

TOXICS USE REDUCTION ACT
MGL c. 21I

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PART I. ADMINISTRATION OF THE GOVERNMENT

**TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE
COMMONWEALTH**

CHAPTER 21I. MASSACHUSETTS TOXICS USE REDUCTION ACT

Chapter 21I: Section 1. Short title

Section 1. This chapter shall be known and may be cited as the “Massachusetts Toxics Use Reduction Act.”

Chapter 21I: Section 2. Definitions

Section 2. In this chapter, the following words shall have the following meanings:

“Agency,” state agency.

“Board”, the science advisory board of the Toxics Use Reduction Institute at the University of Massachusetts Lowell.

“Byproduct” non-product outputs of toxic or hazardous substances generated by a production unit, before handling, transfer, treatment or release. Otherwise used substances shall be counted as byproduct when they leave a production unit.

“CERCLA,” the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. S9601 et. seq. (Public Law 92–500).

“Commissioner”, the commissioner of the department of environmental protection.

“Council,” the administrative council on toxics use reduction as established by section four of this chapter.

“Department”, the department of environmental protection.

“Emission,” a release of a toxic or hazardous substance to the environment or a transfer of a toxic or hazardous substance in waste to an off-site location.

“Environmental management system”, a quality-based management system that effectively integrates environmental considerations into an organization’s day-to-day operations and management culture. The department and the council shall have responsibilities to further define an environmental management system as it relates to this chapter. In order to be eligible to be an alternative to toxic use reduction planning, the environmental management system shall, at a minimum, meet the following criteria: (a) include all production units that use TURA-listed chemicals used in reportable quantities as part of the environmental management system; (b) identify all TURA-listed chemicals used in reportable quantities as significant aspects; (c) consider toxics use reduction when identifying significant aspects and developing associated objectives and targets; (d) emphasize source reduction in achieving objectives; and (e) incorporate appropriate environmental performance metrics when developing objectives and targets.

“EPCRA,” the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. S11001 et. seq. (Public Law 99–499).

“Facility,” 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.

“Higher hazard substance”, a substance designated as a higher hazard substance pursuant to section 9.

“Institute”, the Toxics Use Reduction Institute at the University of Massachusetts Lowell.

“Intermediate product,” (a) in chemical manufacturing, any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of another chemical substance or mixture, or that is intentionally present for the purpose of altering the rate of chemical reactions, other than a non-isolated intermediate as defined in this chapter; (b) in any other setting, any manufactured substance, compound, or product that is consumed, in whole or in part, in a chemical or physical process for the intentional manufacture of another product, becomes a component part of another product, or that is intentionally present for the purpose of aiding the manufacture of another product, other than a non-isolated intermediate as defined in this chapter.

“Large quantity toxic user,” 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.

“Lower hazard substance”, a substance designated as a lower hazard substance pursuant to section 9.

“Manufacture”, 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 that other substance or mixture of substances as a byproduct, and a toxic substance that remains in that other substance or mixture of substances as an impurity.

“Mixture,” means any combination of two or more chemicals, if the combination is not, in whole or in part, the result of a chemical reaction. However, if the combination was produced by a chemical reaction but could have been produced without a chemical reaction, it is also treated as a mixture. A mixture also includes any combination which consists of a chemical and associated impurities.

“Multi-media,” having to do with all environmental media including, but not limited to, water, land and air and workplaces within facilities.

“Non-isolated intermediate,” any intermediate which is not intentionally removed from the equipment in which it is manufactured, including any reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel or similar equipment, and any equipment through which the intermediate passes during a continuous flow process, but not including tanks or other vessels or equipment in which the substance or product is stored after manufacture.

“Office”, office of technical assistance and technology within the executive office of environmental affairs. “Person,” 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.

“POTW (publicly-owned treatment works) operators,” holders of discharge permits for any devices and systems owned by the commonwealth or any of its political subdivisions and used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature to implement 33 U.S.C. S1281, or necessary to recycle or reuse water at the most economical cost under the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and the appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; any works, including the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

“Process,” 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.

“Product,” a product, a family of products, an intermediate product, a family of intermediate products, or a desired results or a family of result.

“Production unit,” a process, line, method, activity, or technique, or a combination or series thereof, used to produce a product.

“Resource conservation”, an action that decreases the use or consumption of a natural asset such as water, energy, or raw materials, or increases the efficiency of the use of the asset, without increasing the risk to the public, including workers and consumers, or the environment and without increasing the amount of waste generated.

“SIC code,” the identification code assigned to facilities by the United States Department of Commerce.

“Small quantity toxics user,” any toxics user who is not a large quantity toxics user.

“State agency,” any agency or authority of the commonwealth as defined in section one of chapter thirty A of the General Laws.

“Threshold amounts”, the thresholds for toxics or hazardous substances as established in section 9A.

“Toxics user”, 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 to 14, inclusive, 20 to 40, inclusive, 44-51, inclusive, 72, 73, 75, or 76 or the corresponding NAICS code.

“Toxic,” toxic or hazardous.

“Toxic or hazardous substance”, a substance in a gaseous, liquid, solid or other form which is identified on the toxic or hazardous substance list established pursuant to section 9, but which will not include any substance when it is (1) present in an article; (2) used as a structural component of a facility; (3) present in a product used for routine janitorial or facility grounds maintenance; (4) present in foods, drugs, cosmetics or other personal items used by employees or other persons at a facility; (5) present in a product used for the purpose of maintaining motor vehicles operated by a facility; (6) present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or present in air used either as compressed air or as part of combustion; (7) present in a pesticide or herbicide when used in agricultural applications; (8) present in crude, lubricating or fuel oils or other petroleum materials being held for direct wholesale or retail sale; or (9) 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,” the list of toxic or hazardous substances established pursuant to section nine of this chapter.

“Toxics,” toxic or hazardous substances.

“Toxics use reduction,” in-plant changes in production processes or raw materials that reduce, avoid, or eliminate the use of toxic or hazardous substances or generation of hazardous byproducts per unit of product, so as to reduce risks to the health of workers, consumers, or the environment, without shifting risks between workers, consumers, or parts of the environment. Toxics use reduction shall be achieved through any of the following techniques:

1. Input substitution, which refers to replacing a toxic or hazardous substance or raw material used in a production unit with a non-toxic or less toxic substance;
2. Product reformulation, which refers to substituting for an existing end-product an end-product which is non-toxic or less toxic upon use, release or disposal;
3. Production unit redesign or modification, which refers to developing and using production units of a different design than those currently used;
4. Production unit modernization, which refers to upgrading or replacing existing production unit equipment and methods with other equipment and methods based on the same production unit;
5. Improved operation and maintenance of production unit equipment and methods which refers to modifying or adding to existing equipment or methods including, but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, or production unit control equipment or methods; or
6. Recycling, reuse, or extended use of toxics by using equipment or methods which become an integral part of the production unit of concern, including but not limited to filtration and other closed loop methods.

However, toxics use reduction shall not include or in any way be inferred to promote or require incineration, transfer from one medium of release or discharge to other media, off-site or out-of-production unit waste recycling, or methods of end-of-pipe treatment of toxics as waste.

“Trade secret,” any formula, plan, pattern, process, production data, device, information, or compilation of information which is used in a toxics user’s business, and which gives said toxics user an opportunity to obtain an advantage over competitors who do not know or use it.

“TURA”, the toxics use reduction act.

“User segment,” a set of no fewer than five toxics users who employ a similar production unit, as classified by the department pursuant to section three of this chapter.

“Toxics Use Reduction Institute,” or “Institute,” the Toxics Use Reduction Institute established pursuant to section six of this chapter.

