



MASSACHUSETTS MARINE TRADES ASSOCIATION

MMTA Government Relations and Legal ENEWS - November 24, 2014

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

A few updates in Government Relations from Beacon Hill, in legislative, regulatory and other matters:

EXECUTIVE LEADERSHIP: You have a new Governor-elect. Please, let us hope we are not the first to make this known. The Commonwealth's new executive leadership is referred to as the team of **Governor-Elect Charlie Baker and Lt. Governor-Elect Karyn Polito**. You may have read that traditionally, the Lt Governor is thought of as having little genuine power, and we even read each election cycle of reasons to abolish the office entirely. In fact, behind the scenes, the Lt. Governor can be enormously overtly influential, or not, depending on how the Cabinet posts synch up with her own relationship to the Governor, and is unquestionably influential should she choose to inquire about any particular matter in the executive branch, the legislature, or even in the private sector.

Governor-Elect Baker has begun announcing key **appointments to cabinet-level positions**. Baker has selected current Shrewsbury Republican Rep. **Matt Beaton as his Energy and Environmental Affairs Secretary**. A member of the House since 2011, Secretary-designate Beaton has a bachelor's degree in biotechnology from Worcester Polytechnic Institute and a master's degree in energy and environmental analysis from Boston University. He also has a 100% voting record with the Mass Audubon Society. He will be overseeing a vast portfolio of issues and over 10 agencies, including the Department of Environmental Protection (Commissioner not yet named), the Division of Marine Fisheries and the Office of Fishing & Boating to name just a few. Will we be arranging a meeting? You betcha. It is our hope that Ms. Madeja, having been General Counsel to Environmental Affairs at the same time Charlie Baker was Secretary of Administration & Finance for Governor Weld, may result in a mutually beneficial exchange of information and ideas for bettering the Commonwealth in general and the business of

boating in particular.

Governor-Elect Baker has appointed Chelsea City Manager **Jay Ash to Secretary of Housing and Economic Development**. Mr. Ash will succeed Secretary Greg Bialecki. This Secretariat is where one goes to coordinate public-private partnerships on redevelopments and on related tax incentives. We anticipate seeking support here for tax incentives to buy and keep more boats in Massachusetts.

Baker's **Chief of Staff** will be **Steven Kadish**, SVP and CEO at Northeastern University and previously a colleague of Governor-Elect Baker's at Harvard-Pilgrim Health Care. Some say the Chief of Staff is the most powerful person in government, as both the Governor's information gatekeeper and his "just get it done" person. One would certainly be hard pressed to name a more uncomfortable position than this one, unless it is goalie on a sudden death penalty shot.

Just this morning Governor-Elect Baker accounced **Kristen Lepore**, current VP of Government Affairs at the Associated Industries of MA, will serve as the **Secretary of Administration & Finance**. In this role Ms. Lepore will essentially become chief financial officer of the Commonwealth with broad authority to formulate the Administration's approach to the state budget and to oversee the day-to-day operations of the executive branch.

All politics is personal. Please help us help others and let us know if you happen to enjoy a pre-existing (good) relationship with any of the Governor-elect's appointees, these or others as you hear of them.

LEGISLATIVE LEADERSHIP: Wow. It's going to be a whole new world at the State House. Or not. The elected officials have changed quite a bit in name and one would think they noticed the voter patterns on, for example, no automatic gas tax increase and other pro-business matters. Then again, they also noticed voters wanted sick leave for all employees. It's a bi-polar state. We know there is a new Senate President, Stanley Rosenberg, who really gets money and budgets. We know we lost to retirement Senator Stephen Brewer, who really got boating and protected the public access boat ramps in the budget. We know Governor-Elect Charlie Baker is really into weekly meetings with legislative leadership and that he likes details and back-up information and is not at all excited about endless regulatory processes. So, we have realistic hopes of reduced regulatory processes this legislative session. And we know we still enjoy the support of our **four terrific Boating Caucus Co-Chairs: House Chairs Susan Gifford (R) and William Straus (D); and Senate Chairs Anthony Petruccelli (D) and Robert Hedlund (R) and the 60 members of the Caucus**. Our plan is not just to monitor filed legislation but to meet personally with each key newly appointed Committee Chair and staff next session and before then with always-influential legislators, from both sides of the aisle, to prepare for the changes to come. Or for more of the same. One never knows when that little opening shows and a change important to the business of boating can be made with enough groundwork and a ready attitude.

HOISTING LICENSES: According to Associated Industries of MA (AIM), the **Massachusetts Department of Public Safety (DPS)** has slightly narrowed the scope of its recently revised **hoisting regulations**. DPS, at the urging of AIM, has concluded that federal rules pre-empt some

of the state's requirements contained in the hoisting regulations.

