

TURA Administrative Council Meeting

August 19, 2021

10am – 12pm

The August 19, 2021 TURA Administrative Council convened remotely, over Zoom, consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the 2019 novel coronavirus, known as, "COVID-19".

Council Members Attending (attendance taken by roll call):

Greg Cooper, Department of Environmental Protection (DEP)

Michael Flanagan, Department of Labor Standards (DLS)

Jennifer Hoyt, Department of Fire Services (DFS)

Marc Nascarella, Massachusetts Department of Public Health (DPH)

Edward Palleschi, Executive Office of Housing and Economic Development (OEHD), Office of Consumer Affairs and Business Regulation (OCABR)

Beth Card, Executive Office of Energy and Environmental Affairs (EEA)

Meeting Attendees (recorded by chat box and/or participant list):

EEA: Caroline Higley, Read Porter

DEP: Lynn Cain, Saadi Motamedi, Veronica O'Donnell, Jenny Outman

OTA: Jim Cain, Caredwen Foley, Kari Sasportas, Tiffany Skogstrom

TURI: Liz Harriman, Hayley Hudson, Rachel Massey, Greg Morose, Lindsey Pollard, Heather Tenney

Other attendees:

- Heather Alker Southborough BOH
- Daryl Beardsley
- David Shapiro
- Kyla Bennett, PEER
- Karen Blood Hollingsworth & Vose
- Gerald Clarke, BOH Town of Dover MA
- Bill Coyne, ACC
- Erin DeSantis, American Chemistry Council
- Robin Dodson, Silent Spring Institute
- Margaret Gorman, ACC
- Rajit Gupta
- Carol Holahan, Foley Hoag
- Jaime Honkawa, Nantucket PFAS Action Group
- Adelina Huo, Office of Representative Kate Hogan
- Lilyana Ibañez, The PFAS Project Lab
- Ayesha Khan, Nantucket PFAS Action Group
- Stephen Korzeniowski, ACC
- Tricia McCarthy, Coyne PC
- Sheri Miller-Bedau Town of North Attleboro Health Department
- Izzy Montesi, Hollingsworth and Vose
- Mickey Nowak, MA Water Environment Association
- Clint Richmond, Mass. Sierra Club
- Kathy Robertson, MCTA

- Bob Rio, AIM
- Laura Spark, Clean Water Action
- Shawn Swearingen, ACC
- Jill Vernes, Capaccio Environmental Engineering, on behalf of Lucy Servidio
- Jay West

1. Welcome and Introductions:

Participants were admitted at 10am and were asked to identify themselves in the chat box for purposes of recording meeting attendance. Council members were identified by roll call.

It was explained that chat would be disabled during the meeting, and that there would be opportunity for attendee participation at designated times.

2. Approval of Meeting March 5, 2021 Meeting Minutes

The chair opened the meeting by asking if there were any changes to the March 5, 2021 meeting minutes. There were no changes brought forth and the motion to accept the minutes as written was seconded and approved.

3. Definition of Substance (Vote):

Beth Card invited Tiffany Skogstrom to give background on this proposed amendment.

The categories listed under TURA primarily come from the federal lists of the Emergency Planning and Community Right to Know Act (EPCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that served as the source of the initial TURA list, and each category is treated as a single substance for regulatory purposes. All three regulations commonly use the term 'substance', but none have specifically defined the word.

Throughout the TURA statute, the term 'substance' is used to refer to a chemical or chemical category on the list. For example, "Cadmium compounds" is a category including an unspecified number of specific chemical abstract service (CAS) numbers.

Categories are reported as a single substance and facilities pay a single substance fee, even if they use multiple chemicals within the category. The statute includes the following definition:

"Toxic or hazardous substance", a substance in a gaseous, liquid, solid or other form which is identified on the toxic or hazardous substance list established pursuant to section 9,....

Adding 'substance' to the definition section of 310 CMR 41.02 will clarify the term when used to describe categories and elsewhere.

