

House Bill 3492

Sponsored by Representatives GREENLICK, BAILEY, KOTEK; Senator DINGFELDER (at the request of Neighbors for Clean Air)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates new definitions for provisions related to reduction of use of toxic substances and reduction of generation of hazardous waste.

Modifies policy related to reduction of use of toxic substances and reduction of generation of hazardous waste.

Modifies factors Department of Environmental Quality considers in identifying users and generators to which department gives priority in providing certain technical assistance. Modifies requirements related to certain plans.

Requires toxics users to give certain notification to Department of Environmental Quality.

A BILL FOR AN ACT

1
2 Relating to the reduction of pollutants; creating new provisions; and amending ORS 465.003, 465.006,
3 465.009, 465.012, 465.015, 465.018, 465.021, 465.027 and 465.032.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 465.003 is amended to read:

6 465.003. As used in ORS 465.003 to 465.034:

7 (1) "Conditionally exempt generator" means a generator that generates less than 2.2 pounds of
8 acute hazardous waste as defined by 40 C.F.R. 261, **as in effect on the effective date of this 2013**
9 **Act**, and that generates less than 220 pounds of hazardous waste in one calendar month.

10 (2) "Facility" means all buildings, equipment, structures and other stationary items located on
11 a single site or on contiguous or adjacent sites and owned or operated by the same person or by
12 any person that controls, is controlled by or under common control with any person.

13 (3) "Fully regulated generator" means a generator that generates 2.2 pounds or more of acute
14 hazardous waste as defined by 40 C.F.R. 261, **as in effect on the effective date of this 2013 Act**,
15 or 2,200 pounds or more of hazardous waste in one calendar month.

16 (4) "Generator" means a person that, by virtue of ownership, management or control, is re-
17 sponsible for causing or allowing to be caused the creation of hazardous waste.

18 (5) "Hazardous waste" has the meaning given that term in ORS 466.005.

19 (6) "Large user" means a facility required to submit a uniform toxic chemical release form under
20 42 U.S.C. 11023, **as in effect on the effective date of this 2013 Act**.

21 (7) "**Major HAP source**" means a source of hazardous air pollutants defined as a major
22 source under 42 U.S.C. 7412(a), **as in effect on the effective date of this 2013 Act**.

23 [(7)] (8) "Person" includes person, public body, as defined in ORS 174.109, the federal govern-
24 ment or any other legal entity.

25 [(8)] (9) "Small-quantity generator" means a generator that generates between 220 and 2,200
26 pounds of hazardous waste in one calendar month.

27 (10) "**Toxic air pollutant**" means:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (a) Any hazardous air pollutant listed under 42 U.S.C. 7412(b), as in effect on the effective date of this 2013 Act;

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3 (b) Any hazardous air pollutant specified by rule of the Environmental Quality Commission pursuant to ORS 468A.025 or 468A.310; or

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5 (c) Any air pollutant known or suspected to cause cancer or other serious health effects and for which the Environmental Quality Commission has established health-based exposure goals by rule pursuant to ORS 468A.025.

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8 (11) "Toxics reduction plan" means a plan required under ORS 465.015 that addresses toxics use reduction, hazardous waste reduction or toxic air pollutant reduction.

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10 [(9)] (12) "Toxic substance" or "toxics" means any substance, other than a substance used as a pesticide in routine commercial agricultural applications, in a gaseous, liquid or solid state specified on the list of toxic chemicals generated [pursuant to] under 42 U.S.C. 11023, as in effect on the effective date of this 2013 Act, or any substance added by the Environmental Quality Commission under ORS 465.009.

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12 [(10)] (13) "Toxics use" means use, [or] production or emission of a toxic substance.