Chapter 21I: Section 3. Duties of the Department

Section 3. In addition to any other requirements or authorities of this chapter, the department’s duties shall include the following:

- (A) The department shall identify all department requirements for reporting on chemical use, release and disposal, and to the maximum extent possible, shall standardize, consolidate and coordinate these reporting requirements to minimize unnecessary duplication.
- (B) By January 1, 1991 the department shall, to the extent practicable, coordinate information about the manufacture, distribution, process, sale, storage, disposal, release or other use of toxics, including the inventory reporting requirement of section ten, on a computer system in order to provide reliable and accessible information across the commonwealth to aid in standardizing the inspection, enforcement and other activities of the commonwealth. The department shall also cooperate with and make this information readily available through computer connections and other means to the Office, the Institute, the environmental protection division of the department of the attorney general, and other state agencies and POTW operators.
- (C) In order to facilitate the coordination of reporting requirements, the department is hereby authorized to 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 Clean Air Act, 42 U.S.C. S7401 et seq.; Federal Water Pollution Control Act, 33 U.S.C. S1251 et seq.; Toxic Substances Control Act, 15 U.S.C. S2601 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. S6901 et seq.; CERCLA and any amendments thereto.
- (D) The department shall develop and implement, by January 1, 1992, guidelines and regulations on inspections which (1) ensure that, where appropriate, inspections are multi-media in approach; (2) ensure that, where appropriate, the inspections are performed by teams of inspectors representing existing programs within the department; and (3) minimize duplication of inspection and enforcement efforts being conducted with other agencies.
- (E) The department shall ensure that, to the maximum extent practicable, any toxics user found to be violating any law or standard for which the department has enforcement

jurisdiction shall practice toxics use reduction in order to come into compliance with the violated law or standard.

(F) The department shall adopt, and may from time to time amend or repeal, rules and regulations which it deems necessary for the proper administration of this chapter and to protect the environment and public health, safety and welfare. As nearly as the department deems appropriate and practicable, regulations pertaining to reporting pursuant to section ten shall comport with and complement regulations adopted pursuant to section 313 of EPCRA.

(G) On or before January 1, 1990, the department shall issue guidelines concerning classification of production units in user segments according to similarities in products and processes. Such guidelines shall be based primarily on the logic and methodology of the product process codes developed for the Organic Chemicals, Plastics, and Synthetic Fibers (“OCPSF”) effluent guidelines and pretreatment standards under the Federal Water Pollution Control Act (“FWPCA”) as amended and, to the extent feasible and appropriate, on protocols and standards used by Massachusetts and others. Based on these guidelines, reports filed pursuant to section ten as of July 1, 1991, and further consideration of then existing classification systems and protocols, the Department shall on or before January 1, 1992 promulgate regulations establishing classifications for production units.

(H) The department annually shall compile, analyze and summarize the reports required by section 10, to the extent available, and shall submit a report to the council on the agency's findings regarding progress in toxics use reduction and emissions reduction in the commonwealth. A copy of the report shall be filed with the clerk of the house of representatives and the clerk of the senate.

(I) Personnel or authorized agents of the department may at all reasonable times enter into any premises, public or private, for the purpose of investigating any records, substance, condition, equipment, practice, or property relating to activities subject to regulation under this chapter. For the purposes of such entries no warrant shall be required provided, however, that upon demand by the owner or individual in control of such premises, a warrant authorizing such entry and inspection shall be sought after such demand. A warrant may be sought by personnel or authorized agents of the department without such demand having been made. Any court, judge, justice or other officer authorized to issue warrants in criminal cases may issue such warrants.

(J) Unless indicated otherwise in this chapter, the department shall develop and make operational all programs and functions required of the department by January 1, 1992.

Chapter 21I: Section 4. Administrative Council on Toxics Use Reduction

There shall be an administrative council on toxics use reduction. The council shall be composed of the secretary of environmental affairs or his designee; the commissioner of environmental protection or his designee; the secretary of economic development or his

designee; ; the commissioner of public health or his designee; the director of labor and workforce development or his designee; and the secretary of public safety or his designee. The members of the council shall serve without additional compensation. The secretary of environmental affairs shall be the chairperson of the council and direct and coordinate the activities of the council. The council shall be considered a government body for the purposes of, and shall be subject to, section 11A 1/2 of chapter 30A. The council shall have its own staff. In addition to any other requirements of this chapter, the council's duties shall include the following:

- (A) By January 1, 1991, and on an annual basis thereafter, the council shall identify all federal or state laws or regulations pertaining to chemical production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxics, and releases of toxics into the environment. The council shall promote increased coordination of efforts to enforce these laws and regulations and also determine how state programs should be coordinated to promote most effectively toxics use reduction in the commonwealth.
- (B) The council shall, by January 1, 1991, identify all state agency and POTW requirements for reporting on chemical or hazardous substance production, use, release, disposal, and worker exposure and to the maximum extent practicable shall make recommendations to said state agencies and POTW operators in order to standardize, consolidate and coordinate these reporting requirements to minimize unnecessary duplication and provide for up-to-date and consistent information about manufacturing, worker exposure, distribution, process, sale, storage, disposal, release or other use of chemicals on a facility, regional and statewide basis.
- (C) The council shall adopt, and from time to time amend or repeal, rules and regulations which it deems necessary for the proper administration of its responsibilities pursuant to this chapter.
- (D) The council shall annually make policy recommendations in a report to the governor regarding toxics use reduction, the implementation of this act, including a detailed report of the expenditures made from the Toxic Use Reduction Fund, a summary of its deliberations and actions regarding its designation of substances as higher hazard substances or lower hazard substances and the achievement of increased toxics use reduction, and shall file a copy of this report with the clerk of the House of Representatives and the clerk of the Senate.
- (E) In order to promote and effect toxics use reduction, the council may comment on all proposed regulations pertaining to toxics production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxics, or releases of toxics into the environment prior to their promulgation.
- (F) The chairperson of the council shall appoint an advisory committee to the council including, but not limited to, the attorney general, or his designee; 2 persons representing statewide environmental organizations; 2 persons representing organized labor; 4 persons representing businesses in the commonwealth, including 2 representatives of small

businesses; 1 person certified as a toxics use reduction planner; 1 person representing a water authority; 2 persons representing a statewide health policy advocacy organizations and 2 members of the general public, 1 of whom shall be a citizen who has been active in a local toxics-related environmental organization.

(G) The council shall, whenever it considers it necessary or favorable, establish ad hoc committees. The chairperson of the council, subject to the approval of the majority of the council, shall appoint members of ad hoc committees. Membership of the ad hoc committees shall not be limited to members of the advisory board.

Chapter 21I: Section 6. Toxics Use Reduction Institute

There shall be a Toxics Use Reduction Institute at the University of Massachusetts Lowell. The institute shall seek to reduce the use of toxic substances and the generation of toxic by-products in Massachusetts by promoting comprehensive environmental management practices, inherently safer products and materials, and the efficient use of resources. The institute shall support industry and community efforts to protect worker and public health and improve environmental quality through programs in research, education, and information dissemination. The Institute may develop recognition programs to promote the toxics use reduction achievements of Massachusetts industry and communities. The institute may establish fees, tuitions, or other financial charges for its programs. All monies appropriated to the institute, or received by the institute through additional grants, gifts, bequests, or contracts shall be administered through the University of Massachusetts Lowell.

Through such programs the Institute shall:

- (A) Provide general information about and actively publicize the advantages of and developments in toxics use reduction, and the requirements of this chapter. This shall include, but not be limited to, providing information about public health, environmental, and economic issues associated with toxics use and toxics use reduction.
- (B) Establish courses, seminars, conferences and other events, and reports, updates, guides and other publications, and other means of providing technical information for toxics users, and may as appropriate work in cooperation with the office.
- (C) Develop and provide curriculum and training for higher education students and faculty on toxics use reduction.
- (D) Engage in research, development and demonstration of toxics use reduction methods. Such research may include but not be limited to assessments of the impact of adopting such methods on the environment, public health and worker exposure, and assessments of the economic and employment impacts within affected firms or user segments.
- (E) By July 1, 1991, develop, in consultation with the department, the office, the department of economic development, and the Science Advisory Board, a toxics use

reduction planning program for individuals who wish to be certified as toxics use reduction planners. Programs may also be available at other public and private colleges and universities located in the commonwealth, subject to the approval of the council. Such programs shall be designed to train toxics use reduction planners to be qualified to assist toxics users in the development and implementation of current toxics use reduction techniques and shall be designed to train toxics use reduction planners to be qualified to prepare, review, and approve toxics use reduction plans established in section eleven of this chapter.

