

**SUBCHAPTER Q: POLLUTION PREVENTION:
SOURCE REDUCTION AND WASTE MINIMIZATION
§§335.471 - 335.480
Effective January 30, 2003**

§335.471. Definitions.

The words and terms used in this subchapter have the meanings given in the Waste Reduction Policy Act of 1991, or the regulations promulgated thereunder. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Further, the following words and terms, as defined herein, shall only have application to this subchapter.

- (1) **Acute hazardous waste** - Hazardous waste listed by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, because the waste meets the criteria for listing hazardous waste identified in 40 Code of Federal Regulations §261.11(a)(2).
- (2) **Base year** - The year preceding the first year of the plan.
- (3) **Conditionally exempt small quantity generator** - A generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time at his facility and who generates less than 100 kilograms of hazardous waste in any given month.
- (4) **Environment** - Water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.
- (5) **Environmental management system** - As defined in §90.30(3) of this title (relating to Definitions). A documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.
- (6) **Facility** - All buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.
- (7) **Generator and generator of hazardous waste** - Has the meaning assigned by Texas Health and Safety Code, §361.131. A person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(8) **Large quantity generator** - A generator that generates, through ongoing processes and operations at a facility:

- (A) more than 1,000 kilograms of hazardous waste in a month; or
- (B) more than one kilogram of acute hazardous waste in a month.

(9) **Media and medium** - Air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) **Pollutant or contaminant** - Includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under §101(14)(A) - (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) **Release** - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 United States Code, §§2011 *et seq.*), if the release is subject to requirements concerning financial protection established by the United States Nuclear Regulatory Commission under that Act, §170;

(D) for the purposes of the federal CERCLA (Superfund), §104, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978 (42 United States Code, §7912 and §7942), §102(a)(1), or §302(a); and

(E) the normal application of fertilizer.

(12) **Small quantity generator** - A generator that generates through ongoing processes and operation at a facility:

(A) equal to or less than 1,000 kilograms but more than or equal to 100 kilograms of hazardous waste in a month; or

(B) equal to or less than one kilogram of acute hazardous waste in a month.

(13) **Source reduction** - Has the meaning assigned by the federal Pollution Prevention Act of 1990, Publication Law 101 - 508, §6603, 104 Stat. 1388. The term 'source reduction' means any practice which:

(A) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(B) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(14) **Tons** - 2,000 pounds, also referred to as short tons.

(15) **Toxic release inventory** - A program which includes those chemicals on the list in Committee Print Number 99 - 169 of the United States Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA, 42 United States Code, §11023), 313" including any revised version of the list as may be made by the administrator of the EPA.

(16) **Waste minimization** - A practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

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§335.472. Pollutants and Contaminants.

The following pollutants and contaminants are subject to pollution prevention planning:

(1) all hazardous wastes generated that are reportable in accordance with §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); and

(2) all chemicals that exceed the Form R threshold reporting requirements in accordance with Emergency Planning and Community Right-To-Know Act of 1986, §313.

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§335.473. Applicability.

This subchapter applies to facilities that are required to develop a pollution prevention plan in accordance with the Waste Reduction Policy Act of 1991, or the regulations promulgated thereunder, including:

- (1) all large quantity generators of hazardous waste;
- (2) all small quantity generators of hazardous waste; and

(3) all persons subject to §313, Title III, Superfund Amendments and Reauthorization Act of 1986 (Emergency Planning and Community Right-to-Know Act (EPCRA), 42 United States Code, §11023). These toxic release inventory (TRI) covered facilities would be required to develop pollution prevention plans for only the TRI listed chemicals that exceed Form R reportable threshold quantities established under EPCRA.

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§335.474. Pollution Prevention Plans.

All persons identified under §335.473 of this title (relating to Applicability) shall prepare a five-year pollution prevention plan that shall be updated as necessary. Plans shall be maintained on-site and available to commission personnel for inspection. Prior to expiration of the initial plan and each succeeding five-year plan, a new five-year plan shall be prepared. Plans prepared under paragraphs (1) - (3) of this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(1) Large quantity generators or toxic release inventory (TRI) Form R reporters. For facilities that are large quantity generators as defined in §335.471(8) of this title (relating to Definitions) or TRI Form R reporters defined in §335.471(15) of this title, the plan shall include, at a minimum:

(A) an initial survey that identifies:

(i) for facilities described in §335.473(1) of this title, all activities that generate hazardous waste; and

