

MAINE STATE LEGISLATURE

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No. 1423

H.P. 999

House of Representatives, April 7, 2009

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

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TREAT of Hallowell.

Cosponsored by Representative: MARTIN of Eagle Lake, Senator: SMITH of Piscataquis.

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

2 **Sec. 1. 37-B MRSA §797, sub-§8**, as enacted by PL 1989, c. 929, §3, is amended
3 to read:

4 **8. Progress toward toxics use reduction goals.** For those persons required to
5 submit a form under this section for extremely hazardous substances, a report on the
6 progress made by the facility toward meeting the toxics use reduction goals established in
7 Title 38, section ~~2303~~ 2303-A.

8 **Sec. 2. 37-B MRSA §799**, as amended by PL 1993, c. 355, §2, is further amended
9 to read:

10 **§799. Toxic chemical release forms**

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

22 **Sec. 3. 38 MRSA §2301, sub-§2**, as enacted by PL 1989, c. 929, §7, is amended
23 to read:

24 **2. Cross-media pollution.** "Cross-media pollution" means pollution, including
25 greenhouse gases, that has an impact on or degrades ~~more than one~~ any environmental
26 resource.

27 **Sec. 4. 38 MRSA §2301, sub-§7-A** is enacted to read:

28 **7-A. Greenhouse gas.** "Greenhouse gas" has the same meaning as in section 574,
29 subsection 1.

30 **Sec. 5. 38 MRSA §2302, first ¶**, as amended by PL 1999, c. 348, §1, is further
31 amended to read:

32 It is the policy of the State to reduce the amount of the toxic substances used in the
33 State, to reduce worker and environmental exposure to the release of toxic substances, to
34 reduce the hazardous waste generated within the State and to minimize the transfer of
35 toxic pollutants from one environmental medium to another. The State encourages an
36 integrated approach to toxics use reduction, toxics release reduction and hazardous waste
37 reduction based on the hierarchies of pollution prevention management strategies
38 included in this section. It is further the policy of the State that the process of reducing

1 the use and release of toxic substances and reducing the generation of hazardous waste
2 through planning and analysis of manufacturing and commercial processes is ongoing
3 and that the principles of continuous improvement in pollution prevention and open,
4 public accountability must be applied to environmental quality management efforts in
5 both public and private facilities. It is further the policy of the State that cross-media
6 pollution prevention programs should incorporate the State's greenhouse gas emissions
7 reduction goals set forth in section 576.

8 **Sec. 6. 38 MRSA §2302, sub-§5** is enacted to read:

9 **5. Greenhouse gas emissions reduction.** The State encourages reducing the
10 generation of greenhouse gas emissions by businesses in this State through the
11 application of the following:

12 A. Provision of an energy audit;

13 B. Implementation of energy conservation and efficiency measures;

14 C. Reduction, reuse and recycling of waste; and

15 D. Production or purchase of electricity from sources that do not produce any
16 greenhouse gases or that produce lower than the regional average levels of
17 greenhouse gases of other sources of electricity for purchase.

18 **Sec. 7. 38 MRSA §2303**, as amended by PL 1999, c. 348, §5, is repealed.

19 **Sec. 8. 38 MRSA §2303-A** is enacted to read:

20 **§2303-A. Zero discharge of harmful and toxic materials; greenhouse gas emissions**
21 **reductions**

22 It is the State's goal to attain zero discharge of harmful and toxic materials to the
23 environment through the methods identified in section 2302 over the long term. By July
24 1, 2010 the Pollution Prevention Advisory Committee, established by Title 5, section
25 12004-I, subsection 22-B, shall establish a schedule and process for continual progress
26 toward achievement of a zero discharge goal by businesses in this State by 2050. It is
27 further the State's goal to reduce greenhouse gases emitted from businesses in this State
28 by 10% below 1990 levels by 2020 and by at least 50% below 2003 levels by 2050,
29 consistent with section 576.

30 **1. Progress evaluation; report.** Progress toward meeting the zero discharge
31 statewide toxics use, toxics release and hazardous waste reduction goal must be evaluated
32 biennially by the commissioner based on manifest data, progress reports submitted under
33 section 2305-A, biennial hazardous waste generator reports and other appropriate
34 available information. To determine achievement of the statewide zero discharge
35 reduction goal, the commissioner may adjust the baseline figure to account for changes in
36 the statutory or regulatory definitions of toxic substances and hazardous wastes.