(F) Sponsor research or pilot projects to develop and demonstrate innovative technologies for toxics use reduction. The results of all such projects shall be available for use by the public. Information protected by trade secret protections as established in section twenty shall remain so protected.

(G) May assist in the training of inspectors and other key toxics personnel, if so requested by the department.

(H) Provide toxics use reduction training and assistance to citizens, community groups, non-profit organizations and institutions, workers, labor representatives, and state and local government boards and officials. The program shall assist these individuals and groups in understanding the public health and environmental impacts of toxics use, the methods and strategies for reducing toxics use, and the requirements of this chapter.

(I) Shall take advantage of all available information from existing state and federal programs on toxics use reduction and pollution prevention.

(J) Shall conduct a detailed study on potential restrictions on the use of chemicals in the commonwealth. The study shall include, but not be limited to existing national and international experiences with restrictions; the social, environmental and economic costs and benefits of adopting chemical restrictions; the potential for restrictions in Massachusetts, and how a restriction program could be implemented. By January 1, 1993, the Institute shall present its findings on the study to the Council, which shall file a copy of the study with the clerk of the House of Representatives, the clerk of the Senate, and the joint committee on Natural Resources and Agriculture. The council shall hold a public hearing on the study. By January 1, 1995, the Institute shall present to the council a further study on the Massachusetts experience with this chapter, and how it relates to the issue of chemical restrictions. The council shall file a copy of the study with the clerk of the House of Representatives, the clerk of the Senate, and the joint committee on Natural Resources and Agriculture. The council shall hold a public hearing on the study.

There shall be a Science Advisory Board associated with the Institute consisting of eleven members appointed by the governor, three members shall be nominated by the secretary of the executive office of environmental affairs, three members shall be nominated by the director of the Institute, three members shall be nominated by the director of economic development, one member shall be nominated by the director of labor and workforce development and one member shall be nominated by the secretary of

the executive office of health and human services. Four of the initial appointees shall serve for an initial term of one year, four of the initial appointees shall serve for an initial term of two years, and all other appointees shall serve for three year terms. Each member shall have appropriate academic or professional experience. The institute shall consult with the board on issues including, but not limited to, additions and deletions to the toxic or hazardous substance list established in section 9 and the designation of substances as higher hazard substances and lower hazard substances. The members of the board shall serve without compensation, except that they may be reimbursed for out-of-pocket expenses incurred in the course of performing their duties as board members.

The institute shall advise the council as to which substances from the list of toxic or hazardous substances established pursuant to section 9 should be designated as higher hazard substances or lower hazard substances. The institute shall base its advice on the recommendations of the board, taking into consideration the policy implications of such recommendations.

Chapter 21I: Section 7. Office of Toxics Use Reduction Assistance and Technology

There shall be the office of technical assistance and technology within the executive office of environmental affairs. The office shall have a director and appropriate staff to carry out its responsibilities and programs. These responsibilities and programs shall include, but not be limited to, the following:

- (A) The office shall provide technical assistance to persons to assist them in implementing effective toxics use reduction and other pollution prevention or resource conservation activities, and in complying with the requirements of this chapter and other applicable environmental and health and safety laws. The office shall prioritize the assistance for persons who have been referred to the office by the department, the office of the attorney general or other state agencies, first-time filers, and reporting toxics users. The office shall establish a process for acquiring information on the implementation of recommendations from persons that receive assistance reports from the office.
- (B) The office shall utilize its expertise in source reduction and knowledge of industrial sectors to assist the department in implementing pollution prevention, resource conservation and toxics use reduction as the preferred means of achieving compliance with applicable laws and regulations.
- (C) The office shall promote and disseminate information concerning toxics use reduction technologies, environmental management systems and other toxics use reduction, pollution prevention and resource conservation practices. In order to assist in this, the office shall compile technical documents, guidance and case studies that utilize the results of its technical assistance efforts as described in paragraph (A).
- (D) The office shall promote research or pilot projects to develop and demonstrate innovative technologies for toxics use reduction, pollution prevention or resource

conservation. The office shall negotiate with project partners to establish or maintain public rights to information about the development, to the extent appropriate and feasible.

(E) The office shall engage in an outreach program to small businesses that are toxics users required to report and plan pursuant to this chapter, and shall assist first-time filers with reporting requirements and trade secret submissions. The office may, with the assistance of the department and the institute, conduct training and workshop for toxics users to assist them in meeting their requirements under this chapter.

(F) The office may work with public health agents, POTW operators, local emergency planning committees, and other officials to assist them with reducing the potential risk of substances hazards posed from filers or from manufacturing facilities located within their jurisdictions. The office may prioritize referrals from local authorities, train local inspectors to increase their awareness and understanding of toxics use reduction and resource conservation and pursue other collaboration as appropriate.

(G) The office may develop a business and community recognition program to promote the toxics use reduction achievements of Massachusetts industry.

(H) Any information or record, in document or electronic format, received by the office in the course of providing technical assistance to a toxics user shall be kept confidential and not considered to be a public record pursuant to section 10 of chapter 66, unless: (i) the toxics user agrees in writing that such information may be made available to the department; or (ii) the office determines at its discretion, the information pertains to an imminent threat to public health or safety, or to the environment; or (iii) disclosure to the department is required by law.

(I) The office may, to the extent that it furthers the commonwealth's interest in disseminating information about toxics use reduction, pollution prevention, or resource conservation, make general or generic information available to the public, even if it is derived from 1 toxics user, when it is determined by the office that the information or records are not related to secret processes, methods of manufacture, or production, or that the information or record would not divulge a trade secret.

(J) The office may establish fees, tuition, or other financial charges for its programs, in accordance with section 4B of chapter 7 and may receive additional funds from grants, gifts, bequests or other contributions or through contracts, which shall be deposited in the funds created in section 2J of chapter 29 for use by the office without further appropriation. The office shall not charge a fee for any on-site technical assistance activity or service provided to the business community.

On or before August 1, 2008 the office of technical assistance and technology established by section 7 of chapter 21I of the General Laws, shall produce a report for the council on toxics use reduction that identifies barriers to business implementation of toxics use reduction, pollution prevention, and resource conservation. The office of toxics use reduction assistance and technology may consult with the department of business and

technology, the department and the Toxics Use Reduction Institute at the University of Massachusetts Lowell and shall make recommendations to the council on toxics use reduction on appropriate actions required to resolve barriers. The office shall annually update the report.

Section 8. Responsibilities of All State Agencies

In order to facilitate coordination of the implementation of this chapter with existing state and federal programs pertaining to toxics production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxics, or release of toxics into the environment, agencies of the commonwealth which administer such programs shall:

- (A) review the programs and associated regulations of the agency and ascertain how toxics use reduction can be promoted and achieved;
- (B) amend those programs or associated regulations, where feasible, so as to promote toxics use reduction as the preferred method for achieving the goals of such programs and submit to the council recommendations for coordinating toxics use reduction efforts with the programs specifically established by this chapter within the department, the office, and the Institute;
- (C) by January 1, 1992, coordinate, to the extent feasible, reporting requirements and guidelines concerning the manufacture, use, or release of toxic or hazardous substances in a manner consistent with the recommendations for standardized, consolidated and coordinated state reporting requirements developed by the council pursuant to section four (B) of this chapter;
- (D) develop, on a biennial basis, a multi-media inspection manual and training program for all inspectors on multi-media team inspections related to toxics. Where feasible, inspector training shall include cross-training with other agencies that administer toxics-related inspections. Agencies may request that the Institute assist with the training of inspectors to carry out multi-media inspections.

