

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2192

H.P. 1583

House of Representatives, January 16, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative LUTHER of Mexico.

Cosponsored by Senator KANY of Kennebec, Representative RAND of Portland and Representative JACQUES of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Reduce the Use of Toxic Substances in the Workplace and
Minimize the Generation of Hazardous Waste.**



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

2
3 **Sec. 1. 2 MRSA §6, sub-§2**, as amended by PL 1989, c. 501, Pt.
4 BB, §1, and c. 585, Pt. A, §1, is repealed and the following
5 enacted in its place:

6 2. Range 90. The salaries of the following state officials
7 and employees are within salary range 90:

8 Superintendent of Banking;

9 Bureau of Consumer Credit Protection Superintendent;

10 State Tax Assessor;

11 Superintendent of Insurance;

12 Associate Commissioner for Programs, Department of Mental
13 Health and Mental Retardation;

14 Associate Commissioner of Administration, Department of
15 Mental Health and Mental Retardation;

16 Associate Commissioner for Institutional Management;

17 Executive Director, Maine Waste Management Agency; and

18 Executive Director, Toxics Use Reduction Agency.

19 **Sec. 2. 3 MRSA §927, sub-§11, ¶B**, as enacted by PL 1989, c.
20 483, Pt. A, §§4 and 62, is amended to read:

21 B. Independent agencies:

22 (1) State Civil Service Appeals Board;

23 (2) Maine Labor Relations Board;

24 (3) Workers' Compensation Commission;

25 (4) Board of Accountancy;

26 (5) State Board of Social Worker Licensure;

27 (6) Electricians' Examining Board;

28 (7) Maine Occupational Information Coordinating
29 Committee; and

30 (8) State Employee Health Commission; and

31 (9) Toxics Use Reduction Agency.

2 Sec. 3. 5 MRSA §12004-I, sub-§54-A is enacted to read:

4 54-A. Labor Toxics Use Expenses 26 MRSA §1808
6 Reduction Only
8 Advisory
 Committee

10 Sec. 4. 10 MRSA §1023-G is enacted to read:

12 §1023-G. Toxics Use Reduction Loan Fund

14 1. Fund established. The Toxics Use Reduction Loan Fund is
created and established under the jurisdiction of the authority.

16 2. Source of money. The following are to be paid into the
fund:

18 A. All money appropriated for inclusion in the fund or
20 appropriated for use in providing financial assistance for
22 businesses to purchase machinery or equipment to implement
toxics use reduction plans;

24 B. Repayments of loans made by the fund and accrued
26 interest on those loans;

28 C. Interest, income and dividends from investment of the
fund made by the authority;

30 D. Payments to the fund pursuant to Title 26, section 1812;
32 and

34 E. Any other money available to the authority and directed
by the authority to be paid into the fund.

36 3. Application of fund. Money in the fund may be applied
38 to carry out any power of the authority under this section
40 including, but not limited to, the power to pledge or transfer
42 and deposit money in the fund as security for and to apply money
44 in the fund in payment of principal, interest and other amounts
due on the insured loans. Money in the fund may be used for
direct loans or, in limited instances, grants for all or part of
the equipment or machinery necessary to implement toxics use
reduction plans when the authority has determined that:

46 A. The applicant has an approved toxics use reduction plan;

48 B. The loan will be used to purchase machinery or equipment
50 to implement the approved toxics use reduction plan;

52 C. The applicant demonstrates financial need for the
assistance; and

2 D. There is reasonable likelihood that the applicant will
3 be able to repay the loan.

4
5 The authority, pursuant to the Maine Administrative Procedure
6 Act, Title 5, chapter 375, subchapter II, shall adopt rules for
7 determining eligibility, feasibility, terms, conditions and
8 security for the loans and grants. In the case of loans, the
9 authority may charge an interest rate which may be as low as 0%
10 and which may be greater, depending on the financial ability of
11 the applicant to pay as determined by the authority, up to a
12 maximum of 2% below the prime rate of interest charged by major
13 Boston banks. Money in the fund not needed currently to meet the
14 obligations of the authority as provided in this section may be
15 invested in a manner permitted by law.

16
17 4. Accounts within the fund. The authority may divide into
18 such separate accounts as it determines are necessary or
19 convenient for carrying out this section, including, but not
20 limited to, accounts reserved for direct loans and grants.

21 5. Revolving fund. This fund is a nonlapsing, revolving
22 fund. The authority shall apply continuously all money in the
23 fund to carry out the purposes of this section.

24
25 Sec. 5. 26 MRSA c. 23 is enacted to read:

26
27 **CHAPTER 23**

28
29 **TOXICS USE REDUCTION**

30
31 **§1801. Short title**

32
33 This chapter may be known and cited as the "Maine Toxics Use
34 Reduction Act."

35
36 **§1802. Definitions**

37
38 As used in this Act, unless the context otherwise indicates,
39 the following terms have the following meanings.

40
41 1. Agency. "Agency" means the Toxics Use Reduction Agency
42 as established in section 1803.

43
44 2. By-product. "By-product" means all nonproduct outputs
45 of toxic or hazardous substances generated by a production unit
46 prior to handling, transfer, treatment or release.

47
48 3. CAS number. "CAS number" means the identification
49 number assigned by the Chemical Abstract Service, Division of the
50 American Chemical Society.

2 4. CERCLA. "CERCLA" means the federal Comprehensive
Environmental Response, Compensation and Liability Act of 1980,
42 United States Code, Sections 9601 to 9657.

4
6 5. CERCLA hazardous substance. "CERCLA hazardous
substance" means a substance on the list defined in the federal
Comprehensive Environmental Response, Compensation and Liability
8 Act of 1980, 42 United States Code, Sections 9601 to 9657.

10 6. Chemical name. "Chemical name" means the scientific
designation of a substance in accordance with the nomenclature
12 system developed by the International Union of Pure Applied
Chemistry or the system developed by the Chemical Abstract
14 Service.

