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301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

301 CMR 40.00: TOXIC USE FEE

Section

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40.01: Authority and Purpose

(1) Authority. The Administrative Council On Toxics Use Reduction adopts 301 CMR 40.00 pursuant to M.G.L. c. 21I, §§ 4(C) and 19.

(2) Purpose. The Administrative Council on Toxics Use Reduction promulgates 301 CMR 40.00 to carry out its authority and responsibility:

- (a) to promote the coordination and enforcement of federal and state laws and regulations pertaining to chemical production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxics and the release of toxics into the environment;
- (b) to coordinate state programs in order to promote most effectively toxics use reduction in the Commonwealth;
- (c) to minimize unnecessary duplication of reporting requirements concerning chemical or hazardous substance production, use, release, disposal, and worker exposure;
- (d) to provide up-to-date and consistent information about manufacturing, worker exposure, distribution, process, sale, storage, release or other use of chemicals on a facility, regional and statewide basis;
- (e) to adjust and to determine the toxics use fee under M.G.L. c. 21I, § 19; and
- (f) to otherwise effectuate the purposes of M.G.L. c. 21I.

40.02: Definitions

Commissioner means the Commissioner of the Department of Environmental Protection or his/her designee.

Council means the Administrative Council on Toxics Use Reduction as established by M.G.L. c. 21I, § 4.

Department means the Department of Environmental Protection.

EPCRA means the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 1101 *et seq.* (Public Law 99-499).

Full-time Individual Employed or Full-time Equivalent, as those phrases are used in M.G.L. c. 21I, § 19 and in 301 CMR 40.00 mean each 2,000 hours worked per year by an employee or combination of employees.

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with such person. A facility may consist of more than one establishment if the establishments are operated by persons who have a common corporate or business interest (including, without limitation, common ownership or control) in the establishments. If the facility consists of more than one establishment where the establishments are operated by persons who do not have a common corporate or business interest (including, without limitation, common ownership or control) in the establishments, then each such person shall treat the establishments it operates as a facility. For purposes of 301 CMR 40.02: Facility, a "common corporate or business interest" includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by the other, or ownership of a controlling interest in both persons by a third person.

40.02: continued

Higher Hazard Substance means a substance designated by the Council as a higher hazard substance pursuant to M.G.L. c. 21I, § 9 and 301 CMR 41.00.

Large Quantity Toxics User means any toxics user who manufactures, processes or otherwise uses any toxic or hazardous substance in an amount the same as or greater than the applicable threshold amount in a calendar year at a facility. When more than one threshold applies to a facility's manufacturing, processing, or other use of a toxic substance, the toxics user is a large quantity toxics user if the facility exceeds any applicable threshold.

Lower Hazard Substance means a substance designated by the Council as a lower hazard substance pursuant to M.G.L. c.21I, § 9 and 301 CMR 41.00.

Manufacture means to produce, prepare, import or compound a toxic or hazardous substance. Manufacture shall also mean to produce a toxic or hazardous substance coincidentally during the manufacture, processing, use or disposal of another substance or mixture of substances, including a toxic substance that is separated from such other substance or mixture of substances as a byproduct, and a toxic substance that remains in such other substance or mixture of substances as an impurity.

Person means any individual, trust, firm, joint stock company, corporation, partnership or association engaged in business or in providing service, excluding the Commonwealth of Massachusetts, and any authority, district, municipality or political subdivision of the Commonwealth of Massachusetts.

Process means the preparation of a toxic or hazardous substance, after its manufacture, for distribution in commerce:

- (a) in the same form or physical state, or in a different form or physical state from, that in which it was received by the toxics user so preparing such substance; or
- (b) as part of an article containing the toxic or hazardous substance.

SIC Code or Standard Industrial Classification Code means a specific identification code, within the identification code system developed by the United States Chamber of Commerce, assigned to a facility.

Threshold Amounts or Threshold Amount mean the following;

- (a) for those toxics users that manufacture or process a toxic or hazardous substance the threshold amount for a toxic or hazardous substance shall be 25,000 pounds each year at any one facility, except the threshold will be 1,000 pounds each year at any one facility for a higher hazard substance; and
- (b) for those toxics users that otherwise use a toxic or hazardous substance, the threshold amount for a toxic or hazardous substance shall be 10,000 pounds each year at any one facility, except the threshold will be 1,000 pounds each year at any one facility for a higher hazard substance.
- (c) if the administrator of the United States Environmental Protection Agency sets a threshold quantity for facility reporting on a toxic or hazardous substance under Section 313 of EPRCA which is lower than a corresponding threshold amount specified in 301 CMR 40.02: Threshold Amounts or Threshold Amount(a) or (b), the corresponding threshold for that substance under M.G.L. c. 21I shall be the same as the federal threshold.
- (d) if the Council sets a threshold amount in 301 CMR 41.00 for a higher hazard substance below that which is specified in 301 CMR 40.02: Threshold Amounts or Threshold Amount(a) or (b), that lower threshold shall apply for that higher hazard substance.

Toxic means toxic or hazardous.