Chapter 21I: Section 9. Toxic or Hazardous Substance List

The toxic or hazardous substance list shall consist of:

- (A) As of January 1, 1990, and thereafter, the chemicals identified on the Toxic Chemical List established pursuant to Section 313 of EPCRA. Each year the council shall adjust the toxic or hazardous substance list to add or delete substances consistent with changes in said toxic chemical list.
- (B) The substances identified on the list pursuant to sections 101(14) and 102 of CERCLA shall be included in the toxic or hazardous substance list until August 1, 2008. On or before August 1, 2007, the institute and the board shall make recommendations to the council as to what substances listed pursuant to said sections 101(14) and 102 of

CERCLA shall be retained on the toxic or hazardous substance list. On or before August 1, 2008, the council shall take action on the recommendations of the institute and the board to retain or delete substances listed pursuant to said sections 101(14) and 102 of CERCLA from the toxic or hazardous substance list. Thereafter, the council may add or delete substances from the toxic or hazardous substance list consistent with changes in the lists of substances established pursuant to said sections 101(14) and 102 of said CERCLA.

(C) Notwithstanding subparagraphs (A) and (B), the council may add or delete additional substances from the toxic or hazardous substance list. Except for those substances covered under subsection (B), no more than 10 substances may be added for any 1 calendar year, and no more than 10 substances may be deleted for any 1 calendar year. The institute and the board shall provide recommendations proposing additions or deletions. A proposed change in the toxic or hazardous substance list shall not take effect until the calendar year immediately following the year in which the council makes the change. Substances added or deleted by the council shall not be affected by subparagraphs (A) and (B). The designation of higher and lower hazard substances pursuant to subparagraph (D) shall not be affected by this subparagraph.

(D) The council shall designate substances as a higher hazard substance, a lower hazard substance or may leave any substance as an otherwise uncategorized toxic or hazardous substance in consultation with the institute and the board. The council shall first consider designating as a higher hazard substance those substances designated as Category 1/more hazardous by the board. The council may add or delete additional substances from the higher hazard substance or lower hazard substance designations. In any 1 calendar year, no more than 10 toxic or hazardous substances shall be designated as a higher hazard substance, nor shall more than 10 toxic or hazardous substances be designated as a lower hazard substance, except that, on the effective date of this subparagraph, those substances identified as Persistent, Bioaccumulative and Toxic chemical substances, the “PBT List”, at 64 Fed. Reg. 60194 – 60204 (1999), policy statement on category for Persistent, Bioaccumulative, and Toxic New Chemical Substances, dated November 4, 1999, shall be designated as higher hazard substances. The designation shall be solely for the purposes of this chapter and shall not otherwise diminish the authority of the council or the department. The designation as a higher hazard substance or lower hazard substance beyond those specified in this section shall not take effect until the calendar year immediately following the year in which the council makes the change.

Section 9A. Threshold amounts for toxic or hazardous substances for purposes of this chapter shall be initially established as the following:

(A) For toxics users that manufacture or process a toxic or hazardous substance, as the terms “manufacture” or “process” are defined herein, the threshold amount for a toxic or hazardous substance shall be 25,000 pounds each year at any 1 facility, except the threshold will be 1,000 pounds each year at any 1 facility for a higher hazard substance; and

- (B) For 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 1 facility, except the threshold will be 1,000 pounds each year at any 1 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 EPCRA which is lower than a corresponding threshold amount specified in subparagraphs (A) or (B), the corresponding threshold for that substance under this chapter shall be the same as the federal threshold.
- (D) Upon recommendation of the institute and the board, the council shall have the authority to lower the facility-reporting threshold on a higher hazard substance below that which is specified in subparagraphs (A) and (B).

Chapter 21I: Section 10. Annual Toxic or Hazardous Substance Reports

Each large quantity toxics user shall provide to the department for each facility an annual report for each toxic or hazardous substance manufactured, processed, or otherwise used at that facility in amounts equal to or exceeding the applicable threshold amounts.

Reporting shall be expressed in terms of the mass of each toxic or hazardous substance manufactured, processed, or otherwise used. In reporting on each such toxic or hazardous substance, the large quantity toxics user shall report the total mass of the substance, whether in a pure form or contained in a mixture, subject to the establishment of *de minimis* levels of chemicals in a mixture by regulation of the department. Such reports for facilities in SIC Codes Twenty through Thirty-nine inclusive shall be submitted to the department on or before July 1, 1991, and annually thereafter on or before July 1. Such reports for facilities in SIC Codes Ten through Fourteen inclusive, Forty, Forty-four through Fifty-one inclusive, Seventy-two, Seventy-three, Seventy-five and Seventy-six shall be submitted to the department on or before July 1, 1992, and annually thereafter on or before July 1. All such reports shall contain data accounting for toxic or hazardous substances manufactured, processed or otherwise used during the preceding calendar year.

- (A) The reports shall use reporting forms required by the regulations promulgated pursuant to section 313 of EPCRA. To the extent that information required by this section is not included in such forms, such information shall be submitted on supplemental forms established by the department by regulation promulgated no later than January 1, 1991, and modified thereafter as appropriate.
- (B) Each report shall include the following facility information:
 - (1) The information required to be submitted under regulations promulgated pursuant to section 313 of EPCRA.

(2) The quantities of the toxic or hazardous substance at the facility which are: manufactured; processed; otherwise used; generated as byproduct prior to any handling, transfer, treatment or release; and shipped as or in product from the facility.

(C)(1) Each report shall also include for each production unit at the large quantity toxics user's facility in which the toxic or hazardous substance is manufactured, processed or otherwise used, the following information:

(a) the information necessary to identify the large quantity toxics user, the facility, the production unit and the toxic or hazardous substance;

(b) an indication of whether the toxic or hazardous substance was used in the production unit in amounts (i) greater than zero pounds and less than or equal to five thousand pounds; (ii) greater than five thousand pounds but less than or equal to ten thousand pounds; or (iii) greater than 10,000 pounds but less than or equal to 100,000 pounds; (iv) greater than 100,000 pounds but less than or equal to 500,000 pounds; or (v) greater than 500,000 pounds.

(c) A quantitative or qualitative indication of significant change in toxics use and byproduct generation, compared with the previous reporting year, including toxics use reduction techniques employed.

(2) For the information submitted under this subsection the large quantity toxics user shall maintain at the facility documentation which is necessary to substantiate the information submitted, including, but not limited to, documentation of the quantity of the toxic or hazardous substance used in each production unit and the quantity generated as byproduct by each production unit.

(D)(1) The following shall be exempted from the reporting requirements of this section:

(a) facilities with fewer than the equivalent of ten full-time employees;

(b) activities in laboratories, including quality control laboratories, to the extent and in the manner such activities are exempted from reporting in regulations promulgated pursuant to section 313 of EPCRA.

(2) The following shall be exempted from the reporting requirements of subsection (C) of this section:

(a) pilot plants and pilot production units;

(b) start-up production units for a time period equal to the shorter of either the time period from the date of initial operation until required operational efficiency is achieved, or two years from the date of initial operation.

(3) Facilities claiming the exemptions provided for in this subsection shall maintain on-site documentation supporting all exemption claims.

(E) In calculating, measuring, or estimating quantities of a toxic or hazardous substance to be reported under this section, large quantity toxics users shall report with the maximum accuracy that is feasible and practicable. Large quantity toxics users shall report quantities with accuracy to two significant digits.

(G) A senior management official shall sign each report certifying its accuracy and completeness.

(H) The department shall make available and, to the extent practicable, shall require, reporting and recording of the report data via electronic submittal.

(I) Pursuant to and consistent with the authority established under section fourteen, the department may require that small quantity toxics users in user segments designated as priority segments pursuant to that section, comply with part or all of the reporting requirements applicable to large quantity toxics users pursuant to this section.

(J) Any toxic user required to file a report with the United States Environmental Protection Agency pursuant to section 313 of EPCRA during the year 1990 shall file a copy of such report with the department on or before July 1, 1990.

