

NASF Public Policy Report May 2022

As the surface finishing industry makes it final preparations for SUR/FIN, legislative and regulatory initiatives impacting the industry continue to roll out. Several key issues will be addressed at a special technical session at SUR/FIN including emerging policy developments impacting plating and the automotive supply chain.

New PFAS legislation targeting surface finishing was just reintroduced in Congress last week. The US Environmental Protection Agency has announced a major new rulemaking to address worst case water discharges of hazardous substances and customers. In addition, new state actions pose significant challenges for the finishing industry and its customers. A summary of recent developments is below.

- SUR/FIN Session to Highlight Chromium Plating, PFAS and the Automotive Supply Chain – Experts from the surface finishing industry, representatives from several automotive OEMs, and government officials will be part of a technical session at SUR/FIN on June 7, 2022 that will focus on the barriers and incentives associated with chromium plating in the automotive supply chain.
- **PFAS Legislation Reintroduced Targeting Surface Finishing** Legislation was recently introduced again in Congress that would require EPA to issue wastewater discharge limits for PFAS for electroplating and metal finishing source categories. Among other impacts, the measure would accelerate the PFAS rulemaking on which NASF is already working with EPA.
- EPA Proposes CWA Hazardous Substance Worst Case Discharge Planning Rule EPA has proposed regulations that would require certain facilities to develop and submit a Facility Response Plan to address worst case discharges of Clean Water Act hazardous substances.

- **Pentagon Halts Incineration of PFAS-Containing Materials** the Department of Defense announced that it was temporarily stopping the incineration of PFAS-containing materials until it can issue appropriate disposal guidance.
- California Releases Draft Regulatory Language for Chromium Plating Rule In draft regulatory language, CARB bans hexavalent chromium plating processes, prohibits any new hexavalent chromium permits, and imposes strict new control measures until the bans take effect.

A more detailed summary of these issues is provided below.

SUR/FIN Session to Focus on PFAS, Chromium Plating and Automotive Supply Chain

A SUR/FIN technical session focused on the challenges posed by PFAS, chromium plating and the automotive supply chain will be held on June 7, 2022 from 3:30 to 5:00 PM. Following the afternoon keynote by Kim Tress from Stellantis and the Blum Lecture by Dr. Jude Runge, EPA's Dr. Phillip Flanders will give an update on EPA's development of PFAS standards for wastewater discharges from surface finishing facilities.

The session will end will a panel discussion including EPA officials, representatives of NASF supplier members, automotive OEMs, and job shops. The discussion will focus on barriers and incentives to the use of trivalent chromium processes in the automotive supply chain and the cobenefit of reducing the use of PFAS fume suppressants. For more details on this critical technical session, consult the SUR/FIN agenda or contact Christian Richter with NASF at <u>crichter@thepolicygroup.com</u>.

PFAS Legislation Introduced That Specifically Targets Surface Finishing

On May 9, 2022, Senator Gillibrand (D-NY) and Representative Pappas (D-NH) introduced the "Clean Water Standards for PFAS 2.0 Act of 2022." The bill would require EPA to set water quality criteria for each measurable PFAS within three years. In addition, it would also require EPA to issue final effluent limitation guidelines (ELG) for each measurable PFAS in wastewater discharges from the electroplating (Part 413) and metal finishing (Part 433) source categories and from the organic chemicals, plastics and synthetic fibers (part 414) source category by June 30, 2024. EPA has already committed to issuing and begun developing a proposed PFAS ELG for electroplating and metal finishing by Summer 2024 and for organic chemicals, plastics and synthetic fibers by Summer 2023.

The bill would also require EPA to issue PFAS ELGs for textile mills (Part 410), electrical and electronic components (Part 469), and landfills (Part 445) by June 30, 2025 and for leather

tanning and finishing (Part 425), paint formulating (Part 446), and plastics molding and forming (Part 463) by December 31, 2026. EPA must also require monitoring of discharges from pulp, paper, and paperboard (Part 430) source category and airports upon the effective date of this legislation.

The time frame in the bill language is very aggressive and would require EPA to make a determination by December 31, 2023 that it will either commence developing the ELG or that an ELG is not feasible for each of the source categories. Among several concerns is that the entire surface finishing industry would be subject to an even more aggressive timetable that is currently underway at EPA. While it was not included last year, the measure could be included in this year's defense spending authorization bill. NASF has already been discussing PFAS and fume suppressants matters with the Department of Defense.