16 7. Committee. "Committee" means the Toxics Use Reduction
Advisory Committee established in section 1808.

18
20 8. Council. "Council" means the interagency Toxics Use
Reduction Council as established in section 1807.

22 9. E.P.A. identification number. "E.P.A. identification
number" means the 12-digit number assigned by the United States
24 Environmental Protection Agency to facilities covered by
regulations under the federal Resource Conservation and Recovery
26 Act of 1976, 42 United States Code, Sections 6901 to 6986.

28 10. EPCRA. "EPCRA" means the federal Emergency Planning and
Community Right-to-Know Act of 1986, 42 United States Code,
30 Sections 11001 to 11050.

32 11. Executive director. "Executive director" means the
Executive Director of the Toxics Use Reduction Agency.

34
36 12. Extremely hazardous substance. "Extremely hazardous
substance" has the same meaning set forth in the federal
38 Superfund Amendments and Reauthorization Act of 1986, Public Law
99-499, Title III, Section 302, and listed in 40 Code of Federal
Regulations, Part 355.

40
42 13. Facility. "Facility" means all buildings, equipment,
structures, rail tracks or yards, parking areas, airports,
44 loading docks and other stationary items that are located on a
single site or on contiguous or adjacent sites and are owned or
46 operated by the same person or by another person who controls, is
controlled by, or is under common control with that person.
48 "Facility" includes motor vehicles, watercraft, rolling stock and
aircraft.

2 14. Hazardous chemical. "Hazardous chemical" means all
hazardous chemicals as defined under 40 Code of Federal
4 Regulations, Part 355.20.

6 15. Hazardous material. "Hazardous material" means all
chemicals and chemical categories defined as extremely hazardous
8 substances and hazardous chemicals in 40 Code of Federal
Regulations, Part 355.20, and toxic chemicals in 40 Code of
10 Federal Regulations, Part 372.3.

12 16. Large quantity toxics user. "Large quantity toxics
user" means any person who manufactures, processes or otherwise
14 uses any toxic or hazardous substance, as defined in subsection
26, in amounts greater than the threshold amounts.

16 17. Manufacture. "Manufacture" means to produce, prepare,
import or compound a toxic or hazardous substance.

18 18. Mixture. "Mixture" means any combination of 2 or more
20 substances, at least one of which is present as a toxic or
hazardous substance, that do not react chemically with each other.

22 19. Multimedia. "Multimedia" means all environmental media
24 including, but not limited to, water, land and air, and
workplaces within facilities.

26 20. NPDES number. "NPDES number" means the 9-digit number
28 assigned by the United States Environmental Protection Agency to
permits held by a facility under the National Pollution Discharge
30 Elimination System pursuant to the authority granted by the
32 Federal Water Pollution Control Act, 33 United States Code,
Sections 1251 to 1376, as amended by the federal Clean Water Act
of 1977, Public Law 95-217.

34 21. Production process. "Production process" means a
36 process, line, method, activity or technique used to produce a
product, an intermediate product or a desired result. Each key
38 intermediary step in the production of products or desired
results within a facility, including material or product handling
40 or storage, is a "production process."

42 22. Reportable quantity. "Reportable quantity" means, for
any CERCLA hazardous substance or extremely hazardous substance,
44 the reportable quantity established in 40 Code of Federal
Regulations, Part 302, Table 302.4 or in 40 Code of Federal
46 Regulations, Part 355, Appendices A and B, for that substance.

48 23. SIC code. "SIC code" means the standard industrial
classification code that is the identification code assigned to
50 facilities by the United States Department of Commerce.

2 24. Small quantity toxics user. "Small quantity toxics
3 user" means any person who manufactures, processes or otherwise
4 uses, in amounts less than the threshold amounts, any toxic or
5 hazardous substance as defined in subsection 26.

6 25. Threshold amounts. "Threshold amounts" means:

8 A. For those toxics users who use, manufacture or process a
9 toxic or hazardous substance, 100 or more kilograms per
10 calendar month at any one facility; and

12 B. For those toxics users who accumulate a toxic or
13 hazardous substance, 100 or more kilograms per calendar
14 month at any one facility.

16 If the administrator of the United States Environmental
17 Protection Agency sets a threshold quantity for facility
18 reporting on a toxic or hazardous substance under EPCRA, that is
19 lower than a corresponding threshold specified in paragraph A or
20 B, the agency shall change the corresponding threshold for that
21 substance under this chapter to be the same as the federal
22 threshold.

24 26. Toxic or hazardous substance. "Toxic or hazardous
25 substance" means any chemical substance in a gaseous, liquid or
26 solid state that is identified on the toxic or hazardous
27 substance list established pursuant to section 1804, subsection 5.

28 27. Toxics use reduction. "Toxics use reduction" means
29 front-end substitution, product reformulation or in-plant changes
30 in production processes or raw materials that reduce, avoid or
31 eliminate the use of toxic or hazardous substances or generation
32 of hazardous by-products per unit of product to reduce risks to
33 the health of workers, consumers or the environment, without
34 shifting risks between workers, consumers or parts of the
35 environment.

38 28. Trade secret. "Trade secret" means any formula, plan,
39 pattern, process, production data, device, information or
40 compilation of information that is not patented, that is unknown
41 by competitors, that is used in the fabrication and production of
42 an article of trade or service and that gives the possessor a
43 competitive advantage over businesses that do not possess it.
44 "Trade secret" does not include information that is required to
45 be disclosed by law or that is readily discoverable through
46 reverse engineering.

48 **§1803. Establishment of the Toxics Use Reduction Agency**

50 1. Agency established. The Toxics Use Reduction Agency is
51 created as an agency in the executive branch of State
52 Government. The agency is an instrumentality of the State and a

2 body corporate and politic. The exercise by the agency of the
3 powers conferred on the agency in this chapter and the
4 implementation of purpose and duties are essential governmental
5 functions.