Chapter 21I: Section 11. Toxics Use Reduction Plans

(A)(1) Large quantity toxics users shall by July 1, 1994 or by July 1 of the first subsequent even-numbered year in which a report pursuant to section 10 is required, prepare and complete a toxics use reduction plan for each facility for which they are required to file a report in that year. The department shall, by January 1, 1991, specify criteria for acceptable plans according to the requirements of this section. In preparing plans, large quantity toxics users shall comply with the requirements of this section for those toxic or hazardous substances for which they are required to file reports for the previous calendar year.

(2) The plan shall include a statement of facility-wide management policy regarding toxics use reduction, and a description of the scope and objectives of the plan.

(3) The plan shall include for each production unit in which a covered toxic or hazardous substance is manufactured, processed or otherwise used:

(a) a comprehensive economic and technical evaluation of appropriate technologies, procedures and training programs for potentially achieving toxics use reduction for each covered toxic or hazardous substance;

(b) an analysis of current and projected toxics use, byproduct generation, and emissions;

(c) an evaluation of the types and amounts of covered toxic or hazardous substances used;

(e) an identification of each technology, procedure or training program to be implemented for the purposes of achieving toxics use reduction, the anticipated costs of implementation of each, and the anticipated savings expected due to each;

(f) a schedule for implementation of such technologies, procedures and training programs;

(B) Each toxics use reduction plan must be certified by a toxics use reduction planner as meeting the department's criteria for acceptable plans.

(C) Large quantity toxics users shall keep plans for a facility on the premises of that facility, and shall make them available on the premises to the department upon request.

(D) Large quantity toxics users shall update and recertify plans by July 1, two years after the first plan, and then according to the schedule specified by the department; but, after a large quantity toxics user has completed 1 toxics use reduction plan in compliance with this section and 2 plan updates, it may complete any 1 of the following types of plans in subsequent years: (i) a toxics use reduction plan update; (ii) an alternative resource conservation plan in accordance with requirements established by the department, or (iii) the implementation of an environmental management system that meets the requirements for an environmental management system established in this chapter and by the department. Eligible large quantity toxics users that choose to complete an alternative resource conservation plan pursuant to clause (ii) shall complete a toxics use reduction plan update during the subsequent planning year. Eligible large quantity toxics users that choose to implement an environmental management system pursuant to clause (iii) shall report to the department on the progress of the environmental management system according to a schedule and form developed by the department.

(E) Six months prior to the date when the initial plan or an update must be completed, each large quantity toxics user shall notify all of its employees of the requirements for the plan or update, identify the toxic or hazardous substances and production units for which a plan or update will be submitted, provide the criteria for plans specified by the department and solicit in the notice comments or suggestions from all employees on toxics use reduction options.

(F) Large quantity toxics users shall file a plan summary with the department on or before July 1 of the applicable year. The summary shall include:

(1) for a toxics use reduction plan, a copy of the plan certification by a toxics use reduction planner;

(2) for an alternative pollution prevention and resource conservation plan, a certification by a toxics use reduction planner that the plan has been reviewed and meets the requirements of clause (ii) of subsection (D); and

(3) for an environmental management system, a certification by a toxics use reduction planner or other environmental management professional with demonstrated qualifications in environmental management systems and toxics use reduction that the environmental management system is in place and meets the requirements of clause (iii) of said subsection (D).

(G) Pursuant to the authority established under section fourteen, the department may require that small quantity toxics users in user segments designated as priority segments pursuant to that section, must comply with part or all of the planning requirements applicable to large quantity toxics users established in this section.

Chapter 21I: Section 12. Toxics Use Reduction Planners

(A) In order to be a certified toxics use reduction planner, an individual must either (1) have satisfactorily completed a toxics use reduction planning program, developed pursuant to section six (E) of this chapter, and passed a uniform certification examination which the department shall prepare by January 1, 1992 and modify thereafter as appropriate, or (2) have at least two years of work experience in toxics use reduction activities. The department shall by January 1, 1991, after consultation with the Institute and the office, promulgate regulations implementing the requirements of this section.

(B) Any individual who satisfies the requirement of at least two years of work experience in toxics use reduction activities, but who has not satisfactorily completed a toxics use reduction planning program and passed the uniform certification examination, shall only be certified as a toxics use reduction planner to engage in toxics use reduction activities in the facilities owned or operated by his employer.

(C) Certification shall be for not more than two years and shall be renewable for additional two year periods. For a certification to be renewed, a toxics use reduction planner must successfully complete continuing education instruction in toxics use reduction activities.

(D) The department may establish a fee to be assessed on any individual when such individual receives or renews his certification as a toxics use reduction planner pursuant to this section. Any such fees shall be deposited in the toxics use reduction fund established pursuant to section two K of chapter twenty-nine of the General Laws.

(E) Certification may be suspended or revoked by the department based on a finding of fraud, gross negligence in the certification of toxics use reduction plans, or other good cause.

(F) In order to certify an alternative resource conservation plan or the implementation of an environmental management system pursuant to section 11, a toxics use reduction planner must successfully complete continuing education instruction in resource conservation and environmental management systems as specified by the department.

Chapter 21I: Section 13. Statewide Reduction Goal

(A) The goal of the commonwealth is to achieve by 1997, through toxics use reduction, a fifty percent (50%) reduction from 1987 quantities of toxic or hazardous byproducts generated by industry in the commonwealth of Massachusetts.

(B) The department shall compile annually the goals of all reduction plans submitted by toxics users. By January 1, 1995, the department shall complete a report comparing large quantity toxics user goals to the statewide goal and file a copy of the report with the council, the clerk of the Senate, the clerk of the House of Representatives, and the Joint Committee on Natural Resources and Agriculture.

Chapter 21I: Section 14. Prioritization of User Segments

(A) Within 4 years from the designation of a higher hazard substance, the council may designate by regulation user segments, which it considers to be priorities for achieving toxics use reduction. The designations shall be based on recommendations from the office, in consultation with the institute and the department. User segments shall include similar production units in all facilities regardless of threshold amounts. Important considerations for identifying priority user segments shall include:

- (1) the potential for current and future toxics use reduction and the technical and economic feasibility of such reduction;
- (2) amounts of the higher hazard substance used by the user segment in the production units of concern;
- (3) amounts of toxic or hazardous substances disposed of, discharged, or released to water, land, air or workplaces within facilities;
- (4) the need for improvement by the user segment in its toxics use reduction efforts; and
- (5) the social, health, and economic benefits and costs to the commonwealth, its political subdivisions, workers, and large quantity and small quantity toxics users.

Consideration shall be given to the adequacy of the state's resources to effectively implement the prioritization of a user segment under subsections (D), (E) and (F).

(B) The council may designate no more than 3 priority user segments in any calendar year. There shall be at no time more than 15 priority user segments.

(C) A priority designation shall expire upon the date 5 years after designation. Priority designation may be renewed in the manner set forth in subsection (A). Upon expiration of a priority designation, a toxics user in the user segment shall no longer be treated as being within a priority user segment for purposes of this chapter, except that applicable

performance standards issued for the user segment or a specific toxics user shall remain in effect.

(D) Results of prioritization include:

- (1) The department may refer toxics users in priority user segments to the office for assistance in achieving toxics use reduction;
- (2) Facilities with fewer than the equivalent of 10 full-time employees shall be required to report and plan on the priority production unit consistent with the requirements of sections 10 and 11;
- (3) The department may require toxics users to submit additional toxic chemical use and byproduct information in order to determine expected efficiency or achievable progress in toxics use reduction within the user segment.

(E) Facilities within a priority user segment may apply for toxics use reduction waivers pursuant to section 17.

(F) The department, working with the office and the institute, may set performance standards for priority user segments pursuant to section 15.