A copy of the bill is available at: <u>https://www.govinfo.gov/content/pkg/BILLS-</u><u>117s4161is/pdf/BILLS-117s4161is.pdf</u>. The Policy Group will continue to monitor this legislation, provide information to congressional staff, and work with our industry partners. If you have any questions or would like additional information on this legislation, please contact Christian Richter with NASF at <u>crichter@thepolicygroup.com</u>.

EPA Proposes CWA Hazardous Substance Worst Case Discharge Planning Rule

On March 28, 2022 EPA published in the Federal Register a proposed regulation that would require certain facilities to prepare a Facility Response Plan (FRP) regarding how it would handle a "worst case discharge" of hazardous substances that could pose a threat to navigable waters, adjoining shorelines or exclusive economic zones. 87 Fed. Reg. 17890. The proposed rule was prompted by a consent decree that required EPA to issue a proposed rule by March 2022 and a final rule by September 2024.

Screening Criteria -- Facilities are subject to the proposed regulation if they meet several screening criteria identified below.

 Threshold Quantities – The first screening criterion is a facility's capacity to store threshold amounts of the Clean Water Act (CWA) hazardous substances. The threshold amount is 10,000 times the reportable quantity (RQ) for each hazardous substance. The RQs range from one to 5,000 pounds, and are listed in the federal regulation at 40 CFR §117.3. The storage capacity is defined as "the total aggregate container capacity for each CWA hazardous substance present at all locations within the entire facility at any one time." The proposed rule defines "container" as "any device or portable device in which a CWA hazardous substance is processed, stored, used, transported, treated, disposed of, or otherwise handled." Facilities must determine if the meet or exceed the threshold quantities for each hazardous substance. This would not include hazardous substances contained in articles, process water, cooling water or permanently closed containers.

- Location If a facility meets or exceeds the threshold quantities criteria for any hazardous substance, and is located within a half mile of a "navigable water or conveyance to a navigable water," the facility must then determine if it meets at least one of the substantial harm criteria in the proposal. Given the broad definition of navigable waters, most facilities that meet the threshold quantity criteria would likely meet this location criteria.
- Substantial Harm A facility that meet the first two screening criteria discussed above must undertake an evaluation to determine if it meets at least one of the following "substantial harm" criteria:
 - the facility has had a discharge of a RQ of hazardous substance within the last five years,
 - discharge from the facility could cause injury to fish, wildlife, or sensitive environments,
 - discharge from the facility could adversely impact a public water system, OR
 - discharge from the facility could cause injury to public receptors.

Facility Response Plan (FRP) – Facilities that meet the location, storage capacity, and substantial harm criteria are required to submit a FRP to EPA. The FRP should include:

- the facility's hazard evaluation for a worst-case discharge of hazardous substances and how the facility plans to respond to potential discharges;
- the facility's discharge history;
- the facility's response personnel (including roles and responsibilities) and equipment necessary to remove, mitigate, and prevent the threat of a discharge;
- discharge detection system and containment measures; and
- a response training program and a drills and exercise program in coordination with local planning and emergency organizations.

Facilities must submit the FRP to EPA within 12 months of the effective date of the final rule and update the plan every five years or within 60 days of a change at or outside the facility that impacts the potential to cause substantial harm to the environment.

EPA Regional Administrator Authority – EPA is also proposing that Regional Administrators may have the authority to require a facility to submit a FRP based on site-specific factor, regardless of whether the facility meets the screening criteria of the rule. Even though the site-

specific factors are identified in the proposed rule, this requirement would give EPA overly broad authority to require facilities to submit a FRP.

More information is available on the proposed rule is available on the EPA website at: <u>Clean</u> <u>Water Act Hazardous Substance Worst Case Discharge Planning Regulations | US EPA</u>. According to the EPA website, comments on the proposed rule are due by July 26, 2022. If you have any questions or would like additional information on the proposed rule, please contact Jeff Hannapel or Christian Richter with NASF at <u>jhannapel@thepolicygroup.com</u> or <u>crichter@thepolicygroup.com</u>.

