

310 CMR 70.00: ENVIRONMENTAL RESULTS PROGRAM CERTIFICATION

Section

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70.01: Purpose and Authority

(1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring Environmental Results Program (ERP) facilities or units to submit a performance based compliance certification to the Department.

(2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), M.G.L. c. 21A, §§ 2, 13 and 16, M.G.L. c. 21C (the Hazardous Waste Management Act), M.G.L. c. 21H, §§ 6A through 6N (the Mercury Management Act), M.G.L. c. 21O, § 4 (The Operation and Removal of Underground Storage Tanks), M.G.L. c. 111, §§ 142A through 142M (the Massachusetts Clean Air Act) and M.G.L. c. 111 § 150A (the Solid Waste Management Act).

70.02: Definitions

The definitions found in 310 CMR 70.02 are for use only in the compliance certification requirements contained in 310 CMR 70.00 and are not intended to replace the definitions of those terms in the underlying standards.

Certification means the certification form as prescribed by the Department pursuant to 310 CMR 70.03(2), which includes the certification statement requirements pursuant to 310 CMR 70.03(2).

Department means the Massachusetts Department of Environmental Protection.

Environmental Results Program (ERP) Facility or Unit means one of the following:

- (a) a dry cleaner subject to 310 CMR 7.26(10) through (16);
- (b) a photo processor subject to 310 CMR 71.00: *Industrial Wastewater Regulations for Photo Processors*;
- (c) a printer as defined in 310 CMR 7.26(22): Printer;
- (d) a boiler subject to 310 CMR 7.26(30) through (37);
- (e) an engine or combustion turbine subject to 310 CMR 7.26(40) through (44);
- (f) a dental facility subject to 310 CMR 73.00: *Amalgam Wastewater and Recycling Regulations for Dental Facilities*;
- (g) an industrial wastewater holding tank subject to 314 CMR 18.00: *Industrial Wastewater Holding Tank and Container Construction, Operation, and Record Keeping Requirements*.
- (h) a scrap recycling facility, vehicle recycler or vehicle manufacturer subject to 310 CMR 74.00: *Removal and Recycling of Mercury-added Components in Vehicles*;
- (i) a manufacturer of a mercury-added product subject to 310 CMR 75.00: *Collection and Recycling, Labeling, and Sales Ban of Mercury-added Products*;
- (j) a manufacturer of mercury-added lamps subject to 310 CMR 75.00: *Collection and Recycling, Labeling, and Sales Ban of Mercury-added Products*; or
- (k) an underground storage tank system subject to 310 CMR 80.00: *Underground Storage Tank (UST) Operator Training*.

ERP Sector means all ERP facilities or units of one type, with the exception of printers where the certification requirements for very small printers differ from those of other printers as defined in 310 CMR 7.26(22): *Definitions*.

Operator means the person responsible for the over-all operation of an ERP facility or unit.

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Owner means any person who has legal or equitable ownership, alone or with others, of an ERP facility or unit, including, but not limited to, any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

Person means any individual, partnership, corporation, syndicate, company, firm, association, authority, department, bureau, trust or group including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.

Responsible Official is one of the following:

- (a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility or unit;
- (b) For a partnership: a general partner with the authority to bind the partnership or the proprietor, respectively;
- (c) For a sole proprietorship; the sole proprietor;
- (d) For a municipality, state, federal, or other public agency including any legislatively created authority, board, commission, district, *etc.*: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

Standards means those requirements listed in the certification form referred to in 310 CMR 70.03(2), including but not limited to 310 CMR 7.00: *Air Pollution Control*, 30.00: *Hazardous Waste*, 71.00: *Industrial Wastewater Regulations for Photo Processors*, 72.00: *Industrial Wastewater Standard for Dry Cleaners*, 73.00: *Amalgam Wastewater and Recycling Regulations for Dental Facilities*, 74.00: *Removal and Recycling of Mercury-added Components in Vehicles*, 75.00: *Collection, Recycling, Labeling, and Sales Ban of Mercury-added Products*, 314 CMR 3.00: *Surface Water Discharge Permit Program*, 5.00: *Ground Water Discharge Permit Program*, or 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers*, requirements contained in NESHAP's (40 CFR Part 61 Subparts, and Part 63) or NSPS's (40 CFR Part 60 Subparts) that have been delegated to Massachusetts, and the terms and conditions of any permits issued pursuant to any of those regulations.

