

Toxics Use and Hazardous Waste Reduction Law Requirements

Questions and Answers



State of Oregon
Department of
Environmental
Quality

1. What is the Toxics Use Reduction and Hazardous Waste Reduction Law?

Oregon's Toxics Use Reduction and Hazardous Waste Reduction law passed in 1989, creating one of the nation's first laws mandating pollution prevention planning for certain facilities. On June 9, 2005, the governor signed a newly-modified TUHWR bill into law. Businesses, trade associations and environmental groups helped develop the law. The law is a comprehensive approach to reducing pollution at its source by encouraging Oregon's businesses and institutions to make changes that eliminate or reduce toxic substances and hazardous wastes.

2. Are there any exclusions or special circumstances for my business? If so, is there any pre-approval required?

Yes, there are exclusions and special circumstances that would eliminate the need for your business to comply with the law, such as:

- *Conditionally Exempt Generators.* CEGs of hazardous waste do not have to comply with any of the law's requirements. However, if a business is a conditionally exempt generator *and* a large toxics user (i.e., reports under the federal Toxics Release Inventory program), the requirements apply unless specifically excluded elsewhere in the law.
- *Businesses generating hazardous waste solely as a result of a removal action.* Businesses that generate hazardous waste solely due to a removal action, such as spill cleanup, do not have to comply with the law. However, if the facility uses toxics or generates hazardous waste from other activities that make the business a large toxics user, large quantity generator or small quantity generator for any other reason besides a cleanup activity, the law applies unless the business can claim exclusion for another reason. See next question for a synopsis of what businesses must comply with the law.
- *Businesses generating hazardous waste due to a one-time event.* A business that changes hazardous waste generator category, such as from conditionally exempt generator to large or small quantity generator solely due to a one-time generation event, such as storeroom cleanout, does not have to comply with the law.
- *Recently changed ownership.* If you take over a business that has an existing, valid Reduction Plan or Environmental Management System, as a new owner, you do not need to prepare a new plan or system. However, you *do* need to update the plan or system with your new contact information and to list any chemical use, hazardous waste generation or process changes. Also, there is a notification requirement after developing a Reduction Plan or Environmental Management System..
- *Businesses that have moved outside of Oregon or are out of business.* The law's requirements do not apply.

If one of the above exclusions or special circumstances applies to your business, there is no need to comply with the TUHWR law or notify DEQ. However, before making such a claim, DEQ encourages you to verify the exclusion with one of DEQ's technical assistance providers – see DEQ's Hazardous Waste Web page for provider listings.

3. What businesses must comply and what are the major requirements?

The law's requirements affect three groups:

- *Large Toxics Users*: Users of toxic chemicals who must prepare a Form R or Form A under the federal Toxics Release Inventory (TRI) program that is part of the Superfund Amendments and Reauthorization Act, Title III, Section 313.
- *Large Quantity Generators*: Facilities that generate more than 2,200 pounds of hazardous waste or more than 2.2 pounds of acutely hazardous waste in a calendar month.
- *Small Quantity Generators*: Facilities that generate between 220 and 2,200 pounds of hazardous waste in a calendar month.

The TUHWR law requires that you:

- Develop a Reduction Plan or an Environmental Management System (EMS);
- Submit an electronic form that notifies DEQ that your business completed a Reduction Plan or EMS;
- Submit two Implementation Summaries to DEQ, except for those businesses who were in the Toxics Use and Hazardous Waste Reduction Program before June 9, 2005; these businesses only need to submit one Summary;
- Keep the Reduction Plan or EMS document on site; and
- Periodically update the Reduction Plan or EMS to reflect current chemical use, waste generation, processes and personnel.

The purpose of a Reduction Plan or Environmental Management System is to help your business reduce its toxic chemicals use and hazardous waste generation. The Reduction Plan and EMS encourage businesses to review their processes and procedures, and make a good-faith effort to find reductions that the business can implement. DEQ suggests contacting one of its technical assistance providers; these people help businesses reduce their toxics use and hazardous waste.

4. What are the minimum elements in a Reduction Plan or Environmental Management System?

If you choose to develop a Reduction Plan or EMS, minimally, your business must have the following four elements:

1. Policy Statement. This statement articulates senior management's support for the Reduction Plan or EMS, and their commitment to implement it;
2. Plan Scope and Objectives. These are to identify and evaluate reduction opportunities and involve employees in reduction awareness efforts;
3. Reduction Evaluations. This is the core part of a Reduction Plan. You should first collect and examine data on all types and amounts of toxic substances used and hazardous wastes generated. The next step is to determine what processes used the toxic chemicals

and generated the wastes. Having completed this status review, you can then identify potential reduction or recycling methods. Your Reduction Plan should document the rationale for reduction options you considered:

- Explain why options considered but not implemented were not technically or economically feasible; and
- Show that toxics use reduction options were given priority over hazardous waste reduction options where feasible.

Point out potential cross-media impacts of the options (e.g., shifts in pollutants from sanitary sewer to air emissions, consequences for human health); and

4. **Implementation Plan.** In this part of the Reduction Plan, you describe feasible reduction options and provide details (e.g., tasks and dates) on how you will implement the options selected. These will eventually go in the Implementation Summary(-ies) you enter in the online reporting system.

If you choose to develop an Environmental Management System, you must develop a system that is International Organization of Standardization (ISO) 14,001 or equivalent. Please note that your business **does not** need to get ISO certification to have a valid system. Businesses that have an earlier system (such as ISO 9000) just need to incorporate the new, additional ISO 14001 elements into the pre-existing system.

