June 5, 2016

Lisa Dixon

Special Counsel for Regulatory Reform

Executive Office of Administration & Finance, Room 373

Massachusetts State House

Boston, MA 02133

Dear Ms. Dixon,

I am following up on comments I, and members of the Massachusetts Chemistry & Technology Alliance, Inc. (MCTA), submitted concerning 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 is the association representing the manufacturers, users and distributors of chemicals in the Commonwealth.

In May, representatives from TURA reported that the regulatory review period was over and that none of the regulations promulgated under the TURA statute were impacted by EO 562 including, among other issues, fees, continuing education requirements, waivers, and planning frequency. We are disappointed that the 26-year-old law was not reviewed under the criteria established in EO 562, even though it meets all of the criteria as defined in the order. Representatives from MCTA provided testimony at each of the MassDEP listening sessions and submitted written comment.

MCTA became involved in the process relatively late (October 2015) as we were waiting for the completion of an analysis of TURA’s effectiveness before commenting. After speaking with members of the Administration and MassDEP, we understood that regulatory revisions to TURA would be taken up, but not until after the initial regulatory review process. We hope that the Baker/Polito Administration will conduct a thorough review of TURA involving stakeholder input before closing the door on changing the regulations promulgated under the law. We also request that new regulations including the fee increases and additions to the Higher Hazard Substance list be delayed until after that review is completed.

As you may recall, Andy Irwin, Jamie Dunbar and I met with you in late 2015 to discuss the findings of the “TUR Effectiveness by TRI Data Analysis” report,” an analysis conducted by Mr. Irwin, President of IRWIN Engineers and a certified Toxic Use Reduction Planner. The report established that the Massachusetts law has not resulted in greater toxic use reduction than other states with similar industry sectors when comparing federal Toxic Use Release Inventory (TRI) data, the best comparable data available for comparison purposes. This report was made available to MassDEP and TURI, and follow-up to their feedback showed that Massachusetts showed even less reduction in the use of toxic chemicals than originally indicated when compared with other states.

A second analysis conducted by IRWIN Engineers reviewing toxic use reduction in Massachusetts over the life of the TURA program established that there has been little change in reduction in the past two decades, a fact underscored by the reduction in the number of filers from nearly 1,000 to less than 500. As a note, there has been no analysis of the cause of this reduction: did filers reduce chemical use to a point to where they no longer had to file? Did they go out of business? Or did they move out of state?

Arguably, other factors contributed to a significant decline in the use of chemicals in the Commonwealth and in the comparison states over the past 26 years. 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. The strengthening of the federal Toxic Substances Control Act, expected to be signed by the President in 2016, will increase regulation of hazardous chemicals and impact manufacture and production in all states equally. Given this flurry of regulatory activity, and the lack of any research into why companies have stopped filing, 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.

MCTA’s recommendations under regulatory reform were quite modest, and aimed at reducing the cost of man-hours required to comply with the law. We did not tinker with statute or the intent of the law.

MCTA and its members strongly believe but both the statute and the regulations promulgated under it should be adjusted to account for the dramatic changes that have occurred in the corporate culture of the manufacturing industry in the past 26 years during which most operations in the Commonwealth have embraced sustainability, environmental stewardship, process upgrades, minimization of waste and reduction of use of hazardous chemistries when possible. It makes sound business sense and fits into our members’ embrace of corporate responsibility and environmental sustainability.

We strongly believe it is time to look at TURA, its 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 recommended 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 plans 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. For small business, it is typical that the owner/president serve as the TURP to avoid the cost of hiring a consultant. 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. The assessment of a fee for use of contractually and regulatory mandated chemicals puts Massachusetts’ companies at a competitive disadvantage. 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 line item 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. TURA’s own FY15 Annual Report released in March 2016 shows a $300,000+ surplus. MCTA strongly opposes any increase in TURA fees, which put an economic hardship on members and places 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.

I am attaching for your review three documents:

* Executive Summary, “TUR Effectiveness by TRI Data Analysis,” September 25, 2015
* Executive Summary, “Evaluation of TURA Effectiveness from TURA Data Analysis,” December 30, 2015
* “Response to TUR and DEP Feedback,” February 1, 2015.”

On behalf of MCTA, I would like to thank you for your consideration and hope to have the opportunity to work with our members and the Administration, including A&F, MassDEP and TURA, on a regulatory review process that integrates robust stakeholder input.

Sincerely,



Katherine Robertson

Executive Director

Massachusetts Chemistry & Technology Alliance