

# ***THE BRIEFING***

**December 2009 Edition**

**Feature News and Information for the Chemistry & Plastics Technology Sector in  
Massachusetts and New England**

## **□ The 2009 Year in Review – State Legislation**

It was with great anticipation that the Massachusetts legislature began the 2009 calendar year session, expecting to finally have put the economic woes of the previous year behind them. The incumbent House Speaker and incumbent Senate President were re-elected handily, insuring continuity in the leadership of both branches of the legislature. Little did the public anticipate that 30 days later the House of Representatives would be in chaos because of the abrupt resignation of House Speaker Salvatore DiMasi, who continues to face Federal bribery and corruption charges.

The abrupt change in House Speaker led to widespread changes in committee chairmanships, with very early supporters of new Speaker Robert DeLeo receiving the most prestigious and powerful committee posts. Representative Charles Flaherty took control of the House Ways & Means committee, and Representative James Vallee became Majority Leader.

There was a major shakeup in the management of the Joint Committee on Environment, Natural Resources, and Agriculture as well. Long-time House Chairman Frank Smizik (D-Brookline), a strong friend to environmental groups, was reassigned to a new Joint Committee on Climate Change. Representative William Straus (D-Mattapoisett), a backbencher, was promoted to House Chair of JEN in place of Representative Smizik. A very positive appointment to JEN occurred from the Senate, where Senator Anthony Petrucci (D-East Boston) replaced retired Senator Pam Resor (D-Acton). Senator Resor and her staff had exhibited a bias toward expanding environmental regulations, including expansion of TURA. Senator Petrucci,

upon taking Senate Chairmanship, announced a more deliberative approach for the JEN with respect to future environmental legislation.

Protecting existing jobs in the Commonwealth became a high priority for JEN, as well as the entire legislature, for the balance of 2009. This new approach did not inhibit environmental activist groups from introducing legislation to ban chemicals, plastics, and other materials from sale or use in the Commonwealth. The activists' favorite idea, Safer Alternatives to Toxic Chemicals, was introduced for the seventh year in a row, this time with an added feature to spend millions of dollars on job retraining for the thousands of people whose jobs would be lost forever if the Safer Alternatives legislation was to become law. Clean Water Action, MassPirg, and other components of the Alliance for a Healthy Tomorrow finally admitted that their idea to expand TURA to include bans on everyday products would totally disrupt the very weak Massachusetts economy.

Activist groups also introduced legislation to ban common pesticides, the gasoline additive MTBE (which has been voluntarily withdrawn from US markets), common household cleaning products, polycarbonate (BPA) products, and polystyrene products. Proponents even brought back an idea from the early 1990's, legislation to mandate a bittering agent compound for all Ethylene Glycol products sold in the Commonwealth.

The Joint Committee on Environment, Natural Resources and Agriculture did not initiate public hearings until the summer, and even then delayed hearings on the Safer Alternatives legislation until early November. This

particular public hearing featured a panel presentation by MCTA companies, as well as testimony from the usual environmental activists. Mass AFL-CIO lobbyists continued the past trend of testifying in support of Safer Alternatives, a job-loss bill, while their general membership at manufacturing plants continued to oppose this legislation. Official testimony from the Patrick Administration on Safer Alternatives, delivered by MADEP staff, was heavily criticized by environmental

activists and AFL-CIO speakers. This must mean the Governor recognizes that preserving existing manufacturing jobs is more important for the Commonwealth than political rhetoric and costly new environmental regulations.

The very good news coming from the Massachusetts legislature in 2009 is that no further harm was done.

## **MCTA Legislation in 2009 Aimed at Eliminating Costly Regulatory Burdens**

In an effort to place environmental groups on the defensive, and chemistry and plastics manufacturers on the offensive, MCTA introduced several key legislative proposals during the 2009 legislative session. The first, House Bill 803, would **eliminate costly TURA regulations** and reporting requirements that have been identified by MCTA companies as non-productive and serving zero environmental value. This legislation placed environmental activist groups on notice that their usual anti-industry ideas would be opposed by suggesting more positive environmental approaches for the Commonwealth that preserve jobs, not destroy them.

MCTA companies testified in support of HB 803 during the same legislative hearing as the Safer Alternatives bill. Environmental activists went out of their way during the public hearing to criticize MCTA's legislation, without offering any positive suggestions.