6 2. Executive director. The Governor shall appoint the
7 Executive Director of the Toxics Use Reduction Agency subject to
8 review by the joint standing committee of the Legislature having
9 jurisdiction over labor matters and to confirmation by the
10 Legislature. The executive director shall serve at the pleasure
11 of the Governor. The salary of the executive director is
12 established under Title 2, section 6, subsection 2. The
13 executive director is the chief executive officer of the agency.

14 3. Staff employees. Agency staff employees are governed by
15 this subsection.

16 A. The executive director may hire staff, on a temporary or
17 permanent basis, including financial experts.

18 B. Professional employees of the agency must be
19 unclassified. Employees are members of bargaining units
20 subject to Title 26, chapter 9-B.

21 C. Notwithstanding Title 5, section 18, subsection 1, each
22 member of the agency and each employee, contractor, agent or
23 other representative of the agency is deemed an "executive
24 employee" solely for purposes of Title 5, section 18. In
25 addition, Title 17, section 3104, is applicable, in
26 accordance with its provisions, to any such representative
27 of the agency.

28 **§1804. Powers and duties of the agency**

29 The agency is responsible for the implementation of this Act
30 and has the following powers and duties.

31 1. Toxics use reduction. The agency shall promote and
32 encourage toxics use reduction with a goal of a 10% reduction
33 from 1989 quantities of toxic or hazardous substances used in the
34 State by July 1, 1992. The goal is a 30% reduction from 1989
35 quantities by July 1, 1995. The goal is a 10% reduction from
36 1989 quantities in by-products generated by July 1, 1992, and a
37 30% reduction in by-products generated by July 1, 1995. Toxics
38 use reduction may be achieved through any of the following
39 techniques:

40 A. Input substitution, a strategy of replacing a toxic or
41 hazardous substance or raw material used in a production
42 unit with a nontoxic substance;

2 B. Product reformulation, a strategy of substituting for an
4 existing end product, an end product that is nontoxic or
6 less toxic upon use, release or disposal;

8 C. Unit redesign or modification of production processes, a
10 strategy of developing and using production units of a
12 different design than those currently used;

14 D. Production unit modernization, a strategy of upgrading
16 or replacing existing production unit equipment and methods
18 with other equipment and methods based on the same
20 production unit; or

22 E. Improved operation and maintenance of production unit
24 equipment and methods, a strategy of modifying or adding to
26 existing equipment or methods including, but not limited to,
28 such techniques as improved housekeeping practices, system
30 adjustments, product and process inspections, or production
32 unit control equipment or methods.

34 2. Identification of user segments. The agency shall
36 identify, by rule, user segments that the agency considers to be
38 priorities for achieving toxics use reduction, based on
40 recommendations from the council. Important considerations for
42 identifying priority user segments include:

44 A. Amounts of toxic or hazardous substances used by the
46 user segment in the production units of concern and the
48 degree of toxicity;

50 B. Amounts of toxic or hazardous substances disposed of,
52 discharged or released into water, land, air, and workplaces
within facilities;

C. The potential for current and future toxics use
reduction and the technical and economic feasibility of such
reduction;

D. The risk to the public health; and

E. The social and economic benefits and costs to the State,
its political subdivisions and workers.

3. Review. The agency may review any rule, regulation,
administrative consent order, administrative order, compliance
schedule or environmental permit or license issued or pending and
determine if the rule or regulation, order, compliance schedule,
permit or license encourages or requires toxics use reduction.
After review, the agency may recommend that a rule or regulation,
order, compliance schedule, permit or license be modified or
denied to encourage or require toxics use reduction. Permits or
licenses may be denied if toxics use reduction plans are not

2 complete or technically correct or feasible. Priority in this
3 review must be given to user segments identified in subsection 2.

4 4. Coordination. The agency shall review all toxics use
5 reduction laws, rules and policies in the State with a goal of
6 achieving coordination of those laws, rules and policies.

8 5. Maintain list. The agency shall maintain a toxic or
9 hazardous substance list. The agency shall establish a schedule
10 for the addition of chemicals to the toxic or hazardous substance
11 list. The agency shall adjust the toxic or hazardous substance
12 list annually to add or delete substances consistent with changes
13 in the lists of chemicals established pursuant to Title 37-B,
14 chapter 13, subchapter III-A. The agency may include a targeted
15 phase out of particularly dangerous toxics. This list is to
16 include, but not be limited to, CERCLA hazardous substances,
17 extremely hazardous substances, hazardous chemicals and hazardous
18 materials as defined in this chapter.

20 6. Interagency data access; computerization. The agency
21 shall promote, with the assistance of the council, interagency
22 access to computerized occupational and environmental data
23 compiled by state agencies. By July 1, 1991, the agency shall
24 coordinate, to the extent practicable, information about the
25 manufacture, distribution, process, sale, storage, disposal,
26 release or other use of toxics, including the inventory reporting
27 requirement of Title 37-B, chapter 13, subchapter III-A, on a
28 computer system to provide reliable and accessible information
29 statewide to aid in standardizing the inspection, enforcement and
30 other activities of the State. The agency shall cooperate with
31 and make this information readily available to other state
32 agencies through computer connections and other means.

34 7. Inventories and reduction plans. The agency shall
35 develop and provide the forms necessary for inventories under
36 section 1805 and maintain reports submitted under that section.
37 The agency shall establish criteria for acceptance of toxics use
38 reduction plans required under section 1806.

40 8. Fees. The agency shall establish and collect fees,
41 assessments and other charges and expend money received as
42 provided in this chapter.

44 9. Employees. The agency may employ industrial hygienists,
45 toxicologists, economists, engineers and such other employees and
46 consultants as necessary or desirable to carry out agency
47 purposes.