Pentagon Halts Incineration of PFAS Containing Materials

In a April 26, 2022 memorandum, the Department of Defense (DOD) announced that it is temporarily halting the incineration of fire fighting foam and other materials containing PFAS. The ban will be effective until the DOD issues a disposal guidance for materials containing PFAS. Members of Congress want to require DOD to use PFSAS-destruction technologies that have been evaluated and found effective by EPA, including supercritical water oxidation technology that uses heat and pressure to destroy PFAS. According to EPA, this technology has been effective in destroying 99 percent of 12 different PFAS.

Industry groups have objected to the incineration ban, arguing that incineration can be a safe and effective means of PFAS disposal. Both EPA and the state of New York have issued guidance that allows for incineration of PFAS. The incineration restriction could negatively impact efforts to clean up and disposal of PFAS at contaminated sites.

The proper management of PFAS contaminated materials continues to plague the public, industry and government officials. Researchers will continue efforts to develop and identify new and effective PFAS destruction technologies. NASF through the AESF Foundation continues to fund research on the electrochemical destruction of PFAS in surface finishing wastewater discharges. For more information on these efforts, please contact NASF at crichter@thepolicygroup.com or jhannapel@thepolicygroup.com.

CARB Releases Draft Regulatory Language for Chromium Plating Rule

On April 26, 2022 the California Air Resources Board (CARB) held its 7th Technical Working Group meeting of the hexavalent chromium air toxics control measures (ATCM) rule and released its draft regulatory language for the rule. The draft language includes a ban on hexavalent chromium decorative plating by January 1, 2026 and a ban on hexavalent chromium functional plating and anodizing by January 1, 2039. CARB will conduct technical reviews for functional plating and anodizing prior to 2039 to determine is non-hexavalent processes are commercially available. The rule would also not allow any new permits for hexavalent chromium operations and would impose strict new emissions controls on facilities until the bans become effective.

NASF and the California Chapters continue to oppose the bans on hexavalent chromium plating, because banning the use of hexavalent chromium will produce significant negative economic impact for facilities, the surface finishing industry in California and the employees and their families that rely on these high-quality jobs. Unfortunately, for many decorative plating facilities, trivalent chromium processes are not an option as customers prefer hexavalent chromium to achieve a desired product quality (e.g., color and luster) for plated parts.

In addition, these sources have the lowest existing emissions of hexavalent chromium of any sources. Forcing these sources in California to close would provide little, if any, environmental and public health benefits.

Throughout the rule development process, industry stakeholders have urged CARB to abandon the bans on hexavalent chromium processes and set an emission-based rule. The surface finishing industry has been successful in managing risk associated with hexavalent chromium and has significantly reduced hexavalent chromium emissions. NASF has highlighted USEPA data indicating that the industry has reduced its hexavalent chromium emissions by over 99 percent since the baseline year of 1995. In light of increasingly stringent local and state requirements in California, reductions of hexavalent chromium emissions in California have been even greater.

The surface finishing industry continues to urge CARB to set the lowest achievable hexavalent chromium emission limits based on best control technologies in place. The industry welcomes the opportunity to work with CARB to identify the appropriate hexavalent chromium emission limits that are protective of human health and the environment and sustainable for the industry and its critical supply chains.

NASF continues to work with and support its California Chapters on this effort. If you have any questions or would like additional information regarding this rulemaking, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.

NASF 1000

The **NASF 1000** program was established to ensure that the surface finishing industry would have resources to effectively address regulatory, legislative and legal actions impacting the industry, NASF members and their workplaces. All funds from the NASF 1000 program are used exclusively to support specific projects and initiatives that fall outside the association's day-to-day public policy activities. The commitment to this program is one of the most vital contributions made in support of surface finishing and directly shapes the future of the industry.

The sustained commitment from industry leaders has helped the NASF remain strong and credible in informing regulatory decisions across the nation. Specific projects funded through the NASF 1000 make a measurable difference in how the industry navigates emerging challenges, communicates credibly with policy makers, and advocates for a strong science base for rules or standards that affect surface finishing.

Please consider supporting the NASF 1000 program. If you have any questions or would like additional information regarding the NASF 1000 program or the broad array of NASF public policy activities, please contact Christian Richter at <u>crichter@thepolicygroup.com</u> or Jeff Hannapel at <u>jhannapel@thepolicygroup.com</u>.