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14 [(11)] (14) "Toxics use reduction" means in-plant changes in production or other processes or operations, products or raw materials that reduce, avoid or eliminate the use, [or] production or emission of toxic substances without creating substantial new risks to public health, safety and the environment, through the application of any of the following techniques:

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16 (a) Input substitution, achieved by replacing a toxic substance or raw material used in a production or other process or operation with a nontoxic or less toxic substance;

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18 (b) Product reformulation, achieved by substituting for an existing end product, an end product that is nontoxic or less toxic upon use, release or disposal;

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20 (c) Production or other process or operation redesign or modifications;

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22 (d) Production or other process or operation modernization, achieved by upgrading or replacing existing equipment and methods with other equipment and methods;

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24 (e) Improved operation and maintenance controls of production or other process or operation equipment and methods, achieved by modifying or adding to existing equipment or methods including, but not limited to, techniques such as improved housekeeping practices, system adjustments, product and process inspections or production or other process or operation control equipment or methods; or

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26 (f) Recycling, reuse or extended use of toxics by using equipment or methods that become an integral part of the production or other process or operation of concern, including but not limited to filtration and other methods.

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28 [(12)] (15) "Toxics user" means a large user, a fully regulated generator, [or] a small-quantity generator or a major HAP source.

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30 [(13)] (16) "Waste reduction" means:

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32 (a) Any activity conducted after hazardous waste is generated that is consistent with the general goal of reducing present and future threats to public health, safety and the environment and that results in:

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34 (A) The reduction of total volume or quantity of hazardous waste generated that would otherwise be treated, stored or disposed of;

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36 (B) The reduction of toxicity of hazardous waste that would otherwise be treated, stored or disposed of; or

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38 (C) Both the reduction of total volume or quantity and the reduction of toxicity of hazardous

1 waste.

2 (b) On-site or off-site treatment where the treatment can be shown to confer a higher degree of
 3 protection of the public health, safety and the environment than other technically and economically
 4 practicable waste reduction alternatives.

5 **SECTION 2.** ORS 465.006 is amended to read:

6 465.006. (1) In the interest of protecting the public health, safety and the environment, the
 7 Legislative Assembly declares that it is the policy of the State of Oregon to encourage reduction in
 8 the use of toxic substances, [and] to reduce the generation of hazardous waste **and to reduce**
 9 **emissions of toxic air pollutants** whenever technically and economically practicable, without
 10 shifting risks from one part of a process, environmental media or product to another. Priority shall
 11 be given to methods that reduce the amount of toxics used and, where that is not technically and
 12 economically practicable, methods that reduce the generation of hazardous waste.

13 (2) The Legislative Assembly finds that the best means to achieve the policy set forth in sub-
 14 section (1) of this section is by:

15 (a) Providing toxics users and generators with technical assistance;

16 (b) Requiring toxics users to engage in comprehensive planning and develop measurable per-
 17 formance goals; and

18 (c) Monitoring the use of toxic substances, [and] the generation of hazardous waste **and the**
 19 **generation of emissions of toxic air pollutants.**

20 **SECTION 3.** ORS 465.009 is amended to read:

21 465.009. The Environmental Quality Commission by rule may:

22 (1) Add or remove any toxic substance, [or] hazardous waste **or toxic air pollutant** from the
 23 provisions of ORS 465.003 to 465.034; and

24 (2) Modify the definition of “large user” to coincide with the amounts specified in federal regu-
 25 lations for the reporting of toxic chemical releases.

26 **SECTION 4.** ORS 465.012 is amended to read:

27 465.012. (1) The Department of Environmental Quality shall provide technical assistance to tox-
 28 ics users and conditionally exempt generators. In identifying the users and generators to which the
 29 department shall give priority in providing technical assistance, the department shall consider at
 30 least the following:

31 (a) Amounts and toxicity of toxics used, [and] amounts of hazardous waste disposed of, dis-
 32 charged and released **and toxic air pollutants released into the ambient air;**

33 (b) Potential for current and future toxics use reduction, [and] hazardous waste reduction **and**
 34 **toxic air pollutant reduction;** and

35 (c) The toxics related exposures and risks posed to public health, safety and the environment.

