

Toxics Use Reduction Act Fees: Summary of Recommendation

August 19, 2014

Since its inception in 1990, the Toxics Use Reduction Act (TURA) Program has achieved substantial success in accomplishing its goals. As a result of greater awareness of the economic advantages of reducing the use of toxic materials, onsite technical assistance, education and research, companies subject to the law have voluntarily substituted alternative safer substances and increased the efficiency with which they use chemicals, as well as reducing energy and water consumption. Based on data from the federal Toxics Release Inventory (TRI), TURA companies have consistently outperformed other states in reductions of chemical releases, reducing releases by 90% between 1990 and 2000 and by 73% between 2000 and 2012, making our communities safer. Independent surveys of Massachusetts companies regulated by TURA have shown both substantial cost savings and competitive advantages for regulated companies from toxics use reduction practices and improved efficiency.

Continued progress is threatened due to a lack of resources. The TURA program is funded entirely by statutorily mandated fees paid by large quantity toxics users (LQTUs). Over the past several years the administration has adjusted environmental permitting and compliance fees to reflect the cost of inflation. However, the TURA fees have not been raised since they were first established in 1991, despite the statutory requirement that they be adjusted annually to reflect changes in the Producer Price Index (PPI).

The statute directed the Council to set the fees to provide initial revenues between approximately \$4 and \$5.5 million in 1989 dollars¹ and provided for the fees to be adjusted annually.

- Had the adjustment been made annually as required, program revenues for reporting year 2013 would have been approximately \$4.7 million;²
- Actual revenues for reporting year 2013 will be approximately \$2.8 million.

¹ Section 19D. The statute directed the Council to set the fees so that the aggregate assessment was between \$4 million and \$5.5 million, adjusted by any changes in the Producer Price Index between July 1, 1989 and July 1, 1991, and if the aggregate assessment was likely to fall below \$4 million or above \$5.5 million, to set the fees to “result in a projected aggregate target assessment” of \$5 million adjusted by changes in the PPI within the same period.

² The number of LQTUS and the number of reported chemicals have declined since the early 1990s, so the figures for 2013 are calculated in relation to the current filing universe.

The TURA program agencies recommend the following actions:

- Adjust the TURA fees by approximately 50% to total \$4 million in fiscal year 2015, using a balanced approach that reduces impacts on small businesses and creates additional incentives to reduce the number of toxic chemicals used;
- In future years, implement the annual fee adjustment as required by statute.

The decline in resources has made it necessary for the three program agencies to cut back on staffing and funds that support technical assistance, training, and research in toxics use reduction and resource conservation, as well as implementation and enforcement of the reporting and planning requirements and analysis and use of the TUR data. Specifically, staffing at MassDEP and OTA has been reduced by more than half, while TURI has had to curtail grant and research efforts, in addition to using less than its full appropriation each year. These reductions threaten to have an impact on the goals of the program: progress in TUR, savings for Massachusetts industries, and health and environmental benefits.

While the proposed fee update is less than what the statute contemplates for adequate resourcing of the program, it would allow for the reestablishment and maintenance of vital program activities.

Additional information on this proposal is provided in the following pages. Options described below include an across-the-board increase or a tailored increase that reduces impacts on small businesses and reflects amounts of toxics used.

Toxics Use Reduction Act Fees: Overview and Recommendation to Update

August 19, 2014

The following is a recommendation to adjust the fees collected under TURA (section 19) to total approximately \$4 million and, going forward, to implement the annual fee adjustment as required by statute. This will allow for the reestablishment and maintenance of vital program activities including enforcement of the mandatory reporting and planning requirements, on-site technical assistance, grants to businesses, supply chain work, and research on safer alternatives.

The TURA program has resulted in significant benefits for the Commonwealth. Flexible regulation, assistance and education, planning and reporting have prompted businesses to voluntarily eliminate millions of pounds of toxics, resulting in efficiencies and economic benefits for business as well as health and environmental improvements for the Commonwealth. However, the steady reduction in funding over time has reduced the program's ability to continue the full range of activities that have made these achievements possible.