For Environmental Management System questions, refer to the resources document on DEQ's TUHWR Program Web page and scroll down to the EMS section. As always, your business can get free technical assistance from DEQ specialists. However, since these technical assistance providers do not offer the same service as paid consultants, they cannot prepare an EMS for your business.

The Reduction Plan or EMS should cover a five- to 10-year planning cycle. However, DEQ highly recommends you review and update your plan or system regularly. Typically, businesses review and update their plan or system after submitting an annual hazardous waste report to DEQ or after submitting EPA's annual Toxics Release Inventory report.

5. Which toxic chemicals and hazardous wastes should I include in my Reduction Plan or Environmental Management System?

As part of your plan or system, you must evaluate opportunities for reducing use of toxic substances and generation of hazardous wastes meeting the following quantity thresholds:

- Any toxic substance reported under the federal Toxics Release Inventory Program; and
- Any hazardous waste representing 10 percent or more by weight of the cumulative hazardous waste stream generated per year.

Toxics use means use or production of a toxic substance. In practice, this can include chemicals used as inputs to a production process, created as byproducts during production, released from the production process, or generated as products for sale.

A *toxic substance* is one that is poisonous or harmful to plant or animal life. The toxic substances you must evaluate in your plan or system are the chemicals and chemical categories reportable

under the federal Toxics Release Inventory program. For the current list, go to EPA's TRI Program website.

Hazardous wastes your business must evaluate are the D-, F-, K-, P-, U-listed and characteristic wastes under the federal Resource Conservation and Recovery Act, and the state-only hazardous wastes; refer to DEQ's Hazardous Waste Program Web page for the Small Quantity Generator Handbook and click on Appendix 2 and 4 for a list of hazardous wastes to consider.

6. Should I let DEQ know that I completed a Reduction Plan or Environmental Management System?

Yes. After completing a plan or system, you must submit an electronic Notice of Plan/EMS Completion; more information about this reporting is on DEQ's Toxics Use and Hazardous Waste Reduction Reporting Web page. Also, you can contact a DEQ hazardous waste specialist for technical assistance.

For businesses new to the TUHWR Program, DEQ will send notification that your business must prepare a plan or system within 120 days of the notification. During this time, DEQ technical assistance specialists can help you develop your plan or system. By the end of the 120 days, your business must submit an electronic Notice of Plan/EMS Completion. A business has the option to wait for the notification or take the initiative and develop a plan or system and submit a Notice of Plan/EMS Completion.

7. What is an Implementation Summary, do I need to prepare one, and what does DEQ do with them?

An Implementation Summary is a report that all businesses in the Toxics Use and Hazardous Waste Reduction Program must submit to DEQ. The report summarizes a company's successful reductions of toxics and hazardous waste, challenges faced while searching for reduction opportunities, and future possibilities that will help the business further reduce its toxics use and hazardous waste generation.

Businesses that were in the program before June 9, 2005 and have met all requirements up to that date only need to submit one Implementation Summary. Businesses new to the program must submit two summaries – 12 and 24 months after the required date of submitting the electronic Notice of Plan/EMS Completion. After submitting the required number of summaries, there is no other reporting requirement, unless the business changes ownership or moves within Oregon. However, DEQ encourages businesses to continue to share their successes and challenges so DEQ can share those with other businesses, by submitting a Supplemental Implementation Summary.

DEQ reviews each Implementation Summary for completeness and will eventually post in a pending Web-based Clearinghouse. The Clearinghouse will allow anyone with Internet access to search through all Implementation Summaries submitted by Oregon businesses. The intent is to create an on-line resource for businesses to learn from other businesses' success and challenges to reduce toxics and hazardous waste. The Clearinghouse will also serve as a resource for the public to see the successes and challenges businesses have in reducing hazardous or toxic materials and wastes.

DEQ also reviews each summary to identify any other reduction opportunities and provides technical assistance to any businesses interested in other ideas to further their toxics and hazardous waste reduction.

8. What is and is not public information?

Your Reduction Plan or Environmental Management System is *not* public information and should remain at your facility. However, your electronic Notice of Plan/EMS Completion and Implementation Summary(-ies) *are* public information.

DEQ staff may review your Reduction Plan or EMS during a technical assistance visit or inspection. DEQ staff can assist you in meeting these planning and reporting requirements, and in correcting any deficiencies.

9. What happens if I do not prepare a Reduction Plan or Environmental Management System, fail to submit a Notice, or fail to complete the required number of Implementation Summaries?

DEQ believes that businesses want to reduce their toxic chemicals and hazardous waste due to the direct benefits of saving money and reducing employee and business liabilities. Based on this assumption, DEQ provides technical assistance to businesses to ensure they comply with the law. However, if a business chooses not to comply, DEQ has statutory authority to assess penalties of up to \$500 per day for violations.

10. Where can I obtain additional information?

DEQ's Toxics Use and Waste Reduction Assistance Program provides free technical assistance. TUWRAP staff statewide can help your facility:

- Identify ways to reduce its toxic substance use and hazardous waste generation;
- Obtain compliance assistance or provide other services, such as training; and
- Assist completing or updating your Reduction Plan; and
- Assisting with DEQ hazardous waste and Toxics Use and Hazardous Waste Reduction reporting.

For questions about the Toxics Use and Hazardous Waste Reduction Program, please contact David Livengood, Toxics Reduction & Innovations, Portland, at 503-229-5181 or call toll-free within Oregon at 800-452-4011, ext. 5181.