37 The commissioner shall report biennially on the progress toward meeting the statewide
38 zero discharge goal established in this section and the adequacy of the goals set by
39 facilities. The commissioner shall submit the report to the joint standing committee of

1 the Legislature having jurisdiction over natural resources matters by January 15th of each
2 odd-numbered year.

3 **2. New facilities.** Facilities constructed after the effective date of this chapter should
4 be designed to minimize toxics use and release, hazardous waste generation and energy
5 usage and greenhouse gas emissions in accordance with the State's goals and policies as
6 set forth in this section and section 2302. New facilities shall use the first full year of
7 production as the base year from which to measure toxics use and release and hazardous
8 waste generation reductions. New facilities that are described in section 2304-A are
9 subject to the requirements of this chapter.

10 **3. New production unit.** A facility subject to the requirements of this chapter that
11 adds a new production unit after the year 2000 shall use the first full year of production
12 data for that production unit as its base year for that production unit.

13 **4. Petition.** A toxics releaser may petition the commissioner to eliminate a
14 substance from the total volume of toxics release subject to the reductions under this
15 section when the toxics releaser demonstrates that release of the substance does not pose
16 an unreasonable threat to occupational health, public health or the environment.

17 **Sec. 9. 38 MRSA §2304-A, sub-§1,** as amended by PL 2001, c. 212, §7, is
18 further amended to read:

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

22 A. Facilities subject to reporting requirements for extremely hazardous substances
23 under the SARA, Title III, Section 312;

24 B. Facilities required to report under the SARA, Title III, Section 313; and

25 C. Facilities that ship more than 2,640 pounds of hazardous waste in a calendar
26 year;

27 D. Facilities that the commissioner determines, based upon review by and
28 recommendation of the Pollution Prevention Advisory Committee, as established in
29 Title 5, section 12004-I, subsection 22-B, pose a threat to the public health and safety
30 and employees and a risk to the environment. This determination must follow public
31 notice and rulemaking. Rules adopted pursuant to this paragraph are routine
32 technical rules as defined in Title 5, chapter 375, subchapter 2-A; and

33 E. Facilities that use, release or generate a chemical or class of chemicals that has
34 been determined by the commissioner, based upon review by and recommendation of
35 the Pollution Prevention Advisory Committee, as established in Title 5, section
36 12004-I, subsection 22-B, to pose a threat to the public health and safety and
37 employees and a risk to the environment. This determination must follow public
38 notice and rulemaking. Rules adopted pursuant to this paragraph are routine
39 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1 **Sec. 10. 38 MRS**A §2305, as amended by PL 1999, c. 348, §8, is further amended
2 to read:

3 **§2305. Pollution prevention plans**

4 Owners or operators of facilities subject to the requirements of this chapter shall
5 develop by January 1, 2000 and update at least every 2 years thereafter pollution
6 prevention plans for their own use and the department's review. These owners or
7 operators shall post or provide a link to these plans on the facility's own publicly
8 accessible website when possible. If the facility does not have a website it shall submit a
9 written copy of the plan to the department. The board may establish rules for toxics use,
10 toxics release and hazardous waste reduction plans to be prepared pursuant to this section.
11 A plan must include:

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

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

15 A. Identification, characterization and accounting of the types and amounts of all
16 toxics used, toxics released and hazardous wastes generated at the facility;

17 B. Identification, analysis and evaluation of any appropriate technologies,
18 procedures, processes, equipment or production changes that may be utilized by the
19 facility to reduce the amount or toxicity of toxics used, toxics released or hazardous
20 wastes generated by that facility, including a financial analysis of the costs and
21 benefits of reducing the amount of toxics used, toxics released and hazardous waste
22 generated. This portion of the plan must employ the hierarchy of reduction
23 techniques established under section 2302;

24 C. A strategy and schedule for implementing practicable reduction ~~options~~
25 techniques the facility intends to undertake for each production process utilized to
26 meet reduction goals;

27 D. Identification of any reasonably available markets or recycling opportunities for
28 hazardous waste generated by the facility; and

29 E. A program for maintaining records on toxics use, toxics release and hazardous
30 waste generation rates and management costs;

31 **2-A. Facility goals.** The facility's 2-year numeric goals for reducing the aggregate
32 amount of extremely hazardous substances used, the aggregate amount of toxic
33 substances released and the aggregate amount of hazardous waste generated at the facility
34 by 2002, 2004 and 2006 and actions taken or measures adopted to achieve the State's
35 zero discharge and greenhouse gas emissions reduction goals. The goals must be
36 established per unit of product to account for changes in the level of production activity
37 from year to year. The plan must include an explanation describing why the facility's prior
38 goals were exceeded, achieved or not achieved;

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

1 **4. Employee involvement, awareness and training.** An employee awareness and
2 training program consistent with the requirements of section 2306 to involve employees
3 in toxics use, toxics ~~reduction~~ release and hazardous waste reduction planning and
4 implementation to the maximum amount feasible and a description of employee
5 notification and involvement in the planning process.