The Act mandates an annual fee adjustment in order to maintain adequate funding for the program. Had the statutory adjustments been implemented each year, the fees would have increased a total of 69% over the life of the program. However, this annual adjustment has never been implemented.

The Act also provides the Council with the authority to tailor the fee adjustment, which can be used to reduce impacts on small businesses and distribute the increases on companies that use a greater number or larger amounts of toxic or hazardous chemicals.

This calendar year, the program recommends that the Council make a one-time adjustment to substantially account for the 69% increase in the manufacturing PPI over the life of the program:

- **Per chemical fee:** A 50% increase in the per chemical fee from \$1,100 to \$1,650;
- **Base fee:** An adjustment to increase the base fee; and
- **Fee maximum:** An adjustment to increase the maximum fee.

The program suggests the Council consider tailoring the adjustments to reduce impacts on the smallest businesses and to allocate increases in proportion to the number of chemicals used.

In addition, we recommend that going forward, the annual fee adjustment be implemented, reflecting changes in the Producer Price Index, as set forth in Massachusetts General Laws Chapter 21 I, Section 19.

The funds would be used to prevent further cutbacks, restore successful program activities, and ensure sufficient enforcement. These proposed changes are discussed in more detail below.

BACKGROUND

TURA Program in MA

- TURA is designed to reduce the use of toxic chemicals in Massachusetts in order to protect the public, environmental and economic health of the Commonwealth. The program, which is funded by fees on the large quantity toxics users (LQTUs) subject to the Act's provisions, establishes regulatory and economic incentives, as well as education, assistance, and research programs, that lead companies to voluntarily reduce the use of toxic chemicals.
- Since passage, TURA has achieved significant success. LQTUs reduced toxic chemical use by 40% between 1990 and 2000, and by another 23% between 2000 and 2012. They improved efficiency by reducing waste by 58% between 1990 and 2000, and an additional 42% between 2000 and 2012. Based on data from the federal Toxics Release Inventory (TRI), TURA companies have consistently outperformed other states in reductions of chemical releases. They have reduced releases by 90% between 1990 and 2000 and by 73% between 2000 and 2012. Furthermore, independent surveys of Massachusetts companies regulated by TURA have shown both substantial cost savings and competitive advantages for regulated companies from toxics use reduction practices and improved efficiency.
- Currently, fees collected from LQTUs go into a retained revenue account at the Department of Environmental Protection (MassDEP) that is dedicated to the support of TURA program activities. Funds are used to support programs at MassDEP, EEA's Office of Technical Assistance and Technology (OTA), and the Toxics Use Reduction Institute (TURI) on the UMass Lowell campus, which share responsibility for ensuring that the environmental and economic goals of the Massachusetts Toxics Use Reduction Act (TURA) are being met.

Funding Needs

Despite these successes, there has been a steady erosion of funding to the program that threatens to diminish the gains made to date.

- Had the statutory adjustments been implemented each year, the fees would have increased a total of 69% over the life of the program. Had the adjustment

been made annually as required, program revenues for reporting year 2013 would have been approximately \$4.7 million;³

- Because the annual adjustments have never been implemented actual revenues for reporting year 2013 were only \$2.8 million.
- The proposed fee adjustments would produce revenues of approximately \$4 million in program funding for FY16 based on the current TURA filer universe. The funds would be used both to prevent further cutbacks and to restore successful program activities.

FEE ADJUSTMENT OPTIONS

The TURA fees are based on a combination of the number of employees at a facility and the number of chemicals used, up to a maximum. For Fiscal Year 2015 any of the following options could be implemented as a one-time adjustment to substantially account for the 69% increase in the manufacturing PPI over the life of the program and generate the recommended revenue target. Of the options described below, the TURA program agencies recommend Option B.

Fee Adjustment Option A

The simplest approach would be to increase existing fees proportionally across the board to generate the recommended revenue. A 50% across the board fee increase would generate approximately \$4.3 million.