48 10. Investigate. The agency may obtain any information and
49 conduct investigations useful or convenient for carrying out any
50 agency purposes, powers or duties.

52

2 11. Inspect. The agency may enter any property at
4 reasonable hours, and enter any building with the consent of the
6 property owner, occupant or agent, to inspect the property or
8 structure, take samples and conduct tests, as appropriate, to
10 determine compliance with any provision of the laws administered
12 by the agency or the terms or conditions of any order, rule,
14 approval or decision of the agency.

16 12. Public domain. The agency may exercise any of its
18 powers in the public domain of the United States, unless the
20 exercise of those powers is not permitted by the laws of the
22 United States.

24 13. Consolidation of reporting requirements. The agency
26 shall identify all state requirements for reporting on chemical
28 use, release and disposal, and to the maximum extent possible,
30 standardize, consolidate and coordinate these reporting
32 requirements to minimize unnecessary duplication and provide
34 up-to-date and consistent information about manufacturing, worker
36 exposure, distribution, process, sale, storage, disposal, release
38 or other use of chemicals on a facility-wide, region-wide and
40 statewide basis. The agency shall report its findings and
42 recommendations for changes to the Legislature, the joint
44 standing committee of the Legislature having jurisdiction over
46 energy and natural resources matters and the joint standing
48 committee of the Legislature having jurisdiction over labor
50 matters by January 1, 1992.

14. Reporting and enforcement authority. To facilitate the
 coordination of reporting requirements, the agency may seek
 unified reporting and enforcement authority from the United
 States Environmental Protection Agency on federal toxics laws and
 regulations, including, but not limited to, the federal Clean Air
 Act, 42 United States Code, Sections 7401 to 7642; the Federal
 Water Pollution Control Act, 33 United States Code, Sections 1251
 to 1376; the federal Toxic Substances Control Act, 15 United
 States Code, Sections 2601 to 2609; the federal Resource
 Conservation and Recovery Act of 1976, 42 United States Code,
 Sections 6901 to 6986; CERCLA; and any amendments thereto.

15. Ensuring compliance. The agency shall ensure that; to
 the maximum extent practicable, any toxics user found to be
 violating any law or standard for which a toxics use reduction
 strategy is applicable, practices toxics use reduction in order
 to come into compliance with the violated law or standard.

16. Education; research; training; information. The agency
 shall perform educational, research, training and informational
 services. In carrying out these duties, the agency may:

2 A. Provide general information about toxics use reduction
and actively publicize the advantages of and developments in
4 toxics use reduction and the requirements of this Act;

6 B. Establish courses, seminars, conferences and other
events, as well as reports, updates, guides and other
8 publications for toxics users;

10 C. Engage in research, development and demonstration of
toxics use reduction methods;

12 D. Develop a toxics use reduction educational program for
individuals who desire to be toxics use reduction planners.
14 This program must be designed to train toxics use reduction
planners to be qualified to assist in toxics use reduction
16 techniques and prepare, review and approve toxics use
reduction plans established in section 1806;

18 E. Provide toxics use reduction training and assistance to
20 citizens, community groups, workers, labor representatives
and local government boards and officials. At a minimum,
22 this program must assist these individuals and groups in
understanding and reviewing reporting requirements, toxics
24 use reduction plan summaries and citizen petition and
enforcement activities, pursuant to this Act;

26 F. Analyze and disseminate data pertaining to this Act; and

28 G. In cooperation with the Department of Educational and
30 Cultural Services, develop a curriculum suitable for use in
programs from kindergarten through high school.

32 17. Rules. The agency may promulgate rules in accordance
34 with the Maine Administrative Procedure Act, Title 5, chapter
375, to carry out this Act. The agency shall develop and
36 implement, by January 1, 1993, guidelines and rules on
inspections that:

38 A. Ensure, when appropriate, inspections are multimedia in
40 approach;

42 B. Ensure, when appropriate, inspections are performed by
teams of inspectors utilizing existing programs within the
44 Department of Environmental Protection and the Department of
Labor; and

46 C. Minimize duplication of inspection and enforcement by
48 other agencies.

50 18. Interstate cooperation. The agency shall participate
in interstate and national initiatives to adopt uniform state
52 laws, when practicable, and enter compacts between this State and

2 other states for the improved management and reduction of toxic
3 and hazardous chemicals.

4 19. Additional powers. The agency may take all other
5 lawful actions necessary and incidental to the powers enumerated
6 in this section to carry out the requirements of this chapter.

8 20. Operational date. Unless otherwise indicated in this
9 chapter, all programs and functions required of the agency must
10 be developed and operational by January 1, 1992.

12 **§1805. Toxic or hazardous substance inventories**

14 1. Large quantity toxics users; annual reports. Each large
15 quantity toxics user shall provide to the agency, for each
16 facility, an annual report by December 31st for each toxic or
17 hazardous substance manufactured, processed or otherwise used at
18 that facility in amounts equal to or exceeding the applicable
19 threshold amounts. Reporting must be expressed in terms of the
20 mass of each toxic or hazardous substance manufactured, processed
21 or otherwise used. In reporting on each such toxic or hazardous
22 substance, the user shall report the total mass of the substance,
23 whether in pure form or contained in a mixture, subject to the
24 establishment of de minimus levels of chemicals in a mixture by
25 rule of the agency. Each report must include the following
26 facility information.

28 A. The report must include the quantities of the toxic or
29 hazardous substance at the facility that are manufactured;
30 processed; otherwise used; generated as by-product prior to
31 any handling, transfer, treatment or release; and shipped as
32 a product or in a product from the facility.