Toxic or Hazardous Substance means a substance in a gaseous, liquid, solid or other form which is identified on the toxic or hazardous substance list established pursuant to M.G.L. c. 21I, § 9 and 301 CMR 41.00, but which will not include any substance when it is:

40.02: continued

- (a) present in an article;
- (b) used as a structural component of a facility;
- (c) present in a product used for routine janitorial or facility grounds maintenance;
- (d) present in foods, drugs, cosmetics or other personal items used by employees or other toxics users at a facility;
- (e) present in a product used for the purpose of maintaining motor vehicles operated by a facility;
- (f) present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or present in the air used either as compressed air or part of combustion;
- (g) present in a pesticide or herbicide when used in agricultural applications;
- (h) present in crude, lube, or fuel oils or other petroleum materials being held for direct wholesale or retail sale; or
- (i) present in crude or fuel oils used in combustion to produce electricity, steam or heat except when production of electricity, steam or heat is the primary business of a facility.

Toxic or Hazardous Substance List means the list of toxic or hazardous substances established pursuant to M.G.L. c. 21I, § 9 and 301 CMR 41.00.

Toxics means toxic or hazardous substances as defined in 301 CMR 41.02.

Toxics Use Fee means the fee in 301 CMR 40.00 established under, and assessed pursuant to M.G.L. c. 21I, § 19.

Toxics User means the following:

- (a) a person who owns or operates a facility that manufactures, processes or otherwise uses any toxic or hazardous substance that is classified in SIC Codes 10 through 14, 20 through 40, 44 through 51, 72, 73, 75 and/or 76, or the corresponding NAICS codes.
- (b) If a person owns a facility, and that person's only interest in the facility is ownership of the real estate upon which the facility is operated, then, with respect to that facility, that person is not a toxics user. This includes, without limitation, owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments within SIC codes 10 through 14, 20 through 40, 44 through 51, 72, 73, 75 and/or 76, or the corresponding NAICS codes, where the owner has no other business interest in the operation of the facility or establishment.

40.03: Toxics Use Fees

- (1) Applicability.
 - (a) For each facility in each year that a toxics user is required to file a toxics use report in accordance with M.G.L. c. 21I, the toxics user shall pay to the department a toxics use fee calculated pursuant to 301 CMR 40.03.
- (2) Calculation of Toxics Use Fee. The toxics use fee for a facility shall be the sum of a base fee and toxics fee but shall not exceed the maximum fee for that facility. 301 CMR 40.03(2)(a), (b) and (c) set forth the amount of the base fee, toxics fee and maximum fee.
 - (a) Base Fee. For each facility, a toxics user shall determine the base fee in accordance with the following chart:

<u>Full-Time Individuals Employed</u>	<u>Base Fee</u>
10 - 49	\$1,850.00
50 - 99	\$2,775.00
100 - 499	\$4,625.00
500 or more	\$9,250.00

40.03: continued

- (b) Toxics Fee. For each facility, a toxics user shall pay a toxics fee of \$1,100.00 for each toxic manufactured, processed or otherwise used in amounts equal to or greater than the applicable threshold amount, except that there shall be no toxics fee for any toxic designated as a lower hazard substance pursuant to 301 CMR 41.00.
- (c) Maximum Fee. For each facility, the maximum fee is listed below:

<u>Full-Time Individuals Employed</u>	<u>Maximum Fee</u>
10 - 49	\$5,550.00
50 - 99	\$7,400.00
100 - 499	\$14,800.00
500 or more	\$31,450.00

40.04: Late Fee

- A toxics user shall pay an additional \$1,000.00 administrative fee if:
- (a) the toxics user fails to file a toxics use report within 30 days after July 1st of the applicable year in which the toxics use report is required; or
 - (b) the toxics user fails to make payment of an assessed toxics use fee within 30 days of the date payment is due as specified by the department.

40.05: Fee Waiver

- (1) On or before July 1st of any year, any toxics user who employs the equivalent of fewer than 100 full-time individuals may apply to the Commissioner for a waiver of the toxics use fee for that year. The Commissioner may prescribe the information, form and manner of the submittal of waiver applications. Such information shall include an explanation of why the toxics user is requesting a waiver of the toxics use fee, including a description of specific circumstances affecting the toxics user, and shall include supporting documentation including, but not limited to, the following:
 - (a) a copy of the toxics user’s federal tax returns for the most recent three years and a completed Form 4506-T authorizing the Internal Revenue Service to provide a transcript of the three year’s tax returns to the Department; and
 - (b) if applicable, a copy of Court documents showing approval of Chapter 11 bankruptcy application.
- (2) For good cause shown, which shall include, at a minimum, the severe financial hardship of the toxics user, the Commissioner may waive the fee for that year in whole or in part, or extend the time for paying any part of the fee.
- (3) Annually, the Commissioner shall report to the Administrative Council the toxics users receiving waivers and the terms and conditions of the waivers.

REGULATORY AUTHORITY

301 CMR 40.00: M.G.L. c. 21I, §§ 4(C) and 19.