The proposed regulations would add a definition of the term 'substance' in to 301 CMR 41.02. The definition of the term 'substance' is as follows: Substance means any agent or material including but not limited to: pure chemicals with a specific chemical and structural identity; and categories or groups of chemicals, compounds or mixtures that share similar, identifiable characteristics such as, but not limited to, elemental composition, chemical formula, chemical structure, chemical properties, physical properties, functional groups or chemical manufacture.

Beth Card invited Council members to discuss and ask questions on the definition.

Council members noted that it makes sense to clarify existing practice. One member asked whether this clarification would affect any votes previously taken by the Administrative Council; program staff clarified that it will not affect any previous decisions or require the Council to re-vote on any listings.

Other attendees were invited to discuss this item.

- An attendee expressed the belief that the program does not have the authority to make this clarification, that the definition expands the Council's authority and contravenes the intent of the TURA statute to limit the number of listings added per year, and asked the Council to delay voting. Program staff clarified that EEA Counsel has confirmed that adding the definition is within the TURA Program's rulemaking prerogative. Staff also noted that categories are already on the TURA list, and that listing a category reduces the burden on filers because they are only required to pay a single fee and report on a single listing.
- An attendee stated that, although she did not contest the Council's authority to add the definition of substance, she believed the proposed definition should be brought to the Advisory Committee for further discussion and expressed concerns about specific language. In particular, the commenter raised the concern that including the phrases "physical properties" and "not limited to" could enable the listing of entire categories based merely on their physical properties, even if they are not toxic. Program staff and a Council member responded that this listing would not supplant the existing definition of "Toxic or Hazardous Substance," that substances would still need to be shown to be toxic or hazardous to be added to the list, and that the Council would continue to make such decisions on a scientific basis.

Hearing no other comments, Beth Card requested a motion in favor of adding a definition of the term 'substance' in to 301 CMR 41.02. The definition of the term 'substance' is as follows: Substance means any agent or material including but not limited to: pure chemicals with a specific chemical and structural identity; and categories or groups of chemicals, compounds or mixtures that share similar, identifiable characteristics such as, but not limited to, elemental composition, chemical formula, chemical structure, chemical properties, physical properties, functional groups or chemical manufacture.

Votes, taken by roll call, 6 approvals (unanimous) and recorded as follows:

- Beth Card: yes
- Greg Cooper: yes
- Michael Flanagan: yes
- Jen Hoyt: yes
- Marc Nascarella: yes
- Edward Palleschi: yes

The motion was carried unanimously, and will proceed through the regulatory process, including a public comment period and public hearing.

4. Per- and Polyfluoroalkyl Substances Not Otherwise Listed (PFAS NOL) (Vote):

Heather Tenney from TURI provided a short recap of the PFAS Policy Analysis that was presented at the March Administrative Council meeting.

Beth Card invited Council members to discuss and ask questions on the PFAS NOL proposal and the policy analysis. Hearing no comments from Council members, other attendees were invited to discuss this item.