34 B. Each report must include, for each production unit at
35 the large quantity toxics user's facility in which the toxic
36 or hazardous substance is manufactured, processed or
37 otherwise used, the following information:

38 (1) The information necessary to identify the large
39 quantity toxics user, the facility, the production unit
40 and the toxic or hazardous substance;

42 (2) An indication of whether the toxic or hazardous
43 substance is used in the production unit in amounts:

44 (a) Greater than zero kilograms and less than or
45 equal to 2,000 kilograms;

46 (b) Greater than 2,000 kilograms but less than or
47 equal to 4,000 kilograms; or

48 (c) Greater than 4,000 kilograms;
49
50
51
52

2 (3) A by-product reduction index that is a number that
4 is the result of the following equation: 100 times (A
6 minus B) divided by A, where A represents the quantity
8 of toxics generated as by-product per unit of product
 produced in the reporting base year, and B represents
 that quantity of toxics generated as by-product per
 unit of product produced in the current reporting year;

10 (4) An emissions reduction index that is a number that
12 is the result of the following equation: 100 times (A
14 minus B) divided by A, where A represents the quantity
16 of emissions attributable to the production unit per
 unit of product produced in the reporting base year,
 and B represents the quantity of emissions attributable
 to the production unit per unit of product produced in
 the current reporting year; and

18 (5) A matrix form on which the user indicates the
20 methods by which the increase in the by-product
22 reduction index was achieved for each production
24 operation during the reporting year. On the horizontal
26 axis of the matrix must be listed the toxics use
28 reduction techniques of input substitution, product
30 reformulation, production unit redesign, production
32 unit modernization, improved operation and maintenance
34 of production units and recycling or reuse that is
36 integral to the production unit and the management
38 technique of using by-product as product. On the
40 vertical axis of the matrix must be listed materials
42 handling and storage, processing, operations and
44 finished goods handling. The user shall mark the
 intersection of a production operation row and a
 reduction or management technique column if, during the
 reporting year, implementation of that technique for
 that operation accounted for an increase of 5 or more
 points in the by-product reduction index. In addition,
 the matrix must contain another column listed
 "miscellaneous" on the horizontal axis. The user shall
 mark the intersection of a product operation row and
 the miscellaneous column if, during the reporting year,
 implementation of 2 or more of the reduction or
 management techniques not otherwise marked for that row
 together account for an increase of 5 or more points in
 the by-product reduction index.

46 C. For the information submitted under this subsection, the
48 user shall maintain at the facility documentation necessary
50 to substantiate the information submitted, including, but
52 not limited to, documentation of the quantity of the toxic
 or hazardous substance used in each production unit and the
 quantity generated as by-product by each production unit.

2 2. Small quantity toxics users. Each small quantity toxics
4 user shall maintain at the facility documentation of the quantity
6 of any toxic or hazardous substance used in each production unit
 and the quantity generated as by-product by each production unit.

8 §1806. Toxics use reduction plans

10 1. Large quantity toxics users. Large quantity toxics
12 users, in accordance with criteria established by the agency,
14 shall prepare and complete a toxics use reduction plan for each
16 facility for which they are required to file a report in that
 year. In preparing plans, large quantity toxics users shall
 comply with the requirements of this section for those toxic or
 hazardous substances for which the large quantity toxics users
 are required to file inventories.

18 A. The plan, in general, must include:

20 (1) A statement of facility-wide management policy
22 regarding toxics use reduction; and

24 (2) A statement of the scope and objectives of the
26 plan, including the planned reductions in facility-wide
28 use and by-product generation from the relevant base
 year for each covered toxic or hazardous substance, for
 the first 2 years of the plan and for the following 3
 years.

30 B. The plan must include for each production unit in which
32 a toxic or hazardous substance is manufactured, processed or
 otherwise used:

34 (1) A comprehensive economic and technical evaluation
36 of appropriate technologies, procedures and training
 programs for achieving toxics use reduction for each
 toxic or hazardous substance;

38 (2) An analysis of current and projected toxics use,
40 by-product generation and emissions;

42 (3) An evaluation of the types and amounts of toxic or
44 hazardous substances used;

46 (4) An identification of the economic impacts of the
48 use of each toxic or hazardous substance in the
50 production unit, including, but not limited to, raw
 material and by-product storage and handling costs,
 potential liability costs and costs associated with
 regulation;

- 2 (5) An identification of each technology, procedure or
4 training program to be implemented for achieving toxics
 use reduction, the anticipated costs of implementation
 and the anticipated savings expected;
- 6 (6) A schedule for implementation of any such
8 technologies, procedures and training programs;
- 10 (7) For each toxic or hazardous substance, the goals
 for the by-product reduction index reported pursuant to
12 section 1805;
- 14 (8) For each toxic or hazardous substance, the goals
 for the emissions reduction index reported pursuant to
16 section 1805; and
- 18 (9) For each plan filed subsequent to the first plan,
 a report on implementation of the previous year's plan.

20 C. Each toxics use reduction plan must be approved by the
22 agency or its designee as meeting the criteria for
24 acceptable plans. Environmental permits or licenses may be
 denied as a result of unacceptable plans. If the plan is
 found to be unacceptable, the user has 90 days to correct
26 the deficiency.

28 D. Plans must be submitted annually by December 31st
 beginning in 1991.

30 E. The public may comment on the plan within 60 days of the
32 filing of the plan. The public comments must be taken into
34 consideration in the agency's review of the plan. For
 purposes of the Maine Administrative Procedure Act, agency
 approval or rejection of a plan is a final agency action.

36 2. Small quantity toxics users. A small quantity toxics
38 user is not required under this Act to develop a toxics use
40 reduction plan, but is encouraged to contact the agency for
 assistance in determining the need for implementation of a toxics
 use reduction strategy.