Chapter 21I: Section 15. Performance Standards

(A) The department may request authority from the council to establish, by regulation, a performance standard for a priority user segment on a segment-wide basis. Such authority shall only be granted if:

- (1) A majority of toxics users in the user segment fall significantly below regional, national or international achievements of byproduct generated per unit of product based on reasonably proven, public domain technologies and/or industry practices; or
- (2) A number of toxics users in the user segment fall significantly below a Massachusetts-based norm for byproduct generated per unit of product based on reasonably proven, public domain technologies and/or industry practices.

(B) Each performance standard issued under subsection (a) of this section shall require large quantity toxics users within the relevant user segment to achieve a level or set of levels of byproducts generated per unit of product. Any such level shall be based on reasonably proven, public domain technologies and/or industry practices applicable to that user segment.

(C) Each performance standard issued under subsection (a) of this section shall specify a reasonable time for compliance, not to exceed three years. Any production unit covered by a performance standard shall come into compliance to the extent economically feasible. The toxics user shall maintain on-site justification for any noncompliance with

the standard, or shall apply to the department for a waiver of the standard based on a showing that the standard is not economically feasible for that user.

(D) The department may establish performance standards under this section for a specific toxics user within a priority segment after considering the toxics user's efforts to reduce byproduct and emissions and the potential effectiveness of referral for technical assistance and/or proposing changes in the toxics user's use reduction plan instead of establishing a performance standard, such consideration not being subject to adjudication. A standard shall be set through the issuance of an administrative order applicable to the toxics user, which may require a specified percent reduction of byproduct generated per unit of product which is cost-effective, economically and technically feasible to the toxics user and the technology for which is commercially available to the user segment. Such an administrative order shall specify a reasonable time for compliance. A toxics user for whom a performance standard is set through this administrative order mechanism may appeal said order through the adjudicatory hearing process set forth in chapter thirty A of the General Laws.

(E) Upon the date one year after issuance of a performance standard for a user segment, the department may apply to the council for authority to extend the standard by regulation to small quantity toxics users within the relevant user segment.

(F) A production unit otherwise covered by a performance standard shall be exempt from such standard if compliance would adversely affect the toxics user's ability to produce its product in conformance with product specifications of the United States Food and Drug Administration, Department of Defense or any other federal agency.

(G) Nothing in this section shall diminish the existing authority of the department pursuant to any statute to establish by regulation, permit, license, or order treatment technology standards, emission or discharge limits, operation and maintenance requirements, or management practices for abating, controlling or preventing a release or threat of release of toxic or hazardous substances to the environment.

Chapter 21I: Section 16. Improved Enforcement of Toxics Laws

Except where otherwise specifically provided, whenever it appears to the department that there has been a violation of this chapter, or any regulation or approval issued or adopted hereunder, the department may refer the toxics user to the office for technical assistance, issue administrative orders requiring compliance with the applicable requirement, or issue an administrative penalty pursuant to the provisions of section sixteen of chapter twenty-one A.

Without limiting any other authority available to the department pursuant to any statute, the department may order a toxics user who violates any standard limiting a release of toxic or hazardous substances to the environment, or a threat of such release, to prepare for that production unit at which the violation occurred a toxics use reduction plan certified by a toxics use reduction planner demonstrating maximum toxics use reduction

opportunities available to that user, where (i) the violation causes or threatens to cause significant harm to the environment or to public health or safety, or (ii) the toxics user has previously violated any standard limiting a release of toxic or hazardous substances to the environment, or a threat of such release.

Any toxics user in violation of any requirement of this chapter, or any regulation or approval issued or adopted hereunder, may apply to the department for a toxics use reduction waiver pursuant to section seventeen.

Nothing in this section shall in any manner diminish or condition any authority conferred on the department by any other statute.

Chapter 21I: Section 17. Toxics Use Reduction Waiver

A toxics user may petition the department for the temporary waiver of any law which the department administers or any regulation adopted by the department if the toxics user proposes to comply with such law or regulation through implementation of a toxics use reduction technique or combination of toxics use reduction techniques in preference to other techniques, or through use of innovative toxics use reduction techniques. By January 1, 1991, the department shall develop regulations governing waiver applications and issuance of waivers.

The department may grant a waiver if the department finds that the following conditions are met:

- (A) that the proposed toxics use reduction technique or combination of techniques will be effective in achieving toxics use reduction and will achieve compliance with toxics laws and regulations within the time period of the waiver; and
- (B) that the proposed technique or combination of techniques will not cause or contribute to an unreasonable risk to public health or safety or the environment in their operation, function or malfunction; and
- (C) for waivers regarding the use of innovative toxics use reduction techniques, that the proposed technique or combination of techniques ultimately will achieve greater toxics use reduction than currently available toxics use reduction techniques; and
- (D) for waivers regarding the use of a toxics use reduction technique or combination of such techniques in preference to other techniques, that the long-term benefit to the environment from the proposed technique or combination of techniques outweighs the benefits to the environment from more prompt compliance through other techniques.

The department shall decide whether or not to issue a waiver within one hundred and twenty calendar days of receiving an application for a waiver.

Any waiver granted shall be for a period not to exceed two years. A toxics user may reapply for a waiver if he has been initially refused, or may apply for an extension of a current waiver. The department shall make decisions on these determinations within sixty calendar days of receiving said applications.

The department shall monitor the implementation and effectiveness of the approved toxics use reduction techniques. If at any time the department finds that the toxics user has not made a good faith effort to implement the approved toxics use reduction techniques or that the application was not made in good faith, the waiver shall be terminated and the toxics user shall have twenty-one calendar days to achieve compliance with the requirements prescribed by the laws and regulations from which the waiver was granted.

For violations which continue beyond the twenty-one day limit the toxics user shall be considered in violation of this chapter and subject to the penalties established in section seventeen.

If at any time the department finds that the toxics user has made a good faith effort to implement the approved toxics use reduction techniques and to maintain compliance with the waiver but finds that implementation of the approved toxics use reduction techniques does not meet the conditions for the issuance of a waiver, then the agency shall suspend or revoke the waiver and the toxics user shall have sixty days to achieve the requirements prescribed by the laws and regulations from which the waiver was granted.

In any event, the toxics user shall eliminate as quickly as possible all unreasonable risks to public health, safety, welfare or the environment.

A toxics user may also request that the department assist it in seeking a waiver from any federal laws or regulations which are administered by the department if the toxics user proposes to comply with such law or regulation through implementation of a toxics use reduction technique or combination of toxics use reduction techniques in preference to other techniques, or through use of innovative toxics use reduction techniques.

Chapter 21I: Section 18. Citizen Involvement

Massachusetts residents may participate in monitoring and enforcement procedures as follows:

(A) The department shall make available for resident review reports which are required under section ten and plan summaries which are required under section eleven; provided, however, that such availability shall be subject to the provisions of section twenty.

(B) Any ten residents living within ten miles of a facility required to prepare a toxics use reduction plan may petition the department for the department to examine the plan, the plan summary and any required back up data and determine their adequacy. The department shall determine whether the plan, plan summary and any required backup

data meet the standards established pursuant to this chapter. The department shall report its determination to the petitioners and the toxics user in writing within a reasonable time.

(C)(1) The superior court shall have jurisdiction to enforce the requirements of this chapter in an action brought by any ten residents of the commonwealth against: (1) any toxics user alleged to be in violation of such requirements; or (2) an appropriate official of the commonwealth when there is alleged a failure of that official to perform any act or duty under this chapter which is not discretionary with that official.

(2) No action may be commenced under this subsection against any toxics user alleged to be in violation of the requirements of this chapter prior to sixty days after the date on which the plaintiff gives notice of the alleged violation to the department and the alleged violator. No action may be commenced under this subsection against an owner or operator of a facility alleged to be in violation of such requirements if the department has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this chapter with respect to the violation of such requirement. No action may be commenced under this subsection against an appropriate official of the commonwealth prior to sixty days after the date on which the plaintiff gives notice to said official and the commissioner that the plaintiff will commence the action. Notice under this subsection shall be given in a manner as the department shall prescribe by regulation.

(3) The court, in issuing any final order in any action brought pursuant to this subsection, may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party other than the commonwealth who advances the purposes of this chapter. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Massachusetts Rules of Civil Procedure.