(ii) for facilities described in §335.473(3), all activities that result in a release of TRI reportable chemicals;

(B) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(C) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(D) an estimate of the type and amount of reduction anticipated;

(E) a schedule for the implementation of each source reduction and waste minimization project;

(F) measurable source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(G) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(H) identification of cases where the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium;

(I) certification that the plan is complete and correct by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan. A copy of the certification is to be submitted to the commission; and

(J) an executive summary of the plan submitted to the commission that shall include at a minimum:

(i) a description of the facility that shall include:

(I) name of facility;

(II) mailing and physical address;

(III) point-of-contact, including phone number and electronic mail (e-mail) address, if available;

(IV) a general description of the facility;

(V) applicable identification numbers, including: Texas Commission on Environmental Quality (TCEQ) solid waste registration number, EPA identification number, and TRI identification number;

(VI) primary standard industrial classification (SIC) code and, if applicable, North American Industry Classification System (NAICS); and

(VII) the specific time period the five-year plan is in effect;

(ii) a list of all hazardous wastes generated and the volume of each;

(iii) a list of all reportable TRI releases and transfers and the volume of each;

(iv) a prioritized list of pollutants and contaminants to be reduced;

(v) a statement of measurable reduction goals;

(vi) an explanation of environmental and human health risks considered in determining reduction goals;

(vii) a list of source reduction and waste minimization projects with an associated schedule toward implementation;

(viii) an implementation schedule for future reduction goals; and

(ix) identification and description of cases where the implementation of source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristic of the normal waste stream or release and how it will be managed in the affected medium.

(K) The executive summary of the plan may include:

(i) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(ii) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(iii) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(iv) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(v) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(2) Small quantity generators/non-TRI Form R reporters. For facilities that are small quantity generators as defined in §335.471(12) of this title and are not TRI Form R reporters as defined in §335.471(15) of this title, the plan shall include, at a minimum:

(A) a description of the facility which shall include:

(i) name of the facility;

(ii) mailing and physical address;

(iii) point-of-contact, including phone numbers and electronic mail (e-mail) address, if available;

(iv) general description of the facility; and

(v) applicable identification numbers, including: TCEQ solid waste registration number and EPA identification number;

(B) a list of all hazardous wastes generated and the volume of each;

(C) a prioritized list of pollutants and contaminants to be reduced;

(D) a statement of measurable reduction goals;

(E) information on environmental and human health risks, such as material safety data sheets or other available documentation, considered in determining reduction goals;

(F) A list of source reduction and waste minimization projects with an associated schedule of implementation;

(G) an implementation schedule for future reduction goals;

(H) certification that the plan is complete and correct by the owner of the facility or if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan. A copy of the certification must be submitted to the commission; and

(I) an executive summary of the plan submitted to the commission that shall include at a minimum:

(i) a description of the facility that shall include:

(I) name of facility;

(II) mailing and physical address;

(III) point-of-contact, including a phone number and email, if available;

(IV) EPA identification number and TCEQ solid waste registration number;

(V) primary SIC code; and if applicable, NAICS;

(VI) the specific time period the five-year plan is in effect;

(ii) a projection of the amount of hazardous waste that the facility will generate (based on what is reported as hazardous waste under §335.9 of this title (relating to Record Keeping and Annual Reporting Procedures Applicable to Generators)) at the end of the five-year period that the plan is in place;

(iii) prioritized list of pollutants and contaminants to be reduced;

(iv) a list of source reduction activities associated with reductions of pollutants and contaminants identified under subparagraph (C) of this paragraph.

(J) The executive summary of the plan may include:

(i) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through the pollution prevention plan;

(ii) a discussion of the effect that changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(iii) the effects that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(iv) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals; and

(v) identification and description of cases where the implementation of source reduction and waste minimization activities designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristic of the normal waste stream or release and how it will be managed in the affected medium.

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§335.475. Implementation.

All facilities subject to this subchapter shall develop a pollution prevention plan. A facility, once subject to this subchapter, shall remain subject until it no longer meets the requirements of §335.473 of this title (relating to Applicability) or is exempted under §335.477 of this title (relating to Exemptions). The executive summary and certificate of completeness shall be submitted to the executive director on the date the plan is required to be in place. Any facility that becomes subject to the requirement to have a pollution prevention plan, shall have 90 days from the date it is required to submit its initial annual waste summary or TRI forms to the commission to have the pollution prevention plan in place and available for review. Facilities subject to this subchapter are required to renew their plan every five years.