42 **§1807. Toxics Use Reduction Council**

44 1. Council established. The Toxics Use Reduction Council
46 is established as an interagency council. The council must be
48 composed of the Commissioner of Labor, the Commissioner of
 Environmental Protection, the Director of the State Planning
50 Office, the Executive Director of the Maine Science and
 Technology Commission, the Director of the Bureau of Health, the
52 Director of the Division of Health Engineering, the Director of
 the Maine Emergency Management Agency, the Executive Director of
 the Maine Waste Management Agency and the Commissioner of

2 Economic and Community Development. The Executive Director of
3 the Toxics Use Reduction Agency shall sit on the council in an ex
4 officio capacity. The Commissioner of Labor shall serve as the
5 chair of the council and shall direct and coordinate the
6 activities of the council. The agency shall provide staff
7 assistance to the council.

8 2. Duties. In addition to any other duties in this Act,
9 the council shall advise the agency as follows. By July 1, 1991,
10 and annually thereafter, the council shall identify all federal
11 and state laws, regulations or rules pertaining to chemical
12 production and use, hazardous waste, industrial hygiene, worker
13 safety, public exposure to toxics and releases of toxics into the
14 environment. The council shall promote increased coordination of
15 efforts to enforce these laws, regulations or rules and determine
16 how state programs should be coordinated to promote effective
17 toxics use reduction in the State. The council shall determine
18 an effective means to coordinate environmental and other permits
19 with toxics reduction strategies, and shall submit any
20 recommended implementing legislation to the Legislature and the
21 Governor by January 1, 1992.

22 **§1008. Toxics Use Reduction Advisory Committee**

23
24 The Toxics Use Reduction Advisory Committee, as authorized
25 in Title 5, section 12004-I, subsection 54-A, shall serve as a
26 review body to assess the progress in implementation of this Act
27 and shall advise the agency in carrying out the policies and
28 purposes of the agency.

29
30 1. Membership. The Governor shall appoint the chair of the
31 committee. The committee shall consist of 11 members: 4 members
32 appointed by the Governor; 3 members appointed by the President
33 of the Senate; 3 members appointed by the Speaker of the House of
34 Representatives; and one member appointed by the Chancellor of
35 the University of Maine System.

36
37 A. The Governor shall appoint 2 representatives from the
38 business community and 2 representatives of organized
39 labor. At least one of the representatives from the
40 business community must represent the interests of toxics
41 users.

42
43 B. The President of the Senate shall appoint one member
44 from the public health community, one member from the
45 environmental community and one public member.

46
47 C. The Speaker of the House of Representatives shall
48 appoint one member from the public health community, one
49 member from the environmental community and one public
50 member.

51
52

2 Membership of the committee must include an industrial hygienist,
3 a chemical engineer and an environmental scientist.

4 2. Terms. All members shall be appointed for staggered
5 terms of 3 years. A vacancy must be filled by the same
6 appointing authority which made the original appointment.

8 3. Compensation. Members are entitled to compensation
9 according to Title 5, section 12004-I, subsection 54-A.

10 4. Quorum; actions. A quorum is a majority of the members
11 of the committee. An affirmative vote of the majority of the
12 members present at a meeting is required for any action. Action
13 may not be considered unless a quorum is present.

14 5. Meetings. The committee shall meet at least 4 times per
15 year and at any time at the call of the chair or upon written
16 request to the chair by 4 of the members.

17 6. Staff support. The agency shall provide the committee
18 with all necessary staff support.

19 7. Duties. The committee shall:

20 A. Review any matters submitted by the agency concerning
21 any aspect of the provisions or implementation of this Act
22 and report its recommendations to the agency;

23 B. Conduct an ongoing review of the implementation of this
24 Act and submit any recommendations for administrative or
25 legislative changes to the agency;

26 C. If necessary, assist worker or citizen groups in
27 enforcement of their rights created in section 1809; and

28 D. Report annually to the Legislature, the Chancellor of
29 the University of Maine System and the Governor on the
30 functioning of the agency and on progress toward meeting the
31 toxics use reduction and by-product generation goals.

32 8. Powers. The committee may:

33 A. Advise the agency concerning information submitted in
34 hazardous substance inventories and toxics use reduction
35 plans, including the addition or deletion of hazardous
36 substance inventories and changes in the method of reporting
37 information;

38 B. Review the scientific literature concerning the
39 occupational, public health and environmental risks
40 presented by exposures to discharges of specific hazardous
41 substances, evaluate scientific interpretations of these
42

2 risks and assess the risks of the discharge of these
3 hazardous substances into the environment;

4 C. Conduct periodic reviews of the criteria adopted by the
5 agency for the submission of toxics use reduction plans and
6 make recommendations for administrative or legislative
7 changes; and

8
9 D. Study and evaluate the practicability and feasibility of
10 achieving reductions in the use or discharge of specific
11 hazardous substances without reductions in employment levels
12 through the use of substitute substances, alternate
13 procedures or processes, or other means.

14
15 9. Goal revision. The committee shall recommend revisions,
16 if appropriate, to the state toxics use reduction goals. The
17 committee shall recommend the goals for years after 1995 to the
18 Legislature and the Governor. The committee shall submit its
19 recommendations and any implementing legislation to the joint
20 standing committee of the Legislature having jurisdiction over
21 energy and natural resources matters and the joint standing
22 committee of the Legislature having jurisdiction over labor
23 matters by January 1, 1994.

24 **§1809. Community right to know**

25
26
27 1. Request. The agency shall make available to any person
28 any report or plan summary required by section 1805 or 1806. Any
29 person or citizen or worker group may request in writing that the
30 agency:

31
32 A. Examine a toxics use reduction plan, a plan summary or
33 any required background data to determine the adequacy of
34 the plan or summary; or

35
36 B. Determine the validity of a trade secret claim.

37
38 2. Agency report. The agency shall report its
39 determination within 30 days to the requester and the toxics user
40 that submitted the plan, summary or data examined. For purposes
41 of the Maine Administrative Procedure Act, the determination of
42 the agency under this section is a final agency action.

43 **§1810. Enforcement; penalties**

44
45
46 1. Agency orders. The agency may issue orders requiring
47 the owner or operator of a facility or other responsible person
48 at a facility to abate a violation of any section of this chapter
49 or rule adopted under this chapter.