A second MCTA legislative proposal, Senate Bill 914, would eliminate costly reporting requirements associated with the current **above ground storage tanks inspection regulations**. SB 914 would focus mandatory

inspections on tanks with just flammable and combustible materials. This latter legislation has been reported favorably by the Joint Committee on Public Safety & Homeland Security, which bodes well given the legislation's early forward progress.

A third proposal, Senate Bill 133, would provide plastic molders and manufacturers with significant financial relief from Massachusetts mold inventory requirements. A fourth proactive proposal, House Bill 3021, would require two state government agencies, Public Health and Environmental Protection, to conduct strict economic impact studies prior to promulgating any new state regulations. In addition, the state legislature would become more active in oversight of these regulatory agencies.

Legislative committees of original jurisdiction (Joint Committees) have until the end of March 2010 to vote in favor of, or table for further action, any of the 6000 legislative bills not yet acted upon. For more detailed information, please contact Dave Wawer, [dwawer@verizon.net](mailto:dwawer@verizon.net), 617-312-6421.

## □ 2009 Massachusetts Regulatory Review

Just when you think state regulatory agencies might temper their historically aggressive tendencies because of the national recession, Massachusetts regulators continue to give credence to the mind-numbing mentality that the only good manufacturing job is a job located in another state.

It began with the Massachusetts Department of Environmental Protection issuing a very comprehensive **storm water regulation** that imposed significant new regulatory reporting costs on all major business properties, both industrial and commercial. This regulatory proposal was precipitated by a local activist group with concerns about a stream in the Charles River watershed. By the time MADEP regulators shaped a regulatory proposal, its implications became statewide, which demonstrated the tendency of MADEP to overreach when faced with minor concerns. Three months of industry grassroots activity, which included legislative briefings, finally slowed the MADEP down, and the proposed regulation was retracted.

The next key regulatory action came when the Massachusetts Department of Public Health issued a public health advisory for consumer items manufactured with **polycarbonate plastic**. Ignoring science and technology, the MADPH instead chose to utilize the “precautionary principle” when suggesting that consumers avoid purchasing certain children’s products. Technical briefings for MADPH staff by SABIC, a

Massachusetts manufacturer, were largely ignored, which is usually the case when MADPH staff has already made up its mind on a new public policy.

The third key regulatory action came when officials of the Massachusetts’ Fire Marshal’s office signaled to chemistry & plastics industry representatives that it was prepared to incorporate industry recommendations into a new state regulatory oversight program on **manufacturing process safety**. The goal of this new regulatory program, which will have public hearings during the first quarter of 2010, is to identify manufacturing companies not currently subject to Federal OSHA requirements, and require certain minimum process safety requirements in their place. This effort is to safeguard against future disasters like the CAI explosion in Danvers in late 2006.

The fourth new regulatory initiative during 2009 was the imposition of **new VOC regulations** for Massachusetts modeled after regulations created by the Ozone Transport Commission in Washington, DC. Several Massachusetts manufacturers were impacted without sufficient notification by MADEP. A later guidance document, developed after industry concerns were voiced, resulted in minor regulatory forbearance for the impacted companies. If you have questions regarding the above, please contact Dave Wawer, [dwawer@verizon.net](mailto:dwawer@verizon.net), or Armin Steiner, [arminsteiner@verizon.net](mailto:arminsteiner@verizon.net).

## □ Stepped-Up Regulatory Enforcement 2009-2010

There has been increased regulatory enforcement on all fronts during this past year, with increased efforts anticipated during 2010. MADEP, OSHA, DOT, MADPH, USEPA, and the MWRA have all been very active. There have been targeted and multimedia inspections at manufacturing companies. Some

begin with one or two issues but then expand to more comprehensive investigations. Inspectors are finding multiple violations, and some violations appear to be more serious than in previous years (perhaps lack of maintenance and oversight). Penalties are being imposed sooner by drafting ACO’s and

ACOP's, sometimes skipping the Notice of Non-Compliance and just imposing fines and penalties. **Violations being observed** by Goldman Environmental Consulting include:

- MADEP hazardous waste – labeling, signage, drums on site too long, universal waste signage, training, generator status, EPA ID, contingency plans, emergency signs, coordinators and phone numbers not posted.
- MADEP air permits – exceeding permit conditions, using unapproved raw materials, not keeping proper documentation to demonstrate “de minimus”, beginning construction without prior approval, and emergency generators without permits.
- OSHA safety violations - including training, PSM, worker exposure, electrical safety, general duty clause, LOTO, hazcom, and respiratory protection.