36 (2) In providing technical assistance, the department shall give priority to assisting toxics users
 37 and conditionally exempt generators in completing and implementing an adequate toxics [use] re-
 38 duction [and hazardous waste reduction] plan under ORS 465.015. The assistance may include but
 39 need not be limited to:

40 (a) Information clearinghouse activities;

41 (b) Telephone hotline assistance;

42 (c) Toxics use reduction, [and] hazardous waste reduction **and toxic air pollutant reduction**
 43 training workshops;

44 (d) Establishing a technical publications library;

45 (e) The development of a system to evaluate the effectiveness of toxics use reduction, [and]

1 hazardous waste reduction **and toxic air pollutant reduction** measures;

2 (f) The development of a recognition program to publicly acknowledge toxics users and condi-
 3 tionally exempt generators that complete and implement successful toxics *[use]* reduction *[and haz-*
 4 *ardous waste reduction]* plans; and

5 (g) Direct on-site assistance to toxics users and conditionally exempt generators in completing
 6 the plans.

7 (3) The department shall:

8 (a) Coordinate its technical assistance efforts with industry trade associations and local colleges
 9 and universities as appropriate.

10 (b) Follow up with toxics users that receive technical assistance to determine whether the
 11 user, *[or]* generator **or emitter** implemented a toxics *[use]* reduction *[and hazardous waste*
 12 *reduction]* plan.

13 (c) Coordinate and work with local agencies to provide technical assistance to businesses in-
 14 volved in the crushing of motor vehicles concerning the safe removal and proper disposal of mercury
 15 light switches from motor vehicles.

16 (4) Technical assistance services provided under this section shall not result in inspections or
 17 other enforcement actions unless there is reasonable cause to believe there exists a clear and im-
 18 mediate danger to the public health and safety or to the environment. The Environmental Quality
 19 Commission may develop rules to carry out the intent of this subsection.

20 **SECTION 5.** ORS 465.015 is amended to read:

21 465.015. (1) Except as provided in subsection (2) of this section, a person shall, within 120 days
 22 after notification in writing by the Department of Environmental Quality that the person meets the
 23 definition of a toxics user, complete a toxics *[use]* reduction *[and hazardous waste reduction]* plan.
 24 At a minimum, a plan shall include:

25 (a) A written policy articulating organizational support for the toxics *[use]* reduction *[and haz-*
 26 *ardous waste reduction]* plan and a commitment by the organization to implement plan goals.

27 (b) A description of *[its]* **the** scope and objectives **of the plan**, including the evaluation of
 28 technologies, procedures and personnel training programs to ensure unnecessary toxic substances
 29 are not used and unnecessary waste is not generated.

30 (c) Internal analysis and periodic assessment of individual processes for toxics use and hazard-
 31 ous waste generation. **If the toxics user is a major HAP source, then the plan must also in-**
 32 **clude internal analysis and periodic assessment of individual processes for toxic air pollutant**
 33 **reduction.**

34 (d) Identification of opportunities to reduce or eliminate toxics use and hazardous waste gener-
 35 ation. **If the toxics user is a major HAP source, then the plan must also include identification**
 36 **of opportunities to reduce or eliminate the generation of emissions of toxic air pollutants.**

37 (e) Employee awareness and training programs that involve employees in toxics use reduction
 38 and hazardous waste reduction planning and implementation. **If the toxics user is a major HAP**
 39 **source, then the plan must also include employee awareness and training programs that in-**
 40 **volve employees in toxic air pollutant reduction planning and implementation.**

41 (f) Institutionalization of the plan by incorporating the plan into management practices and
 42 procedures.

43 (2) A person is not required to complete a plan if the person has implemented an environmental
 44 management system, as defined in ORS 468.172.