Option A						
<u>Number of employees</u>	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥ 10 to < 50	\$1,850	\$2,775	\$1,100	\$1,650	\$5,550	\$8,325
≥ 50 to < 100	\$2,775	\$4,162	\$1,100	\$1,650	\$7,400	\$11,100
≥ 100 to < 500	\$4,625	\$6,938	\$1,100	\$1,650	\$14,800	\$22,200
≥ 500	\$9,250	\$13,875	\$1,100	\$1,650	\$31,450	\$47,175

Fee Adjustment Option B

Option B includes adjustments to mitigate impacts on the smallest businesses, and was the approach described in the previous Council meeting. Also, in Option B the fee maximum is not increased for companies with 500 or more employees, as their maximum is already more than twice that of the size category below them. The components of Option B are as follows:

³ The number of LQTUS and the number of reported chemicals have declined since the early 1990s, so the figures for 2013 are calculated in relation to the current filing universe.

- **Per chemical fee:** A 50% increase in the per chemical fee from \$1,100 to \$1,650;
- **Base fee:** A 50% adjustment to increase the base fee for businesses with 100 or more employees,
- **Base fee – small businesses:** No change in the base fee for businesses with fewer than 100 employees, and
- **Fee maximum:** An approximate 50% increase in the maximum fee for businesses with fewer than 100 employees, and an approximate 22% increase in the maximum fee for businesses with 100 to 499 employees.

The proposed fee structure, shown in the table below, would generate approximately \$4 million.

Option B						
<u>Number of employees</u>	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥ 10 to < 50	\$1,850	\$1,850	\$1,100	\$1,650	\$5,550	\$8,325
≥ 50 to < 100	\$2,775	\$2,775	\$1,100	\$1,650	\$7,400	\$11,025
≥ 100 to < 500	\$4,625	\$6,938	\$1,100	\$1,650	\$14,800	\$18,000
≥ 500	\$9,250	\$13,875	\$1,100	\$1,650	\$31,450	\$31,450

If Option B is implemented, companies with 10-49 employees will reach the maximum fee with 4 chemicals, companies with 50-99 employees will reach the maximum with 5 chemicals, companies with 100-499 employees will reach the maximum with 7 chemicals, and companies with 500 or more employees will reach the maximum with 11 chemicals.

Fee Adjustment Option C

Based on input from members at the last Council meeting, we have prepared an Option C that incorporates a graduated increase in the base fee, and additional adjustments to the maximum fees. The components of Option C are:

- **Per chemical fee:** A 50% increase in the per chemical fee from \$1,100 to \$1,650;
- **Base fee:** Graduated increases in the base fee:
 - No increase for the smallest businesses,
 - 17.2% increase for businesses with 50 to 99 employees,
 - 34.5% increase for businesses with 100 to 499 employees, and
 - 50% increase for businesses with 500 or more employees.

- **Fee maximum:**
 - 50% increase in the maximum fee for businesses with fewer than 50 employees,
 - A 69% increase for companies with 50 to 99 employees, and
 - 50% increase for businesses with 100 to 499 employees.

The proposed fee structure, shown in the table below, would generate approximately \$4 million.

Option C						
<u>Number of employees</u>	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥ 10 to < 50	\$1,850	\$1,850	\$1,100	\$1,650	\$5,550	\$8,325
≥ 50 to < 100	\$2,775	\$3,252	\$1,100	\$1,650	\$7,400	\$12,506
≥ 100 to < 500	\$4,625	\$6,221	\$1,100	\$1,650	\$14,800	\$22,200
≥ 500	\$9,250	\$13,875	\$1,100	\$1,650	\$31,450	\$31,450

If Option C is implemented, companies with 10-49 employees will reach the maximum fee with 4 chemicals, companies with 50-99 employees will reach the maximum with 6 chemicals, companies with 100-499 employees will reach the maximum with 10 chemicals, and companies with 500 or more employees will reach the maximum with 11 chemicals. The maximum fee in for the 50-99 employee category is increased proportionally to reach the maximum fee at 6 rather than 5 chemicals.