50
51
52 2. Civil penalties. A person who violates any provision of
section 1805 or 1806 is subject to a civil penalty not to exceed

2 \$25,000, payable to the Toxics Use Reduction Fund, to be
3 recovered in a civil action. Minimum penalties under this
4 subsection shall be \$100 per day. Each day of violation
5 constitutes a separate violation.

6 3. Criminal penalties. A person who intentionally,
7 knowingly or recklessly fails to comply with section 1805 or 1806
8 commits a Class C crime and, notwithstanding Title 17-A, section
9 1301, is subject to a fine of not more than \$25,000 for the first
10 offense and not more than \$50,000 for a subsequent offense. For
11 purposes of determining a subsequent offense, the date of a
12 conviction is deemed to be the date the sentence is imposed even
13 though an appeal was taken.

14 4. Authority to bring civil actions. Civil actions may be
15 brought as follows.

16 A. Any person may commence a civil action on that person's
17 own behalf against the owner or operator of a facility for
18 failure to do any of the following:

19 (1) Submit an annual report under section 1805; or

20 (2) Submit a plan or inventory under section 1806.

21 B. Action may not be brought against the owner or operator
22 of a facility if the Federal Government or the State has
23 commenced and is diligently pursuing an administrative
24 order, civil action or criminal action to enforce the
25 requirement concerned or to impose a civil penalty for an
26 alleged violation of the requirement, either under this
27 subsection or under comparable federal law, rule or
28 regulation.

29 C. Action may not be commenced under this subsection unless
30 the plaintiff has given at least 60 days' prior notice, to
31 the agency, the Attorney General and the owner or operator
32 of the facility alleged to be in violation, that the
33 plaintiff will commence the action.

34 D. Action brought against an owner or operator under this
35 subsection must be brought in Superior Court for the county
36 in which the alleged violation occurred.

37 E. This subsection does not restrict or expand any right
38 that any person or class of persons may have under any
39 federal or state law or common law to seek enforcement of
40 any requirement or to seek any other relief.

41 F. In any action under this subsection, the Federal
42 Government or the State, or both, may intervene as a matter
43 of right.

2 G. In any action under this subsection, any person may
4 intervene as a matter of right when that person has a direct
6 interest that is or may be adversely affected by the action
8 and the disposition of the action may, as a practical
10 matter, impair or impede the person's ability to protect
12 that interest, unless the court determines that the person's
14 interest is adequately represented by existing parties in
16 the action.

18 **§1811. Fees**

20 1. Fees required. Large quantity toxics users are subject
22 to the fees established pursuant to subsection 2. All fees
24 collected pursuant to this section must be deposited in the
26 Toxics Use Reduction Fund.

28 2. Fees established. The agency, subject to the Maine
30 Administrative Procedure Act, Title 5, chapter 375, shall
32 promulgate rules to establish a fee schedule for:

34 A. Facilities reporting under sections 1805 and 1806, not
36 to exceed \$100 per facility; and

38 B. Reporting toxic or hazardous substances, on a weight
40 basis per chemical.

42 3. Fee exemptions. The following operators are exempt from
44 the following requirements under this section.

46 A. Retail marketers of petroleum products with a storage
48 capacity of 75,000 pounds or less per product are exempt
50 from the reporting fee.

52 B. A facility that uses, manufactures, processes or
54 accumulates less than 4,000 kilograms of toxic or hazardous
56 substances per year is exempt from the reporting fee under
58 subsection 2, paragraph B.

60 **§1812. Toxics Use Reduction Fund**

62 1. Establishment. The Toxics Use Reduction Fund is
64 established as a nonlapsing fund to be used to carry out the
66 purposes of this Act. All fees collected and all fines or
68 penalties assessed pursuant to this Act must be credited to this
70 fund.

72 2. Disbursements allowed. The agency shall make
74 disbursements from the fund for the following purposes:

76 A. To fund the agency;

2 B. To fund the Toxics Use Reduction Loan Fund established
in Title 10, section 1023-G; and

4 C. To fund the Fund for Workers Displaced by Toxics Use
Reduction established in section 1813.

6 **§1813. Fund for Workers Displaced by Toxics Use Reduction**

8 **1. Fund created.** The Fund for Workers Displaced by Toxics
Use Reduction is established as a nonlapsing fund to be
administered by the agency.

12 **2. Rules.** The agency, in conjunction with the council and
the advisory committee, shall promulgate rules in accordance with
the Maine Administrative Procedure Act, for the operation and
administration of the fund. The rules must at a minimum:

18 A. Establish guidelines for the application for and
disbursement of money in the fund; and

20 B. Ensure that benefits under the fund are not duplicative
of other benefits available to displaced workers.

24 **§1814. Trade secret claim**

26 Information that constitutes a trade secret may be withheld
from the agency, subject to the exceptions and procedures of this
section.

30 **1. Claim procedure.** If the owner or operator of a facility
believes that disclosing information required by this Act will
reveal a trade secret, the owner or operator may withhold that
information from the agency, if the owner or operator files with
the agency a trade secret claim for any information withheld.
The claim must specifically state how the information withheld
meets the definition of a trade secret in this Act. The claim
must be filed with the agency at least 60 days prior to the
deadline for filing the information required by this Act.

40 **2. Determination of request.** The agency may determine the
validity of a trade secret claim when a request is made pursuant
to this section, or at any time the agency determines appropriate.

44 A. If the agency determines that a trade secret claim is
not valid, the agency shall notify the claimant of the
determination by certified mail. The business shall file
any information withheld during the pendency of the claim
within 30 days of the receipt of the agency's
determination. For purposes of the Maine Administrative
Procedure Act, the agency's determination is a final agency
action.