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§335.476. Reports and Recordkeeping.

All persons required to develop a pollution prevention plan for a facility under this subchapter shall submit to the commission an initial executive summary of the plan following the requirements of §335.474(1)(J) of this title (relating to Pollution Prevention Plans) for large quantity generators/toxic release inventory Form R reporters or §335.474(2)(I) of this title for small quantity generators/non-toxic release inventory Form R and a copy of the certification of completeness and correctness as required by §335.474(1)(I) of this title. Within 30 days of any revision of such plan, a revised executive summary, including a copy of a new certificate of completeness and correctness shall be submitted. All owners and operators required to develop a plan under §335.473(1) or (3) of this title (relating to Applicability) shall also submit an annual progress report as defined in paragraphs (1) - (3) of this section according to the schedule outlined in paragraph (4) of this section. Persons required to develop a pollution prevention plan for a facility under §335.473(2) of this title may meet the annual progress reporting requirements by submitting their annual waste summary required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) and by submitting their hazardous waste reduction goals as required under §335.474(2)(I) of this title.

(1) The annual progress report shall detail the facility's progress in implementing the pollution prevention plan and include:

(A) an assessment of the progress toward the achievement of the facility source reduction goals and the facility waste minimization goals;

(B) a statement to include, for facilities described in §335.473(1) of this title, the amount of hazardous waste generated and, for facilities described in §335.473(3) of this title, the amount of any releases and transfers of reportable pollutants or contaminants designated under Texas Health and Safety Code, §361.503(a)(3) in the year preceding the annual progress reporting year, and a comparison of those amounts with the amounts generated or released using the base year; and

(C) any modification to the plan.

(2) The annual progress report may include:

(A) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through the pollution prevention plan;

(B) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(C) the effects that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(D) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(3) The annual progress report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(4) The first annual progress report shall be submitted on July 1st of the calendar year following the year of first plan due date. Thereafter, the annual progress report shall be submitted annually, due July 1st to report progress from the previous calendar year.

(5) Base year data shall be used in developing both the annual progress report and the executive summary of the plan.

(6) The annual progress report shall be submitted on forms furnished or approved by the executive director and shall contain at a minimum the information specified in paragraph (1) of this section. Upon written request by the facility, the executive director may authorize a modification in the reporting period.

§335.477. Exemptions.

This subchapter does not apply to:

(1) facilities regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101 or §141.012;

(2) owners and operators of facilities listed in §335.473 of this title (relating to Applicability) who may apply on a case-by-case basis to the executive director for an exemption from this subchapter. The executive director may grant an exemption if the applicant demonstrates that sufficient reductions have been achieved. If an exemption is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based upon the following standards and criteria for determining practical economic and technical completion of the plan:

(A) the facility has reduced the amount of pollutants and contaminants being generated or released by 90% since the base year;

(B) potential impact on human health and the environment of any remaining hazardous waste generated, or pollutant or contaminant released; and

(C) a demonstration that additional reductions are not economically and technically feasible.

(3) facilities that have an environmental management system (EMS) that meets the requirements and is approved by the executive director, as described in §90.36 of this title (relating to Evaluation of an Environmental Management System by the Executive Director) and report annually under the EMS program.

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§335.478. Administrative Completeness.

The executive director may review a pollution prevention plan or annual progress report to determine whether the plan or report complies with this subchapter.

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§335.479. Enforcement.

Failure to have a pollution prevention plan in accordance with this subchapter or failure to submit a pollution prevention annual progress report in accordance with this subchapter is a violation.

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§335.480. Confidentiality.

(a) A pollution prevention plan shall be maintained at each facility owned or operated by a person and/or generator who is subject to this subchapter and shall be available to agency personnel for inspection. The pollution prevention plan is not a public record for the purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statutes, Article 6252-17a).

(b) The executive summary of the plan and the annual progress report are public records. On request, the person and/or generator shall make available to the public a copy of the executive summary of the plan or annual progress report.

(c) If an owner or operator of a facility for which a pollution prevention plan has been prepared shows to the satisfaction of the executive director that an executive summary of the plan, annual progress report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the executive director shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual progress report, or portion of a plan, summary, or annual progress report would otherwise qualify as a trade secret, an action by the agency does not affect its status as a trade secret.

(e) Information classified by the executive director as confidential under this section is not a public record for purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statutes, Article 6252-17a), and may not be used in a public hearing or disclosed to a person outside the agency unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

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