



MMTA Government Relations and Legal ENEWS - February 9, 2016

From the Desk of Jamy Buchanan Madeja, Esq, MMTA Gov't Relations & Legal Counsel

Happy New Year from Beacon Hill! It was wonderful to see so many of you at the MMTA Education Conference in January. We look forward to seeing more of you at the Boat Show, as well. Do call if you have lingering questions from the Education Conference.

TIP: At the Education Conference, our presentation included the challenge of the new U.S. Army Corps Massachusetts General Permits for such activities as dredging, moorings maintenance, and dock relocations. One of the ways to apply for some activities is using a "Self-Verification" form, available for a small fraction of activities. It is worth noting that "Self-Verification" filings do not require plans be submitted with the self-verification form. All other forms of applying require plans.

We have also learned since the Education Conference that the U.S. Army Corps is planning to make still more changes to their application process within one year, instead of waiting five years. Stay tuned.

Massachusetts Statewide Regulatory Reform:

On behalf of MMTA, Buchanan & Associates attended several public meetings on **Executive Order 562 (EO 562)**, Governor Baker's order that all state agencies undertake a review of each and every regulation and to "sunset" all regulations on or before March 31, 2016, unless they are mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents.

Here is a link to the page where people can give feedback to the Governor about how regulations work: <http://www.mass.gov/anf/regreview.html>. It is easy to use, does not require identifying information, and can be used as many times as you like. There is a box to detail the observation, and another box to detail a solution.

It is not too late to inundate the Governor with stories. The Governor wants to hear our

stories!! March 31, 2016 is the date the Governor wants to hear from regulators, so input should be sent in ASAP. **This is our chance to lighten the regulatory load; to do something about the regulations we complain about. The more of us that write in, the better our chances of positive change.**

All regulations selected for change will require a report submitted to the Governor's office for their approval, after which any proposed regulatory revision is subject to the usual public comment process. This means there will be ample opportunity to review and comment on the specifics of any proposed regulatory change before the changes become law. Here are some key elements to look for:

- At the MMTA Education Conference, our keynote speaker, Deputy Secretary Carolyn Kirk (former Mayor of Gloucester) highlighted the hoisting laws as the "poster child" of regulations to be reformed. Hooray! Thanks to all of you who slogged up to Beacon Hill and wrote in to demand changes. We will keep you informed as the final changes go through the approval process.
- The Massachusetts Department of Environmental Protection has completed an initial assessment of their regulatory portfolio of more than 95 regulations and has identified 18 regulatory programs to be amended, and 10 regulations to be rescinded. DEP regulations cover a wide spectrum of issues for laboratory certification to the Chapter 91 and Wetlands programs. At this time, all of the programs proposed to be *rescinded* are either grant programs or regulations of little to no interest to MMTA members. DEP will continue to review its programs beyond the EO 652 deadline of March 2016, so there may be additional revisions proposed after that date.
- DEP hopes to streamline the regulatory process and ensure that Designated Port Area changes work in concert with the Office of Coastal Zone Management's Municipal Harbor Plan process. The DPA proposed regulations will add greater flexibility for municipal and business uses within a DPA, including what is termed "accessory uses." This change would allow municipalities to permit additional uses that will help support the primary marine industrial businesses, will bring in alternative beneficial revenue sources to support port operations, and add flexibility to expanded compatible industrial and commercial uses that reflect new and emerging technology in water-dependent industrial commerce. All that insider-speak means there may finally be more recreational boating commerce allowed in DPA's, especially in waterways with room for both. Please remember repairing vessels, even recreational vessels, is allowed in a DPA currently.
- "Chapter 91" waterways regulations (310 CMR 9.00) will be amended to clarify the definition of a Boatyard, broaden the definition of Supporting DPA Uses, strengthen the definition of Temporary Uses, add allowable water-dependent industrial uses, add clarification to allowed Accessory Uses to a water-dependent industrial use, add more specificity to Categorical Restrictions for parking and supporting uses on pile-supported structures over flowed tidelands within a DPA, permit maintenance of existing previously authorized recreational boating facilities within a DPA, permit recreational berths authorized in connection with a Boatyard, and provide for more flexibility in the standards for Boatyards in a DPA. We see these as really important "devil in the details" changes for our members, so we are quite focused on those details. Stay tuned.
- As for "Facilities of Public Accommodations", 310 CMR 9.00 will be amended to create "Facilities of Limited Accommodation" as an alternative to Facilities of Public Accommodation in order to provide

property owners with flexibility to site businesses that are open to the public by appointment, in exchange for funding programs that enhance public access and enjoyment of the waterfront. Additionally, where only a portion of a building is subject to c. 91 jurisdiction, the proposed regulations will allow property owners to relocate FPA or FLA within the footprint of the building to an alternative location that will more efficiently promote public use and enjoyment. Again, that "insider speak" can result in more flexibility for marinas and boatyards to include other revenue sources on site.

Additional amendments include:

- streamlining and updating the laboratory certification process under 310 CMR 42.00,
- conforming low emission vehicle regulations under 310 CMR 7.40 to California's standards,
- allowing easier compliance with the vehicle emissions inspection and maintenance program under 310 CMR 60.02,
- conforming drinking water standards under 310 CMR 22.00 to the new federal revised total coliform rule,
- conforming underground injection control regulations under 310 CMR 27.00 to the federal regulations,
- conforming clean water state revolving fund regulations under 310 CMR 44.00 and 45.00 to new state and federal laws,
- DEP's establishment of a design flow for septic systems for assisted living facilities by September of 2016 under Title 5, 310 CMR 15.00,
- simplifying sludge/septage regulations under 310 CMR 32.00 by establishing a single limit of 40 ppm for treated sludge,
- increasing flexibility for regulated parties under the industrial wastewater holding tank regulations, 310 CMR 18.00,
- streamlining the process for photoprocessors, small printers, and dentists with regards to wastewater and recycling under 310 CMR 70, 71, 73.00,
- clarifying and improving flexibility for ground water discharge permits under 314 CMR 5.00,
- conforming the surface water quality standards under 314 CMR 4.00 to federal law, which includes updating bacteria standards for recreational coastal waters, removing site-specific copper limits, and changing the standard for aluminum to acid-soluble,
- adjusting training qualifications and management standards for abatement work on asbestos under 310 CMR 7.15,
- conforming air pollution control regulations under 310 CMR 7.00 to federal laws, which includes revising reasonably available control technology for volatile organic compounds and nitrogen oxides, revising plan approval procedures to clarify exemptions and account for GHGs, and revising engine and turbine requirements, and
- establishing set-aside allowances for facilities that provide steam under RGGI 310 CMR 7.70.

We will, of course, continue to monitor the EO 562 process at the various agencies for proposed regulatory changes of interest to MMTA membership. Please let us know if you have comments or concerns on specific regulatory programs so that we can help monitor those programs.

LEGISLATION:

A few bills are moving this Winter/Spring:

- Mandatory boating education is the most impactful, and we are heavy participants to assure sensible provisions that do not discourage people from buying or trading boats;
- Bills to allow 100% of boat excise tax to be used for a local waterways fund, if so desired by the municipality;
- A climate change preparedness bill, which if passed would not allow new licenses or permits that do not comply with state agency plans for possible climate change measures such as tidal surges or flooding. Again, we're on it;
- Transfer of boat registrations among family members, to facilitate continued boating within a family.

That's some of the news that's fit to print. Call anytime with questions.

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