2 B. To assist in administering this Act and determining the
4 validity of a trade secret claim, the agency may require a
6 business making a trade secret claim to submit 2 copies of
8 the annual report or toxics use reduction plan to the
10 agency, one copy with the information for which a trade
 secret claim is being made withheld and one copy in an
 envelope marked "Confidential" containing the information
 for which a trade secret claim is being made, which the
 agency during the pendency of the claim procedure shall keep
 in a locked file or room.

12 3. Confidential information. The subject of any trade
14 secret claim pending or approved must be treated as confidential
16 information. The agency shall not disclose any confidential
18 information to any person except an officer or employee of the
20 State in connection with the official duties of the officer or
22 employee under any law for the protection of public health, or to
24 contractors of the State and their employees if, in the opinion
 of the agency, the disclosure is necessary for the completion of
 any work contracted for in connection with the implementation of
 this Act. Any officer, employee or contractor of the State who
 has access to any confidential information, and who willingly and
 knowingly discloses the information to any person not authorized
 to receive that information, is guilty of a Class E crime.

26 **§1815. Indemnification**

28 The agency shall defend and indemnify any employee of the
30 agency, including the executive director and any member of the
32 council or committee, against expenses actually and necessarily
34 incurred by the person in connection with the defense of any
 action or proceeding in which the person is made a party by
 reason of past or present association with the agency.

36 **§1816. Confidential information**

38 Except as provided in section 1814, information obtained by
40 the agency under this Act is a public record as provided by Title
42 1, chapter 13, subchapter I. Any record containing information
 for which a trade secret claim is pending or has been approved
 must be made available to the public with that information
 concealed.

44 **§1817. State procurement policy**

46 The Department of Administration shall establish procurement
48 policies for state agencies, so that goods and services are
50 purchased from businesses engaged in toxics use reduction. This
 procurement policy must take effect July 1, 1992.

2 §1818. Sunset

4 For purposes of the Maine Sunset Act, Title 3, chapter 33,
6 the agency has its first justification report in accordance with
8 Title 3, section 924, due no later than March 31, 1999, and the
10 evaluation and analysis, in accordance with Title 3, section 927,
prepared by the joint standing committee of the Legislature
having jurisdiction over audit and program review, due no later
than June 30, 2000. Notwithstanding Title 3, sections 926 and
927, the agency shall not terminate.

12 **Sec. 5. Appropriation.** The following funds are appropriated
14 from the General Fund to carry out the purposes of this Act.

16 **1990-91**

18 **TOXICS USE REDUCTION FUND**

20 **Toxics Use Reduction Fund**

22 All Other \$402,554

24 Provides funds to be transferred to the
26 Toxics Use Reduction Fund on the effective
28 date of this Act. The amount must be repaid
in full by a transfer of revenues from the
Toxics Use Reduction Fund to the General
Fund in fiscal year 1990-91.

30 **Sec. 6. Allocation.** The following funds are allocated from the
32 Toxics Use Reduction Fund to carry out the purposes of this Act.

34 **1990-91**

36 **TOXICS USE REDUCTION AGENCY**

38 **Toxics Use Reduction Agency**

40 Positions (7)
42 Personal Services \$137,554
All Other 185,000
Capital Expenditures 80,000

44 Provides funds for an Executive Director
46 position, 3 professional positions, one
Business Manager II position and 2 clerical
48 positions; expenses of the Toxics Use
Reduction Advisory Committee; office costs
for the agency; costs of a data management

and information system; and costs of consulting services for technical assistance.

**TOXICS USE REDUCTION AGENCY
TOTAL**

\$402,554

FISCAL NOTE

Enactment of this bill would result in:

1. A General Fund appropriation to the Toxics Use Reduction Fund in the amount of \$402,554 for fiscal year 1990-91;

2. An allocation of dedicated revenue to the Toxics Use Reduction Agency in the amount of \$402,554 for fiscal year 1990-91;

3. An increase in revenue to the General Fund of \$402,554 for fiscal year 1990-91; and

4. An increase in revenue to the Toxics Use Reduction Fund of \$402,554 for fiscal year 1990-91.

This bill appropriates \$402,554 from the General Fund to the Toxics Use Reduction Fund as a loan. These funds are to be repaid from dedicated revenues collected by the Toxics Use Reduction Agency. The estimate of revenues and the repayment of the loan to the General Fund is based on the assumption that the Toxics Use Reduction Agency will be able to establish a fee schedule sufficient to raise this amount of revenue to carry out the purposes of this Act.

Finally, the exact total amount of annual revenue to be generated from the assessed fees authorized by this bill cannot be determined at this time.

STATEMENT OF FACT

The use of toxic substances and the production of hazardous wastes has adversely affected the health and safety of Maine workers and the public and has significantly damaged the environment of the State. Historically, laws designed to deal with toxic substances and hazardous wastes have focused on the control and treatment of the substances and wastes at the end of the production process. A frequent result of this policy has been the shifting of the toxic pollution from one discharge medium to another. This method still places worker health and the safety of the environment at risk.

2 This bill seeks to reduce the use of toxic or hazardous
materials and substantially eliminate the production of hazardous
waste. To this end, the bill establishes the Toxics Use
4 Reduction Agency. The goals of the bill are:

6 1. To establish a statewide goal of reducing by 30% the use
of toxic or hazardous substances by 1995 using toxics use
8 reduction as the means for achieving this objective;

10 2. To establish toxics use reduction as the preferred means
for achieving compliance with any federal or state law,
12 regulation or rule pertaining to toxics production or use,
hazardous waste, industrial hygiene, worker safety, public
14 exposure to toxics or release of toxics into the environment,
including all permitting and licensing requirements;

16 3. To phase out the use of chemicals and substances that do
18 not have any safe exposure limits;

20 4. To enhance and strengthen the enforcement of existing
environmental laws and rules within the State; and

22 5. To promote coordination and cooperation between all
24 state departments and agencies administrating toxics-related
programs, waste disposal programs and chemical identification
26 programs.