Some companies that operate industrial lift trucks and forklifts solely on their own property are no longer subject to the state regulations if the area where the equipment is used is not accessible to the public.

MMTA, with the assistance of MMTA member Barbie Burr of Burr Brothers Boats, and in cooperation with AIM, had objected to many components of the new regulations. In addition to being costly and burdensome to businesses who had long-standing and effective "train the trainer" programs, many of the new regulations duplicated federal rules enforced by the Occupational Safety and Health Administration (OSHA).

AIM and lawyers representing forklift manufacturers and technicians, prepared a legal memo to DPS outlining the case for pre-emption, citing several similar major national cases. DPS reviewed the memo and, following several discussions, agreed with AIM's position and released the guidance making the hoisting regulations consistent with pre-emption law.

Please be aware that only industrial lift trucks and forklifts are exempt. Operators of other equipment, such as Travelifts and overhead hoists subject to the law must still be licensed, even when hoisting equipment is used in areas where the public is not allowed. **The exemption does not apply if the public has access to any property in which the equipment is operated.** If, for example, the public is allowed in any area of your racked-storage building, you cannot claim the exemption.

Please be sure you are up-to-date with DPS administrative rulings and guidance documents before making any revisions to your hoisting equipment licensing requirements and operations.

ARMY CORPS PERMITTING: You may have read in previous ENEWS briefs that the U.S. Army Corps is revising its permitting system. It is. We have held several teleconference/webinars and been shocked by the absence of awareness among not just the regulated mooring holders but even among harbor masters and within the Corps itself. And we're not easily shocked. So, we carry on our "dialogue", although it has recently come to light that some MMTA members would actually be better off under the new proposed permit than under the old one, because they will qualify for a simple "notice to the Corps" rather than needing an Individual Permit. This beneficial change, however, doesn't cure the massive absence of information and awareness about 1) who exactly needs to apply for a Corps permit; 2) whether enough compliant equipment and materials will be available; and 3) at what cost to existing businesses and individuals. The Corps has responded so far only by breaking out each New England state to have its own revised permit, starting (it says) with Massachusetts on January 15, 2015. Stay tuned as we slog on, but **talk soon (not after the holidays, for example) to a qualified professional if you operate a mooring field or rely on one for income. Your individual facts matter enormously as to whether you are legally permitted right now or will be next year.**

U. S. EPA STORMWATER PERMITS: According to the usually-amazingly-reliable and always amazingly cordial and professional Thelma Murphy of the U.S. Environmental Protection Agency,

New England Region I, we should be seeing **issuance of the revised Multi-Sector General Permit for NPDES Stormwater Management matters before January 15, 2015**. If you own or operate a marina, assume This Means You. It is rare, very rare, like a beautiful rainbow behind a sunlit, high flying U.S. flag, for a marina or boatyard not to be required to have one of these permits.

Ms. Murphy is confident the changes will include salt-water-specific monitoring criteria as "benchmarks" to work towards, not absolute, must-attain numerical thresholds but rather as "must use Best Management Practices" to the extent reasonably practicable given the facts on the ground. Sadly, she is also sure some of the "benchmarks" will continue to be unattainable from the get-go, being below drinking water standards. In those circumstances, one would be prudent to document use of reasonable Best Management Practices to not worsen the pollutants contributed to adjacent water bodies. Finally, **a big danger zone will be the likely requirement to file all monitoring reports electronically**, which will make it easier for third parties such as Conservation Law Foundation to scan for possible violations. MMTA will update you as soon as more information is available.

BOSTON COURTHOUSE IN WATER SECURITY ZONE: Please be advised that a **security zone will soon be published for comment around the Federal Court House at the Fan Pier in Boston** to be enforced during certain high profile trials. Recreational boaters transiting the area, who might not otherwise keep up with such periodic restrictions, may need your help being made aware by checking Local Notices to Mariners for any effective security zone and be prepared to justify transiting those zones when they have been imposed. Local Notices to Mariners for Boston Harbor can be located at: <http://www.navcen.uscg.gov/?pageName=InmDistrict®ion=1>.

FUELING SAFETY: Please anticipate that the **Massachusetts Bay Harbor Safety Committee** will send out a handout regarding **fueling of recreational vessels** for distribution state-wide. The primary concern giving rise to the handout is frequent improper ventilation of the necessary compartments before and during fueling, although other key safety tips will be included.

That's most of the news fit to print! Here's to a happy and safe upcoming holiday season!

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