6 ~~The plan may include a description of any pollution prevention strategies~~
7 ~~implemented at the facility after 1991 and before 1998.~~

8 Owners or operators of facilities shall keep a complete copy of the plan and any
9 backup data on the premises of that facility for at least 5 years and make the copy and
10 data available to the commissioner or the commissioner's designee upon request.

11 **Sec. 11. 38 MRSA §2305-A**, as enacted by PL 1999, c. 348, §9, is amended to
12 read:

13 **§2305-A. Progress reports**

14 Beginning in ~~2000~~ 2010, the owner or operator of a facility subject to the
15 requirements of this chapter shall submit a biennial pollution prevention progress report
16 to the department by ~~July~~ August 1st of every even-numbered year. The progress report
17 ~~may~~ must be submitted to the department in an electronic format if the facility has the
18 capability to do so. By June 1, 2012 the department shall establish an Internet-based
19 reporting system. All facilities with the capability to do so must file their progress reports
20 using this system. A progress report must include the following:

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

24 **2. Toxics use and release and wastes generated.** A quantitative statement of the
25 facility's ~~progress toward achieving each of its 2 year goals and an identification, in~~
26 ~~absolute amounts and per unit of product, of the reduction or increase in the amount of~~
27 ~~each extremely hazardous substance used, toxics released and hazardous waste generated~~
28 ~~in comparison to the previous 2 years~~ toxics use and release and hazardous waste
29 generated during the prior calendar year. The department shall calculate facility
30 reductions in absolute amounts using 2000 as a base year; and

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

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

35 ~~5. Employee involvement.~~ A description of employee notification and involvement
36 in the planning process;

37 ~~6. Future pollution prevention methods.~~ A description, for each production unit,
38 of the pollution prevention techniques that the owner or operator of the facility intends to
39 undertake during the next 2 years to reduce the use of extremely hazardous substances, to

1 ~~reduce the release of toxic substances and to reduce the generation of hazardous waste~~
2 ~~and a schedule for the implementation of the techniques; and~~

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

7 A progress report may exclude any information entitled to protection as confidential
8 information or a trade secret pursuant to section 1310-B or Title 37-B, section 800.

9 **Sec. 12. 38 MRSA §2308, sub-§1,** as amended by PL 1991, c. 520, §17, is
10 further amended to read:

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

14 **Sec. 13. 38 MRSA §2309, sub-§7,** as enacted by PL 1999, c. 348, §14, is
15 repealed.

16 **Sec. 14. 38 MRSA §2309, sub-§8,** as enacted by PL 1999, c. 348, §14, is
17 repealed.

18 **Sec. 15. 38 MRSA §2309, sub-§9,** as enacted by PL 1999, c. 348, §14, is
19 repealed.

20 **Sec. 16. 38 MRSA §2309, sub-§10,** as enacted by PL 1999, c. 348, §14, is
21 amended to read:

22 **10. Performance recognition program.** The commissioner shall establish, based
23 on the recommendations of the Pollution Prevention Advisory Committee, as established
24 in Title 5, section 12004-I, subsection 22-B, a biennial recognition program for facilities
25 achieving a minimum reduction of 40%, 50% and 60% in toxics use, toxics release or
26 hazardous waste generation by 2002, 2004 and 2006, respectively that achieve significant
27 progress toward meeting the State's zero discharge reduction goal.

28 SUMMARY

29 This bill amends the toxic use and hazardous waste reduction laws administered by
30 the Department of Environmental Protection by:

31 1. Modernizing the statewide toxics use, toxics release and hazardous waste
32 reduction goals by establishing a goal of zero discharge by 2050 and charging the
33 Pollution Prevention Advisory Committee with establishing a schedule and process for
34 continual progress toward this goal;

35 2. Setting forth a procedure to add new facilities or new chemicals or classes of
36 chemicals to the provisions of the law;

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3. Including the State's greenhouse gas reduction goals and encouraging facilities to meet those goals through energy efficiency and other measures;

4. Requiring the department to establish an Internet-based reporting system for facility progress reports that will allow department resources to be devoted to outreach and technical assistance; and

5. Eliminating the requirement that facilities use an activity production index when filing the pollution prevention plan.