MCTA

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October 27, 2015

EO562 Input, c/o Deneen Simpson
MassDEP
One Winter Street
Boston, MA 02108

Dear Ms. Simpson,

On behalf of the Massachusetts Chemistry & Technology Alliance, Inc., the association representing the manufacturers, users and distributors of chemicals, I am pleased to submit the following comments on regulations promulgated under the Toxic Use Reduction Act of 1989, MGL c. 211, pursuant to the mandate for regulatory review established under Executive Order (EO) 562.

MCTA's members and other chemical-related industries represent the 2nd largest industry sector in the state, generating $9 billion in revenue, contributing $1.7 billion in payroll, and providing 16,740 direct jobs and 40,955 related jobs. Massachusetts manufacturers, users and distributors of chemicals pay nearly 100% of the administrative, research, enforcement, programmatic, marketing, and technical assistance costs associated with TURA.

TURA was enacted 25 years ago, and EO 562 provides a vehicle by which the Commonwealth can review the TURA regulations in light of today's conditions, and determine how the program can be improved without jeopardizing its mandate or putting an undue burden on industry.

In 2015, a coalition of industry groups conducted an analysis of data of toxic chemical releases reported to EPA under the federal Toxic Release Inventory (TRI) program. TRI was the best comparative vehicle available, since the TURA program is specific to Massachusetts. According to the most recent data available, over 90 percent of the large quantity TUR filers in Massachusetts also file for federal TRI chemicals, and over 75 percent of the chemical releases and offsite transfers reported under the TUR program were for TRI chemicals.

For the purposes of this analysis, Massachusetts was compared with six other states: California, Ohio, Pennsylvania, New Jersey, North Carolina and Connecticut. The data captured in that survey establishes that:

- TURA was enacted in 1989 during a time of greatly increased governmental oversight including the enactment of the Pollution Prevention Act of 1990, the Clean Air Act Amendments in 1990 addressing Air Toxics, the Federal Clean Water Act Amendments in 1987 that gave new teeth to the control of toxic pollutants, the Hazardous and Solid Waste Amendments of 1986, and the Superfund Amendments and Reauthorization Act of 1987. Given this flurry of regulatory activity, it is difficult to isolate and measure the impact TURA had on the reductions achieved by industry in the Commonwealth from the influences of other laws and promulgated regulations.

- Despite the added requirements of TURA, the Commonwealth's reduction in the generation of TRI core chemical waste is not markedly different than that achieved by the same industries in other states. The results of the analysis show that while the Commonwealth significantly reduced TRI core chemical waste by 40% between 1994 and 2013, so did Connecticut (85%), California (47%), New Jersey (51%), Pennsylvania (25%), Ohio (38%), and North Carolina (55%). The data, compiled and analyzed, also shows that the rate of reduction in chemical waste volumes in both Massachusetts and the comparison states has slowed significantly over the past decade, a trend that can be attributed in large part to the modifications and changes made in the mid- and late 1990s as industry responded to the new state and federal environmental regulations that required toxics reporting, made the disposal of toxic waste more expensive, and forced specific technologies to be implemented to reduce emissions and waste.

MCTA is not advocating for the repeal of TURA, which serves a public education, research, and academic purpose. However, we strongly believe that the TURA regulations governing planning and recertification should be reviewed and amended. After 25 years of TURA compliance, industry has limited opportunity for further reductions. In fact, TURA's own data shows that the number of TURA filers has decreased by more than 50%, and that reductions have virtually flat-lined over the past decade. To quote one MCTA member, "[Achieving further reductions] is like squeezing water from a stone. We have to go through the planning every two years even though there is nothing else to do. It's just a costly exercise."

We strongly believe it is time to look at TURA, is costs and the outcomes it generates and make a determination of whether some of its regulations can be revised to reduce the costly training and reporting requirements associated with compliance.