45 **(3) A toxics user that is a major HAP source and that has previously developed a toxics**

1 **reduction plan or environmental management system required under this section that does**
 2 **not address the generation of emissions of toxic air pollutants into the ambient air shall,**
 3 **within 120 days after notification in writing by the department, amend the plan or system**
 4 **to incorporate opportunities to reduce or eliminate the generation of emissions of toxic air**
 5 **pollutants into the ambient air consistent with the requirements for a plan or system spec-**
 6 **ified in this section.**

7 [(3)] (4) A toxics user shall incorporate into the plan and associated decision-making process,
 8 the costs of using toxic substances and generating hazardous waste. **If the toxics user is a major**
 9 **HAP source, the plan and associated decision-making process must also incorporate the**
 10 **costs of emitting toxic air pollutants into the ambient air.** The costs may represent, among
 11 other things, the costs of management, liability insurance, regulatory compliance and oversight.

12 [(4)] (5) As part of each plan, a toxics user shall evaluate technically and economically practi-
 13 cable toxics use reduction and hazardous waste reduction opportunities for:

14 (a) Any toxic substance for which the toxics user reports as a large user; and

15 (b) Any hazardous waste representing 10 percent or more by weight of the cumulative hazardous
 16 waste stream generated per year.

17 **(6) As part of each plan, a toxics user that is a major HAP source shall also evaluate**
 18 **technically and economically practicable opportunities to reduce or eliminate the generation**
 19 **of emissions of any toxic air pollutant into the ambient air, except that the commission by**
 20 **rule may exempt de minimis emissions from the requirements of this subsection.**

21 [(5)] (7) A toxics user shall explain the rationale for each toxics use reduction, [and] waste re-
 22 duction **and toxic air pollutant reduction** opportunity specified in the plan, including any imped-
 23 iments, such as technical or economic barriers, to toxics use reduction, [and] hazardous waste
 24 reduction **and toxic air pollutant reduction.**

25 [(6)] (8) A toxics [use] reduction [and hazardous waste reduction] plan developed under this sec-
 26 tion or the documentation for an environmental management system shall be retained at the facility.
 27 To the extent that a plan or system may be considered a public record under ORS 192.410, the in-
 28 formation contained in the plan or system is confidential and is exempt from public disclosure
 29 [pursuant to] **under ORS 192.502.**

30 [(7)] (9) It is the policy of this state that plans developed under this section be kept current and
 31 that the plans reflect changes in toxics use over time. In furtherance of this policy, a toxics user
 32 may update its plan or modify its environmental management system to reflect any changes.

33 **SECTION 6.** ORS 465.018 is amended to read:

34 465.018. (1) **A toxics user shall notify the Department of Environmental Quality in a form**
 35 **determined by the department that the toxics reduction plan or environmental management**
 36 **system is in place** following completion of a [toxics use reduction and hazardous waste reduction]
 37 plan under ORS 465.015, [or] implementation of [an environmental management system, a toxics user
 38 shall notify the Department of Environmental Quality in a form determined by the department that the
 39 plan or system is in place] **a system under ORS 465.015, or, for any toxics user that is a major**
 40 **HAP source that must amend its toxics reduction plan or environmental management sys-**
 41 **tem to address toxic air pollutants, completion of an amended toxics reduction plan or en-**
 42 **vironmental management system under ORS 465.015.**

43 (2) Twelve months after notifying the department under subsection (1) of this section, the toxics
 44 user shall provide an implementation summary to the department.

45 (3) Twenty-four months after notifying the department under subsection (1) of this section, the

1 toxics user shall provide a second implementation summary to the department.

2 **(4) A toxics user may submit a subsequent implementation summary at any time after**
 3 **submitting the second implementation summary under subsection (3) of this section.**

4 [(4)] (5) A toxics user shall permit the Director of the Department of Environmental Quality or
 5 the director's designee to inspect a plan or system to allow the department to:

6 (a) Determine the adequacy of the plan or system under ORS 465.021;

7 (b) Assess the implementation of the plan or system; and

8 (c) Provide technical assistance under ORS 465.012.