Nothing in this subsection shall restrict or expand any right which anyone may have under any federal or state statute or common law to seek enforcement of any requirement or to seek any other relief.

Chapter 21I: Section 19. Establishment of Toxics Use Fee

(A) No later than April 1, 1990 the department shall prepare and distribute to all employers in the commonwealth in SIC codes Ten through Fourteen inclusive, Twenty through Forty inclusive, Forty-four through Fifty-one inclusive, Seventy-two, Seventy-three, Seventy-five and Seventy-six a toxics use survey. All such employers shall complete the survey and return it to the department no later than July 1, 1990. The survey shall require each such employer to identify as of January 1, 1990, for each covered facility it owns or operates within the commonwealth, the full-time equivalent number of employees at that facility; and, for each chemical identified in a list of chemicals provided by the department containing chemicals identified in either the list established pursuant to section 313 of EPCRA or the list established pursuant to sections 101(14) and 102 of CERCLA, whether such chemical is manufactured, processed, or otherwise used

in such facility and if so, whether the quantity of each such use is below ten thousand pounds, between ten thousand and twenty-five thousand pounds, or over twenty-five thousand pounds. The completeness and accuracy of the employer's response to the survey shall be certified under pains and penalties of perjury by the manager of the facility. The department shall analyze the results of such survey no later than October 1, 1990, and shall recommend to the council any adjustment to the toxics use fee that may be necessary to comply with paragraph (D) of this section.

(B) Any toxic user required to file a report with the United States Environmental Protection Agency pursuant to section 313 of EPCRA during the year 1990 shall file a copy of such report with the department, and shall pay a toxics use fee as set forth in paragraph (C), on or before July 1, 1990.

(C) The toxics use fee shall be initially determined as set forth in this paragraph. The base fee for each facility shall be five hundred dollars for facilities at which the full-time equivalent of ten or more, but fewer than fifty, individuals are employed; seven hundred and fifty dollars for facilities at which the full-time equivalent of fifty, or more, but fewer than one hundred, individuals are employed; one thousand two hundred and fifty dollars for facilities at which the full-time equivalent of one hundred or more, but fewer than five hundred, individuals are employed; and two thousand five hundred dollars for facilities at which the full-time equivalent of five hundred or more individuals are employed. The base fee shall be increased by three hundred dollars for each toxic or hazardous substance for which the toxics user is required to file a report pursuant to section nine; provided, however, that the maximum fee shall be one thousand five hundred dollars for facilities at which the full-time equivalent of ten or more, but fewer than fifty, individuals are employed; two thousand dollars for facilities at which the full-time equivalent of fifty or more, but fewer than one hundred, individuals are employed; four thousand dollars for facilities at which the full-time equivalent of one hundred or more, but fewer than five hundred, individuals are employed, and eight thousand five hundred dollars for facilities at which the full-time equivalent of five hundred or more individuals are employed.

(D) On or before November 1, 1990, the council shall by regulation adjust the toxics use fee as set forth in this paragraph. If the council projects, on the basis of the survey required pursuant to paragraph (a), that the aggregate assessment of toxics use fees on July 1, 1991 is likely to fall below a lower bound which shall be four million dollars increased by a proportion equal to any increase in the Producer Price Index between July 1, 1989 and July 1, 1991, or above an upper bound which shall be five million, five hundred thousand dollars increased by a proportion equal to any increase in the Producer Price Index between July 1, 1989 and July 1, 1991, the council shall adjust the base fees, additional amount per chemical reported, and maximum fees in direct proportion, to result in a projected aggregate target assessment, which shall be five million dollars increased by a proportion equal to any increase in the Producer Price Index between July 1, 1989 and July 1, 1991. The base fees, additional amount per chemical, and maximum fees shall be adjusted annually to reflect changes in the Producer Price Index. The department shall annually on or before April 1, publish in the Massachusetts register the adjustments to be made for that year. The council shall also have the authority to adjust

the fee for a substance that it designates as a higher hazard substance pursuant to subparagraph (D) of section 9. For a substance designated as a lower hazard substances, the fee shall only consist of the facility base fee as established by the council. Two years after the effective date of subparagraph (D) of said section 9, the council shall examine the current toxics use fee structure established by this section and may propose changes to the fee structure. In formulating a proposed toxics use fee structure, the council shall consider a number of factors, including, but not limited to; potential revenues generated by the fees, the impact fees will have on toxics users and their use of toxic substance, and the funding required for the program to meet its statutory obligations. Any new fee structure shall maintain the base fees, additional amount per chemical reported, and maximum fees structure described in paragraphs (C) and (D). The council shall file this recommendation with the executive office of administration and finance and the house and senate ways and means committees 90 days before promulgating regulations to implement the new toxics use fee structure.

(E) On or before July 1 of 1991 and each year thereafter, each toxics user filing a report pursuant to this chapter shall pay a toxics use fee determined in accordance with paragraph (d) for each facility for which such a report is filed.

(F) The department shall impose an additional administrative fee of \$1,000 for failure to file a complete and accurate report by July 1 of the applicable year, or to pay any fee pursuant to this section in a timely manner. Late payment fees shall apply if a toxics use report is filed more than 30 days after July 1 of the applicable year or if payment of the fee is not made within 30 days of the date payment is due.

(G) Any toxics user who employs the equivalent of fewer than 100 full-time individuals may in instances of severe financial hardship, apply on or before July 1 of any year to the commissioner of the department. The commissioner may, for good cause shown, waive the fee for that year in whole or in part, or extend the time for paying any part of the fee. The commissioner shall annually report to the council the waivers granted.

(H) The council shall adopt, and may from time to time amend or repeal, rules and regulations which it deems necessary for the proper administration of this section.

Chapter 21I: Section 20. Trade Secret Protection

(A) If a toxics user, required to submit to the department a report, plan summary or other document, believes that disclosing information in that document required by this chapter will reveal a trade secret, he may file with the department a trade secret claim as herein provided. A toxics user making a trade secret claim shall submit two copies of the required document to the department, one with the information for which a trade secret claim is being made which conceals that information, and one in an envelope marked "Confidential" containing the information for which a trade secret claim is being made, which the department, during the pendency of the trade secret claim, shall keep in the secured storage area as referenced in this section. Any toxics user concealing the specific chemical identity of any toxic or hazardous substance shall, in the place on the non-

confidential copy where the chemical identity would normally be included, include the generic class or category of the toxic or hazardous substance.

(B) A toxics user is entitled to conceal information under this section only if such toxics user:

(1) Claims that such information is a trade secret, on the basis of the factors enumerated in subsection (C); and

(2) Includes in the envelope marked "Confidential" an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (C), including a specific description of why all such factors apply.

(C) No toxics user required to submit information under this chapter may claim that the information is entitled to protection as a trade secret under this section unless such toxics user shows each of the following:

(1) Such toxics user has not disclosed the information to anyone else, other than a member of a local emergency planning committee as defined by EPCRA, an officer or employee of the United States or a state or local government, an employee of such toxics user, or anyone who is bound by a confidentiality agreement, and such toxics user has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures; and

(2) The information is not required to be disclosed, or otherwise made available to the public under any other federal or state law; and

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such toxics user.

(D) As soon as practicable after the date of enactment of this chapter, the commissioner shall promulgate regulations to implement this section guided to the extent practicable by comment b to Section 757 of the Restatement of Torts.

(E) Any resident of the commonwealth may petition the commissioner for the disclosure of any information which is claimed as a trade secret under this section by specifying in the petition the information sought to be disclosed. The commissioner may, in the absence of a petition under this subsection, if he has reason to believe that the information concealed may not be a trade secret, initiate a determination to be carried out in accordance with subsection (F).

(F)(1) Within sixty days after the date of receipt of a petition under subsection (E), or upon the initiative of the commissioner, the commissioner shall review the explanation filed by a trade secret claimant under subsection (C) and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the information concealed is a trade secret.