- USEPA – EPCRA Tier II reports, storm water, SPCC.
- MWRA – wastewater discharge permit exceedances.
- USDOT – special permits, product labeling, marking, shipping papers and training.

According to GEC, regulators have been identifying easy fines at companies with lax or neglected compliance programs. In order to stay ahead of regulators looking to impose hefty fines in tough economic times, the company suggests third party compliance audits in order to detect and correct potential areas of vulnerability. If you have questions or would like more detailed information, please contact Neil Inglis, EHS Manager at Goldman Environmental Consultants, 781-356-9140 ext. 112, or by email, [ninglis@goldmanenvironmental.com](mailto:ninglis@goldmanenvironmental.com).

## □ MCTA Regulatory Workshop 2010

The steering committee for the 2010 Regulatory Workshop met just before Christmas to identify regulatory topics for chemistry and plastics manufacturing companies in the Commonwealth, including companies with multiple facilities in other New England states.

A half-day program is being planned for late first quarter 2010 at a location convenient to companies throughout Massachusetts. A survey of MCTA members is being conducted the first week of January to further refine the list of potential topics identified by the steering committee. Please watch your emails, and plan to participate in the MCTA member survey.

## □ Changes Proposed to OSHA Hazard Communications Standard – SOCMA Analysis

At the end of September OSHA issued a proposed rule that would **revise the Hazard Communications Standard** to conform to the Globally Harmonized System of Classification (GHS) and labeling of Chemicals of the United Nations.

Potential benefits of this change include elimination of incompatibilities and inconsistencies in labeling and classification, more

uniformity in both substance and format, and the elimination of language and reading barriers through pictograms. OSHA does not plan to conduct a Small Business Regulatory Enforcement Fairness Act (SBREFA) review of this rule. OSHA estimates that annualized employee training costs in response to GHS is approximately \$44 million. SOCMA believes this number to be severely underestimated. A GHS informal hearing is likely to occur in the

very near future, even though OSHA has deliberately avoided a formal small business regulatory review. If this regulation is adopted, there will be new costs associated with compliance, training, and regulatory paperwork. Companies would most likely have to retrain everyone who reviews incoming safety data sheets and labels. Manufacturers

would also have to review where hazardous chemicals are stored and perform new hazard assessments to ensure compliance. If you have questions or comments, please contact Bill Allmond at SOCMA, [allmondb@socma.com](mailto:allmondb@socma.com).

### **□ MCTA Offering Energy Efficiency and Energy Cost Recovery Programs for Members**

Through a partnership with Resource Development Associates, MCTA companies have an opportunity to evaluate existing energy uses and implement cost-effective energy saving strategies. This service can be initiated by contacting Rich DuPont, President of Resource Development Associates, and a New England energy efficiency company headquartered in Connecticut.

The energy cost-recovery program includes an in-depth analysis of past energy use, with an emphasis on energy rates charged to companies. Mr. DuPont's firm is a leader in New England for energy innovation programs. If you would like a more information about the energy cost-recovery programs now available to MCTA companies, please contact Dave Wawer, [dwawer@verizon.net](mailto:dwawer@verizon.net), or at 617-312-6421.

### **□ MCTA Legislative Policy Committee 2010 Conference Calls – First Meeting January 12, 2010**

Beginning with the second Tuesday in January, and continuing until the Massachusetts legislature adjourns on July 31<sup>st</sup>, 2010, MCTA's Legislative Policy Committee will conduct monthly conference calls to which all member companies and trade associations are invited. The conference calls begin at 4:00 PM and conclude by 5:00 PM.

For those of you who participated in Committee conference calls this past year, the call-in number and pass code remain the same. A CC reminder alert will be sent to

MCTA members the day before each conference call.

Topics for the January 12<sup>th</sup> conference call include an update on chemical ban legislation.

There is no need to register in advance of each month's conference call. If you have any suggested topics for the monthly CC, please contact Dave Wawer, [dwawer@verizon.net](mailto:dwawer@verizon.net) or [wawer@sbcglobal.net](mailto:wawer@sbcglobal.net).

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