9 [(5)] (6) The department shall make implementation summaries submitted to the department un-
 10 der this section available to the public, including making the summaries available in a commonly
 11 used, electronic format on the World Wide Web.

12 **SECTION 7.** ORS 465.021 is amended to read:

13 465.021. (1) The Department of Environmental Quality may review and determine the adequacy
 14 of a toxics [*use*] reduction [*and hazardous waste reduction*] plan or an environmental management
 15 system.

16 (2) If a toxics user fails to complete an adequate plan, implement an adequate system or submit
 17 an adequate implementation summary, the department may notify the toxics user of the inadequacy,
 18 identifying the specific deficiencies. The department also may specify a reasonable time frame, of
 19 not less than 90 days, within which the toxics user shall modify the plan, system or implementation
 20 summary to address the specified deficiencies. The department also may make technical assistance
 21 available to aid the toxics user in modifying its plan, system or implementation summary.

22 (3) If the department determines that a modified plan, system or implementation summary is in-
 23 adequate, the department may require that further modifications be made within a time frame
 24 specified by the department.

25 (4) If after having received notice of specified deficiencies from the department, a toxics user
 26 fails to develop an adequate plan, system or summary within a time frame specified [*pursuant to*]
 27 **under** subsection (2) or (3) of this section, the department may assess a civil penalty in the manner
 28 provided by ORS 183.745 in an amount not to exceed \$500 for each day that the toxics user fails to
 29 develop an adequate plan, system or summary.

30 (5) In reviewing the adequacy of any plan, system or summary, the department shall base its
 31 determination solely on whether the plan, system or summary is complete and prepared in accord-
 32 ance with ORS 465.015 or 465.032.

33 **SECTION 8.** ORS 465.027 is amended to read:

34 465.027. Subject to available funding, the Department of Environmental Quality shall contract
 35 with an established institution of higher education to assist the department in carrying out the
 36 provisions of ORS 465.003 to 465.034. The assistance shall emphasize strategies to encourage toxics
 37 use reduction, [*and*] hazardous waste reduction **and toxic air pollutant reduction**, and shall pro-
 38 vide assistance to facilities under ORS 465.003 to 465.034. The assistance may include but need not
 39 be limited to:

40 (1) Engineering internships;

41 (2) Engineering curriculum development;

42 (3) Applied toxics use reduction, [*and*] hazardous waste reduction **and toxic air pollutant re-**
 43 **duction** research; and

44 (4) Engineering assistance to users, [*and*] generators **and emitters**.

45 **SECTION 9.** ORS 465.032 is amended to read:

1 465.032. An implementation summary submitted to the Department of Environmental Quality
2 under ORS 465.018 shall be in a form determined by the department and shall include, but not be
3 limited to:

4 (1) A summary of how the toxics [*use*] reduction [*and hazardous waste reduction*] plan or envi-
5 ronmental management system has been implemented;

6 (2) A description of specific successes that the toxics user has had in reducing, **as applicable**,
7 the use of toxic substances, [*or*] the generation of hazardous wastes, **or the generation of emis-**
8 **sions of toxic air pollutants into the ambient air**;

9 (3) An estimate of the challenges and impediments to implementing and evaluating, **as applica-**
10 **ble**, toxics use reduction, [*and*] hazardous waste reduction, **and toxic air pollutant reduction** op-
11 portunities; and

12 (4) A description of future plans, **as applicable**, for toxics use reduction, [*and*] hazardous waste
13 reduction, **and toxic air pollutant reduction**.

14 **SECTION 10. The amendments to ORS 465.003, 465.006, 465.009, 465.012, 465.015, 465.018,**
15 **465.021, 465.027 and 465.032 by sections 1 to 8 of this 2013 Act apply to plans completed, plans**
16 **amended and notifications and implementation summaries submitted on or after the effective**
17 **date of this 2013 Act.**

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