- (2) If the commissioner determines pursuant to subsection (F)(1) that the explanation presents assertions which, if true, are sufficient to support a finding that the information concealed is a trade secret, the commissioner shall, by certified mail, notify the trade secret claimant that he has thirty days to supplement the explanation with detailed information to support a finding that the information concealed is a trade secret.
- (3) If the commissioner determines, after receipt of any supplemental supporting detailed information under subsection (F)(2), that the information concealed is a trade secret, the commissioner shall, by certified mail, so notify the trade secret claimant and the petitioner, if any. The petitioner, if any, may within thirty days seek judicial review of the determination. The commissioner shall after final adjudication immediately return to the trade secret claimant all supplemental supporting detailed information submitted concerning the validity of the trade secret claim. All such information shall be kept in the secure storage area pursuant to this section while the claim is pending. The petitioner, if any, shall not be permitted to have access, except as approved by the court. In entering any order approving access by the petitioner, the court shall consider the need for the entry of an appropriate protective order restricting the use or further disclosure of the confidential information.
- (4) If the commissioner determines, after receipt of any supplemental supporting detailed information under subsection (F)(2), that the concealed information is not a trade secret, the commissioner shall, by certified mail, notify the trade secret claimant. The trade secret claimant may within thirty days request an adjudicatory hearing on the commissioner's determination. A timely request for an adjudicatory hearing under this subsection shall act as an automatic stay of the commissioner's determination pending completion of the adjudicatory hearing. A trade secret claimant aggrieved by the department's final decision upon said adjudicatory hearing may within thirty days seek judicial review pursuant to section fourteen of chapter thirty A, during which time the information shall remain confidential. Any court in considering a motion for a temporary restraining order or preliminary injunction to enjoin release of such information shall presume that release would cause irreparable harm to the trade secret claimant.
- (5) If the commissioner determines pursuant to subsection (F)(1) that the explanation presents insufficient assertions to support a finding that the information concealed is a trade secret, the commissioner shall, by certified mail, notify the trade secret claimant that he shall have thirty days in which to request an adjudicatory hearing, or, upon a showing of good cause, to amend the original explanation by providing supplemental assertions to support the trade secret claim.
- (6) If the commissioner does not reverse or modify his determination under subsection (F)(1) after an adjudicatory hearing or an examination of any supplemental assertions under subsection (F)(5), the commissioner shall, by certified mail, so notify the trade secret claimant and the trade secret claimant shall have thirty days in which to file for judicial review of the determination. A trade secret claimant aggrieved by the commissioner's final decision may within thirty days seek judicial review pursuant to section fourteen of chapter thirty A, during which time the information shall remain

confidential. Any court in considering a motion for a temporary restraining order or preliminary injunction to enjoin release of such information shall presume that release would cause irreparable harm to the trade secret claimant.

(7) If the commissioner reverses or modifies his determination under subsection (F)(1) after an appeal or an examination of any supplemental assertions under subsection (F)(5), the procedures under subsections (F)(2) through (F)(4) shall apply.

(G) Information certified to by an appropriate official of the United States as necessarily kept secret for national defense purposes shall be accorded the full protections against disclosure as specified by such officials in accordance with the law of the United States.

(H) Anyone who is not authorized to have access to, or who is not authorized to disclose information submitted to the department under the authority of this chapter, but who knowingly and willfully uses, divulges or discloses to anyone else such information in a manner not authorized by this chapter, shall be in violation of this chapter and subject to the penalties established in subsection b of section twenty-one of this chapter.

(I) With respect to concealed information for which a trade secret claim has been made but not finally denied the department may;

(1) Use such information, aggregated with other information in such a manner as to maintain the confidentiality of the information claimed to be a trade secret, to carry out responsibilities under this chapter. The department may include such aggregated information in the publicly available database required by this chapter.

(2) Disclose such information when the department is required to do so to comply with federal law or regulation, but only to the extent required by the federal law or regulation, and so long as the department gives notice of the requirement to the toxics user prior to complying.

(J) The department shall establish and maintain a single secure storage area for confidential materials and information. Materials and information for which trade secret claims have been made and related supporting materials, and information for which such claims have been finally adjudicated in favor of the claimant, shall be kept in the secure storage area and may only be removed in accordance with the provisions of this section. Materials and information for which such claims have been finally adjudicated against the claimant may be permanently removed from the secure storage area.

A chief document control officer designated by the commissioner shall be responsible for controlling access to the secure storage area and its contents. The commissioner may designate no more than five department personnel at any one time as document control officers who may have access to the secure storage area. Personnel and authorized agents of the department who require information contained within the secure storage area for the effective performance of their duties may, upon request to a document control officer, examine documents containing such information within a secure area adjoining the

secure storage area. Immediately upon completion of such examination, or at the close of the business day, whichever is first, such personnel shall return the documents to a document control officer for immediate return to the secure storage area. A hearing officer or department counsel in an adjudicatory hearing in which such documents or information are in issue, or other department personnel authorized in writing by the commissioner to do so, may remove such documents from the secure storage area when necessary for preparation and conduct of such adjudicatory hearing or effective performance of their duties, provided that the hearing officer, counsel, or other personnel shall at all times retain control of such documents and information through direct physical observation or deposit in a locked room, file, or other secured area. Immediately upon completion of the hearing or other required use, the documents shall be returned to a document control officer for immediate return to the secure storage area. No copies of such documents or information may be made except by a document control officer. Copies shall be considered equivalent to original documents for purposes of this section. Any notes concerning such information made by department personnel shall be treated as confidential under this section. Department personnel or authorized agents who violate the procedures required by this paragraph shall be subject to disciplinary action. The council shall annually verify the department's compliance with the requirements of this subsection.

(K) The provisions of this section shall not apply to the disclosure of emissions data.

Chapter 21I: Section 21. Penalties

(A) Any person who violates any provision of this chapter, or any regulation or approval issued or adopted hereunder, shall be subject to a civil penalty not to exceed twenty-five thousand dollars per day of such violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. This section shall not apply to section nineteen of this chapter.

(B) Any individual or toxics user who wilfully (i) violates any requirement of sections ten or eleven, or any regulation or approval issued or adopted thereunder, or (ii) violates any requirement of section twenty, shall be punished by a fine of not less than two thousand five hundred dollars or more than twenty-five thousand dollars for each violation, or by imprisonment for not more than one year, or by both.

(C) If the commissioner determines that:

(1) (i) an explanation submitted by a trade secret claimant pursuant to section twenty of this chapter presents insufficient assertions to support a finding that the information concealed is a trade secret; or (ii) after receiving supplemental supporting detailed information that the information concealed is not a trade secret; and

(2) that the trade secret claim is frivolous; then the trade secret claimant shall be subject to a civil penalty not to exceed twenty-five thousand dollars per claim. The commissioner may assess the penalty administratively pursuant to section sixteen of chapter twenty-one

A of the General Laws or may request the attorney general to bring an action in any court of competent jurisdiction in the commonwealth to assess and collect the penalty.

Chapter 21I: Section 22. Injunctive Relief

The attorney general may, upon request of the department, bring action for injunctive relief against any person violating a provision of this chapter or any regulation or approval issued or adopted hereunder, and the superior court in equity shall have jurisdiction to enjoin such violation and to grant such further relief as it may deem appropriate.

Chapter 21I: Section 23. Protection of Employee Rights

No employer or duly authorized agent of an employer shall discharge, refuse to hire or in any other manner discriminate against an employee because the employee has exercised a right afforded by this chapter. Any employee of a toxics user claiming to be aggrieved by a violation of this section may initiate proceedings in the superior court department of the trial court for the county in which the alleged violation occurred. An employer found to have violated this paragraph shall be exclusively liable to pay the employee lost wages, shall grant to the employee suitable employment, and shall reimburse such reasonable attorney fees incurred in the protection of rights granted as shall be determined by the court. The court may grant whatever relief it deems necessary to protect rights granted by this section. An employee may not waive rights granted by this section.