waste reduction; and]

[(b) Set forth amendments to the toxics use reduction and hazardous waste reduction plan and explain the need for the amendments.]

[(7) The commission by rule may provide for modifications for small-quantity generators related to the kind of information to be included in the plan.]

[(8) The commission shall specify by rule the criteria a toxics user or a large user shall meet to achieve and maintain an exemption from the requirements of subsections (1) to (6) of this section. The rule shall allow an exemption under the following circumstances:]

[(a) A toxics user has instituted an environmental management system that at a minimum complies with the intent of ORS 465.006; or]

[(b) A large user has:]

[(A) Implemented all technically and economically feasible toxics use reduction and waste reduction opportunities;]

[(B) Determined that further reductions could only be accomplished by producing less of the user's product; and]

[(C) Developed and implemented an education program approved by the Department of Environmental Quality, designed to increase consumer demand for less toxic or nontoxic products.]

[(9) To maintain an exemption under subsection (8) of this section, the toxics user or large user shall comply with the requirements of subsection (10) of this section.]

[(10) The commission by rule shall determine the reporting requirements for users exempted under subsection (8) of this section. At a minimum, these requirements shall provide for obtaining toxics use data equivalent to that reported under ORS 465.024.]

(6) A toxics use reduction and hazardous waste reduction plan developed under this section or the documentation for an environmental management system shall be retained at the facility. To the extent that a plan or system may be considered a public record under ORS 192.410, the information contained in the plan or system is confidential and is exempt from public disclosure pursuant to ORS 192.502.

(7) It is the policy of this state that plans developed under this section be kept current and that the plans reflect changes in toxics use over time. In furtherance of this policy, a toxics user may update its plan or modify its environmental management system to reflect any changes.

SECTION 7. ORS 465.018 is amended to read:

465.018. *[(1) All large users and fully regulated generators shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1, 1991, and all small-quantity generators shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1,*

1992. Upon completion of a plan, the user shall notify the Department of Environmental Quality in writing on a form supplied by the department.]

[(2) A facility required to complete a toxics use reduction and hazardous waste reduction plan under subsection (1) of this section may include as a preface to its initial plan:]

[(a) An explanation and documentation regarding toxics use reduction and hazardous waste reduction efforts completed or in progress before the first reporting date; and]

[(b) An explanation and documentation regarding impediments to toxics use reduction and hazardous waste reduction specific to the individual facility.]

[(3) The department shall consider information provided under subsection (2) of this section in any review of a facility plan under ORS 465.021.]

[(4) Except as provided in ORS 465.021, a toxics use reduction and hazardous waste reduction plan developed under this section shall be retained at the facility and is not a public record under ORS 192.410.]

(1) Following completion of a toxics use reduction and hazardous waste reduction plan under ORS 465.015 or implementation of an environmental management system, a toxics user shall notify the Department of Environmental Quality in a form determined by the department that the plan or system is in place.

(2) Twelve months after notifying the department under subsection (1) of this section, the toxics user shall provide an implementation summary to the department.

(3) Twenty-four months after notifying the department under subsection (1) of this section, the toxics user shall provide a second implementation summary to the department.

[(5)] **(4) [For the purposes of this section and ORS 465.012 and 465.021,] A toxics user shall permit the Director of the Department of Environmental Quality or [any designated employee of the director] the director's designee to inspect [the toxics use reduction and hazardous waste reduction plan] a plan or system to allow the department to:**

(a) Determine the adequacy of the plan or system under ORS 465.021;

(b) Assess the implementation of the plan or system; and

(c) Provide technical assistance under ORS 465.012.

(5) The department shall make implementation summaries submitted to the department under this section available to the public, including making the summaries available in a commonly used, electronic format on the World Wide Web.

[(6) A facility shall determine whether it is required to complete a plan under subsection (1) of this section based on whether its toxics use or waste generation results in the facility meeting the definition of toxics user as defined in ORS 465.003 for the calendar year ending December 31 of the year immediately preceding the September 1 reporting deadline.]

SECTION 8. ORS 465.021 is amended to read:

465.021. (1) The Department of Environmental Quality may review **and determine the adequacy of a toxics use reduction and hazardous waste reduction plan** or [an annual progress report to determine whether the plan or progress report is adequate according to the guidelines established under ORS 465.015] **an environmental management system.**

(2) If a toxics user fails to complete an adequate plan [or annual progress report as required under ORS 465.015 and 465.018], implement an adequate system or submit an adequate implementation summary, the department may notify the **toxics** user of the inadequacy, identifying the specific deficiencies. The department also may specify a reasonable time frame, of not less than 90 days, within which the **toxics** user shall [submit a modified plan or progress report addressing] **modify the plan, system or implementation summary to address** the specified deficiencies. The department also may make technical assistance available to aid the **toxics** user in modifying its plan [or progress report], **system or implementation summary.**

[(2)] **(3) If the department determines that a modified plan [or progress report], system or implementation summary [submitted pursuant to subsection (1) of this section] is inadequate,** the department may[, within its discretion, either] require **that** further [modification or issue an

administrative order pursuant to subsection (3) of this section] **modifications be made within a time frame specified by the department.**

[(3)] (4) If after having received [*a list*] **notice** of specified deficiencies from the department, a toxics user fails to develop an adequate plan [*or progress report*], **system or summary** within a time frame specified pursuant to subsection [(1) or (2)] **(2) or (3)** of this section, the department may [*order such toxics user to submit an adequate plan or progress report within a reasonable time frame of not less than 90 days. If the toxics user fails to develop an adequate plan or progress report within the time frame specified, the department shall conduct a public hearing on the plan or progress report. Except as provided under ORS 465.031, in any hearing under this section the relevant plan or progress report shall be considered a public record as defined in ORS 192.410.*] **assess a civil penalty in the manner provided by ORS 183.745 in an amount not to exceed \$500 for each day that the toxics user fails to develop an adequate plan, system or summary.**

[(4)] (5) In reviewing the adequacy of any plan [*or progress report*], **system or summary**, the department shall base its determination solely on whether the plan [*or progress report*], **system or summary** is complete and prepared in accordance with ORS 465.015 **or section 2 of this 2005 Act.**

[(5)] *The department shall maintain a log of each plan or progress report it reviews, a list of all plans or progress reports that have been found inadequate under subsection (3) of this section and descriptions of corrective actions taken. This information shall be available to the public at the department's office.*

SECTION 9. ORS 465.034 is amended to read:

465.034. Notwithstanding any [*other*] provision of ORS 465.003 to [*465.031*] **465.034**, nothing in [*chapter 833, Oregon Laws 1989, shall be considered to apply to any hazardous wastes that become subject to regulation solely as a result of remedial activities taken in response to environmental contamination.*] **ORS 465.003 to 465.034 applies to:**

(1) **Hazardous wastes generated from a removal, as defined in ORS 465.200, or from a one-time event.**

(2) **A raw material that contains a naturally occurring toxic substance and that is used in a process for which there is no substitute.**

SECTION 10. Notwithstanding ORS 465.018 (3), a toxics user that has completed a toxics use reduction and hazardous waste reduction plan or that has implemented an environmental management system prior to the effective date of this 2005 Act, is required to submit only one implementation summary to the Department of Environmental Quality. The toxics user shall submit the implementation summary to the department, in a form determined by the department, on or before February 1, 2006.

SECTION 11. ORS 465.024 and 465.031 are repealed.

SECTION 12. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by Senate February 14, 2005

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Secretary of Senate

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President of Senate

Passed by House May 20, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

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Secretary of State