In 2008, the TUR Advisory Committee agreed that a fee increase was necessary. The Advisory Committee worked on several proposals that shared the intent of the present recommendation: to maintain the ability of the program to continue its effective work, and to tailor the fee adjustment so that it reduced impacts on small businesses and reflected the use of toxics or hazardous materials. A formal proposal was not brought before the Council for a vote at that time.

Additional Program Benefits

Currently, it is estimated that MassDEP is two years behind in taking enforcement action against companies that have stopped filing with TURA without providing a reason. Additionally, MassDEP estimates that it needs to investigate approximately 100 facilities that have never filed, and have not been investigated. This creates an unlevel playing field unfair to those companies in full compliance with the statute. Additional resources would also enhance MassDEP's ability to conduct other key activities, including: monitoring and evaluating the quality of toxics use reduction planners' work

with TURA filers; analyzing reported data for consistency and accuracy; and providing timely and effective guidance on the reporting and planning requirements for TUR and Resource Conservation planning. Falling behind on these programmatic requirements means that neither the Commonwealth or the citizens, nor businesses receive the full potential benefits of the Act.

OTA assistance to small businesses is also being reduced due to resource constraints. TURA data has shown that companies receiving OTA visits tend to have higher TUR performance, reducing costs and reaping the benefits of greener production and marketing.

In addition, the fee update will directly benefit users by supporting additional industry sectors, small businesses, startups, and research into toxic chemical alternatives. A few examples of these benefits from TURI and OTA programs are shown below.

- *Support more industry sectors:* Over the past fifteen years, the TURA program built a highly successful supply chain initiative that eliminated the use of lead by plastics compounders, wire and cable manufacturers, and electronic product manufacturers. This work has provided a competitive advantage in international markets, and the TURA program is applying a similar model in its work with aerospace and defense industries. TURA would like to expand the scope of this work to aid growing sectors in Massachusetts, including biotechnology and pharmaceuticals, but will be unable to do so without restoration of funding levels.
- *Support more small businesses:* The TURA program supports small businesses through a combination of technical assistance, business grants, and regulatory innovation. In one example, the program works with dry cleaners to eliminate the carcinogenic chemical perchloroethylene, improving their work environments as well as their profit margins. Many LTQUs are small businesses such as metal finishers, plastics compounders, medical device manufacturers, surface coaters, and auto shops that stand to benefit significantly from education and financial and technical assistance.
- *Support startups and innovative technology:* The consideration of safer alternative materials and processes is best performed before scale-up. The TURA program has worked with individual small biotech companies to support making beneficial process changes early on. For example, as a result of TURA program assistance, ChemGenes in Wilmington saved more than \$215,000, and experienced increased productivity and decreased cost that enabled the company to hire four new employees. With adequate funding, TURA could assist many other similar businesses, key players in the Commonwealth's innovation economy, in finding ways to lower costs through toxics use reduction.
- *Support more research into toxic chemical alternatives:* The TURA program supports university research into chemical alternatives of interest to Massachusetts industry. Raising the fees would allow the program to support additional business sectors and research, and grow Massachusetts' innovation economy in clean technology and green chemistry.

Finally, maintaining and restoring effective programs will produce additional economic benefits for Massachusetts businesses. Several company representatives have indicated that they have stayed in business in the Commonwealth, or hired or retained employees, because of the production efficiencies achieved as a result of the TURA program. The most recent survey of TURA filers found that 51% experienced improved worker health and safety; 41% achieved financial savings; 33% achieved improved compliance with other state or federal regulations; 29% achieved improvements in production efficiency; and 21% achieved improved product marketing, all as a result of the TUR planning and implementation process. Additional benefits include competitive positioning in European markets, maintaining tax revenues from more profitable Massachusetts businesses, savings from improved public and worker health and safety, and averted cleanup costs associated with pollution and spills.