70.03: Compliance Certification Requirements

(1) Schedule for Submission of Compliance Certification.

- (a) The owner or operator of each ERP facility or unit shall submit a certification in accordance with 310 CMR 70.03(2) and thereafter shall submit, as applicable, a periodic compliance certification in accordance with the schedule set forth herein for the specific type of ERP facility or unit.
- (b) The owner or operator of each ERP facility or unit, except underground storage tank systems subject to 310 CMR 80.00: *Underground Storage Tank (UST) Operator Training*, shall submit a compliance certification in accordance with 310 CMR 70.03(1) and (2) within 60 days of:
 1. the commencement of operation of a new ERP facility or unit; except for boiler(s) subject to 310 CMR 7.26(30): *U Boilers - Applicability* that must submit a certification in accordance with the schedule in 310 CMR 7.26(32): *Certification*;
 2. the recommencement of operation of an ERP facility or unit for which no certification was submitted during the year prior to recommencement; except for boiler(s) subject to 310 CMR 7.26(30): *U Boilers - Applicability* that must submit a certification in accordance with the schedule in 310 CMR 7.02(3)(m): *Reactivating an Inactive Emission Unit*; or
 3. acquiring an ERP facility or unit unless exempted from this requirement pursuant to 314 CMR 18.10(3).

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- (c) If a periodic compliance certification is required, then the owner or operator of the ERP facility or unit shall submit the compliance certification by the end of each certification period unless a statement of non-applicability is submitted to the Department on a form prescribed by the Department.
- (d) Notwithstanding 310 CMR 70.03(1)(a) and (b), a photo processor holding a permit from the Massachusetts Water Resources Authority pursuant to 360 CMR 10.000: *Sewer Use* is deemed to hold the equivalent of an ERP certification and is not required to file a one-time compliance certification pursuant to 310 CMR 70.00 and 71.00: *Industrial Wastewater Regulations for Photo Processors*, but such a photo processor is required to pay an annual compliance fee to the Department pursuant to 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.
- (e) A photo processor located in the service area of the Massachusetts Water Resources Authority and which hauls or ships photo processing waste off-site is required to file one-time compliance certification pursuant to 310 CMR 70.00 and 71.00: *Industrial Wastewater Regulations for Photo Processors*.
- (f) Owners or operators of the following types of ERP facilities or units shall submit a periodic compliance certification to the Department by September 15th of each year except as provided in 310 CMR 70.03(h):
1. dry cleaners subject to 310 CMR 7.26(10) through (16); and
 2. printers, with the exception of very small printers, subject to 310 CMR 7.26(20) through (29).
- (g) The owner or operator of the following types of ERP facilities or units shall submit a periodic or one-time compliance certification in accordance with the following schedules:
1. The owner or operator of a facility with boilers subject to 310 CMR 7.26(30): *U Boilers - Applicability* shall submit a one-time certification in accordance with the schedule set forth in 310 CMR 7.26(32): *Certification*.
 2. The owner or operator of an industrial wastewater holding tank shall submit to the Department a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 18.10: *Certification*.
 3. The owner or operator of a photo processor subject to 310 CMR 71.00: *Industrial Wastewater Regulations for Photo Processors* shall submit a one-time certification in accordance with 310 CMR 70.03(1)(b).
 4. The owner or operator of a very small printer as defined in 310 CMR 7.26(22) shall submit a one-time certification in accordance with 310 CMR 70.03(1)(b).
 5. The owner or operator of a dental facility subject to 310 CMR 73.00: *Amalgam Wastewater and Recycling Regulations for Dental Facilities* shall submit a certification in accordance with the schedule and conditions referenced in 310 CMR 73.07: *Compliance Certification Requirements for Dental Facilities*.
 6. An owner or operator of an engine or combustion turbine subject to 310 CMR 7.26(40) through (44) shall submit a certification in accordance with the schedule and conditions set forth in 310 CMR 7.26: *Industry Performance Standards*.
 7. Scrap recycling facilities, vehicle recyclers and vehicle manufacturers subject to 310 CMR 74.00: *Removal and Recycling of Mercury-added Components in Vehicles* shall submit certification forms in compliance with the applicable schedules and conditions referenced in 310 CMR 74.09: *Submittal of Compliance Certifications and Reports to the Department*.
 8. Manufacturers of mercury-added products and lamps subject to 310 CMR 75.00: *Collection, Recycling, Labeling, and Sales Ban of Mercury-added Products*, shall submit certification forms in compliance with the applicable schedules and conditions referenced in 310 CMR 75.04: *Plans for Collecting and Recycling Mercury-added Products*.