Accordingly, MCTA recommends the following regulatory modifications to TURA under EO 562:

- Reduce Planning Frequency from every two years to every five years. The statute requires that an industry which falls under the TUR umbrella must complete an initial Toxic Use Reduction Plan and an update after two years, but provides that the frequency of subsequent is to be determined by MassDEP. MassDEP regulations currently call for the plan to be re-certified every two years, a cumbersome and costly exercise which delivers minimal return. We recommend that the regulations be amended to require that TUR Plan updates after the first statutorily-required update are required every five years, rather than every two years.
- Reduce the hours required for recertification of Toxic Use Reduction Planners (TURPs). Under TURA, Toxic Use Reduction Plans must be approved by a certified TURP, either a consultant or a qualified in-house manager. These TURPs are required to have between 30/24 or 24/20 hours of continuing education every two years depending on their classification. As noted above, the marketplace and the federal/state regulatory environment require that industry be aware of new processes and technologies: the cost in course fees and manpower outweighs the value-added of the continuing education. We recommend that the regulation should be amended to reduce continuing education requirements by half.
- Provide access to waivers for industries that require the use of listed chemicals to comply with state, Federal, or local regulations, or to meet bidding specifications for Federal and state contracts. While the statute allows waivers to be granted, there has been no promulgation of rules or guidance that would establish criteria or procedures for how to obtain one. We recommend that MassDEP draft a guidance document enabling Massachusetts companies to receive waivers under these circumstances.

- Eliminate TURI's community grant program. While laudable, industry members already contribute millions of dollars annually to community programs ranging from the United Way and youth sports to Earth Day and open space acquisition, and should not be asked to fund a separate TURI program that provides grant funding for non-industry related purposes.
- Reject fee increases. The cost of the TUR Program, including the funding of staff at MassDEP, OTA, and TURI, is funded almost entirely by fees assessed on industries using listed chemicals. As noted above, the number of TUR filers has more than halved since the program's inception; the remaining filers are still paying for nearly the entire program. MCTA strongly opposes any increase in TURA fees, which put an economic hardship on members and place them at a disadvantage when competing with out-of-state businesses. In light of the TURI's broad educational and research mandate, MCTA would strongly support its being funded from the Commonwealth's general fund.

The recommendations for regulatory change are consistent with the following standards set by the Executive Order:

- **Criterion 1: There is a clearly identified need for governmental intervention that is best addressed by the MassDEP and not another agency or governmental body;**

  There is no identified, substantiated need for MassDEP intervention. Other states have achieved comparable results with no TURA program. Even in the absence of TURA regulation, significant economic incentives, market forces, and governmental regulations would serve to motivate toxics use reduction.

- **Criterion 2: The costs of the regulation do not exceed the benefits that would result from the regulation;**

  TURA regulation provides only a questionable benefit with respect to the reduction of toxics released to the environment in Massachusetts, but imposes a high cost on businesses manufacturing, using, or distributing listed chemicals. Fees assessed to industry and the costs of TURA certifications, continued education, fees, and worker hours consumed for training, data gathering, and reporting, do not result in a discernible added benefit.

- **Criterion 3: The regulation does not exceed federal requirements or duplicate local requirements;**

  The TURA statute exceeds that which is required under Federal law. TURA regulations that impose requirements beyond those required under Federal law that are not specifically required by statute should be eliminated.

- **Criterion 4: Less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives;**

  The state has not considered less restrictive and intrusive alternatives, even though data collected by both the industry and TUR have established that the return on industries' investment is negligible at best.

- **Criterion 5: The regulation does not unduly and adversely affect Massachusetts citizens and customers of the Commonwealth, or the competitive environment in Massachusetts;**

TUR fees and the costs of training, education, and the diversion of worker hours to conducting frequent planning for Toxics Use Reduction puts Massachusetts businesses at a competitive disadvantage when bidding on contracts where certain listed materials are included in the specifications, or when competing in the marketplace with companies manufacturing goods and products in less restrictive environments. These added costs of production have affected Massachusetts citizens employed at TURA-regulated businesses as industries lose market share, move production to other states, or shut down.

- **Criterion 6: The Agency has established a process and a schedule for measuring the effectiveness of the regulation;**

  TURA's own data demonstrate diminishing returns as the program approaches its 25th anniversary. The comparison of TRI data for Massachusetts with that for other states also demonstrates that TURA regulation is not making an appreciable difference with respect to toxics use in Massachusetts.

- **Criterion 7: The regulation is time-limited or provides for regular review.**

  There is no time limitation for TURA regulation. TURI's own data indicate that the major reductions in the use of TUR-listed chemicals were realized before 2000; the lack of incremental improvement in recent years indicates the regulation should be at least modified and may have outlived its usefulness.

On behalf of MCTA, I would like to thank Governor Baker and his administration for providing us with the opportunity to comment on regulations that impact our members.

Sincerely,

Katherine Robertson

Executive Director
Massachusetts Chemistry & Technology Alliance