- An attendee with experience dealing with local water contamination issues in Massachusetts expressed strong support for the category approach to listing PFAS.
- An attendee raised concerns about applying the category approach to all PFAS, particularly fluoropolymers, because of the variability in toxicity of specific PFAS chemicals. They indicated that the set of PFAS in commerce is likely in the hundreds and can be evaluated through traditional risk assessment and that different PFAS should be regulated differently. They expressed the opinion that persistence is not an intrinsic hazard and requested that the Council further review these issues and hold off on voting.
- An attendee expressed the belief that the Council does not have the authority to list this category, and raised procedural objections to the public meetings held on the topic; specifically, that virtual meetings of the Science Advisory Board did not provide sufficient opportunity for public engagement, and that only one Advisory Committee meeting was held on the topic. TURA Program staff responded that virtual meetings only began after approximately 3 years of in-person meetings, and that the Program complied with all obligations to enable public participation in virtual meetings. Program staff also noted that the Advisory Committee discussed the proposed listing and that it has also been discussed in prior Administrative Council meetings, that the Administrative Council is the decision-making body to initiate the regulatory process, and that stakeholder comments would also be accepted during the public comment period of the regulatory process.
- An attendee raised concerns about the economic impact on filers of this listing.
- An attendee who is a TUR planner noted that her clients are concerned about PFAS and want to get PFAS out of their products and to understand the available alternatives. She thinks these companies are all for this regulatory step. This attendee noted that manufacturers may encounter challenges complying, but that this isn't a reason not to proceed. TURA Program staff added that OTA and TURI are working directly with affected manufacturers to help them identify and eliminate PFAS in their facilities, including reaching out to suppliers.
- An attendee noted the difficulty of finding out whether PFAS are contained in products, and that their suppliers don't have the information either. They suggested that the ACC could assist companies by helping identify PFAS replacements.
- An attendee agreed that companies don't want to use PFAS, but may not know if they are using it, due in part to trade secret claims, and finds the OTA supplier notification letter helpful.
- An attendee asked whether this listing would require testing for hundreds of PFAS chemicals or all the PFAS in the PFAS NOL category, rather than the 6 included under the drinking water MCL, and asked whether this listing would require testing of influent or biosolids. TURA Program staff clarified that this listing only applies to TURA filers and would not place any testing requirements on TURA filers. OTA is also working with companies upstream from Publicly Owned Treatment Work (POTWs), who will soon have PFAS testing requirements in

their surface water discharge permits, but the MassDEP SWD testing requirements are not related to the inclusion of PFAS NOL as a TURA-reportable substance.

- An attendee asked what the responsibility would be for a company that does not know whether it is using PFAS, and has made a good faith effort to find out. TURA Program staff suggested maintaining records and communications with suppliers to show due diligence, recommended reaching out to OTA for assistance, and noted that the TURA Program is already supporting companies with these issues. Program staff also noted that this is an advantage of the category approach: companies only need to request a yes/no from a supplier on whether any chemical fitting the definition is used in a product, but the supplier does not need to specify which one.
- A Council member noted that the TURA listing will help provide Massachusetts businesses with leverage for getting information about product contents from their suppliers, and will also provide valuable information on PFAS use and sources in Massachusetts.
- An attendee noted that listing PFAS as a category will also help prevent regrettable substitution and will keep companies from investing in substitutions that may need to be replaced again in a few years.

Hearing no further comments, Beth Card requested a motion in favor of adding the per- and polyfluoroalkyl substances not otherwise listed (PFAS NOL) category to the TURA List of Toxic or Hazardous Substances (TURA List) to 301 CMR 41.03, as defined as: those PFAS that contain a perfluoroalkyl moiety with three or more carbons, or a perfluoroalkylether moiety with two or more carbons, that are not otherwise listed. She noted that example chemical structures were noted in the parentheses on the slide.

Votes, taken by roll call, 6 approvals (unanimous) and recorded as follows:

- Beth Card: yes
- Greg Cooper: yes
- Michael Flanagan: yes
- Jen Hoyt: yes
- Marc Nascarella: yes
- Edward Palleschi: yes

5. Program Updates

Liz Harriman from TURI provided a TURA Program update. The update was also provided in writing, and included the following topics:

- An update on the conclusion of meetings of the TURA Program Strengthening Ad Hoc Committee and next steps
- TURA Program staff updates
- The upcoming fall TUR Planner Certification Course
- An update on the progress of the Science Advisory Board (recommendation made on selected group of quaternary ammonium compounds, TURI will be working on a policy analysis; SAB is now evaluating carbon nanotubes and nanofibers in response to a petition to list)
- An update on PFAS use identification and source reduction activities

Beth Card thanked the Administrative Council and Advisory Committee members, Stakeholders, TURA Program staff, and reiterated that the affirmative votes taken today would initiate the regulatory process. This includes a public comment period and public hearing. Notifications for important dates will be sent out via email, Constant Contact and posted on the web. All inquiries, comments and communications should be sent to the TURA Administrative Council Executive Director, Tiffany Skogstrom.

A motion to adjourn was made and seconded. All TURA Administrative Council members were in favor, and none opposed. Meeting adjourned.