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9. An Owner or Operator of an underground storage tank system subject to 310 CMR 80.00: *Underground Storage Tank (UST) Operator Training* shall submit a certification in accordance with the schedule and conditions set forth in 310 CMR 80.34: *Requirements for Compliance Certification*.

(h) The Department may determine a schedule, less frequently than the schedule in 310 CMR 70.03(1)(f), for submission of periodic compliance certifications, based on the following criteria:

1. the size, composition and activities of the ERP sector;
2. the quantity and types of (toxic) materials used and potential wastes, emissions and discharges of the ERP sector;
3. the degree of compliance with established regulatory requirements by the ERP sector;
4. the degree of control over the environmental and public health aspects of activities by the ERP sector; and
5. any other relevant information regarding the environmental consequences of the periodic compliance certifications and return to compliance response rates and results within the ERP sector.

The Department will notify the public and affected businesses by publishing a notice in the *Massachusetts Environmental Policy Act Monitor* and may also notify an ERP sector through industry trade associations, the Department's website and other appropriate cost effective methods of changes in the ERP sector's certification schedule.

(2) Certification Statement. The Responsible Official for each ERP facility or unit shall submit a compliance certification. Each compliance certification shall be on a form prescribed by the Department and shall address compliance with standards to which the ERP facility or unit is subject. The certification form may include specialized forms for specific categories of ERP facilities or units, and any owner/operator required to submit a certification pursuant to 310 CMR 70.03 shall submit all applicable forms. The compliance certification shall:

- (a) state whether the ERP facility or unit is in compliance with the applicable standards as listed on the certification form;
- (b) identify any violations that occurred and the date of such violations within the certification period prior to the due date of the certification statement including, but not limited to, any notifications required pursuant to M.G.L. c. 21E, § 7 and 310 CMR 40.0300: *Notification of Releases and Threats of Release of Oil and Hazardous Materials; Identification and Listing of Oil and Hazardous Materials* (releases and threats of release of oil and/or hazardous material), and any reporting of violations required pursuant to 310 CMR 7.02(6): *Aggregated Emissions* (air pollution control equipment failures), 314 CMR 12.03(8) (emergency bypasses to sewer treatment works), 310 CMR 30.520: *Basis for Tier Classification* (hazardous waste contingency plans) and the terms and conditions of any permits issued by the Department; and
- (c) state what the owner/operator will do to return to compliance and the date by which compliance will be achieved; and
- (d) include the following statement: "I, [name of responsible official], attest under the pains and penalties of perjury:
 1. that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
 2. that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
 3. that systems to maintain compliance are in place at the facility or unit and will be maintained even if processes or operating procedures are changed; and
 4. that I am fully authorized to make this attestation on behalf of this facility or unit. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."
- (e) provide any other information pertaining to the facility which the Department requires.

70.04: Violations

- (1) It shall be a violation of 310 CMR 70.00 for any person to:
 - (a) fail to submit a timely certification pursuant to 310 CMR 70.03;
 - (b) make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to 310 CMR 70.03;
 - (c) make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;
 - (d) hold themselves out as a responsible official in violation of the requirements contained in 310 CMR 70.03;
 - (e) fail to comply with the applicable standards; or
 - (f) violate any other provision of 310 CMR 70.00.

- (2) The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21, §§ 26 through 53 (Massachusetts Clean Waters Act), M.G.L. c. 21A, §§ 2, 8, 13 and 16, M.G.L. c. 21C (Hazardous Waste Management Act), M.G.L. c. 21H, §§ 6A through 6N (the Mercury Management Act), M.G.L. c. 21H, § 8, M.G.L. c. 21O, § 4 (The Operation and Removal of Underground Storage Tanks), M.G.L. c. 111, §§ 142A through 142M (Massachusetts Clean Air Act), and M.G.L. c. 111, § 150A (Solid Waste Management Act), in order to obtain full compliance with all requirements applicable to ERP facilities and units, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

REGULATORY AUTHORITY

310 CMR 70.00: M.G.L. c. 21, §§ 26 through 53; c. 21A, §§ 2, 13 and 16; c. 21C, c. 21H, §§ 6A through 6N (the Mercury Management Act), c. 21O § 4, and c. 111, §§ 142A through 142M and 150A.