



## Advice & Counsel

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### MP&M (Again)

**Dear Advice and Counsel,**  
**I attended AESF Week and found it extremely useful in obtaining up-to-the-minute information on regulatory activities on the part of EPA and OSHA. One such activity has me extremely concerned, and I am hoping that you can shed some light on the subject. It seemed to me the EPA officials were talking as if the regulation of Jobshop Electroplaters (currently regulated under 40 CFR part 413) under the Metal Products and Machinery (MP&M) regulations was a "done deal" under Phase II. I seem to remember that EPA specifically exempted this category from MP&M regulation when they proposed them, back in 1995. What happened?**

**Signed,**  
**Captain, HMS Titanic**

Dear Captain,  
Your confusion and concerns are understandable, and are shared by me as well. In fact, I posed this very question to Steve Geil (202/260-9817), who is in charge of the EPA office developing the MP&M guidelines. I indicated to Mr. Geil, who was part of a Q/A Panel, that the Phase I proposal appeared to have very clear language that the EPA was exempting the jobshop electroplaters from regulation under MP&M. I also had been given verbal assurances by various EPA representatives in 1995 that they had no intention of ever regulating the jobshops under MP&M. What had changed? His initial response was that EPA mentioned an intent of looking at jobshop inclusion under Phase II, when Phase I was proposed (*Federal Register*,

May 30, 1995). He further confirmed that EPA (through a subcontractor) was actively sampling jobshop electroplaters, in an effort at obtaining enough data to make a decision as to whether jobshops will be included under Phase II regulation of the MP&M category.

Upon my return to my office, I received an e-mail from Mr. Geil, correcting his answer. He wrote:

"I went back and looked (at the Phase I proposed regulations) and found that I was wrong. I found the exclusion for jobshops for Phase I and the definition for what we consider a jobshop for the purposes of regulation, but could not find the statement that we were going to look at jobshops during Phase II. I know that the intention to gather data on jobshops was in the draft Phase II surveys we delivered to trade associations, and also spelled out in the Information Collection Request Federal Register notice and in the information which we had to have approved by the Office of Management and Budget (early to mid-1996 time frame). I know that when I came up to the guidelines division in May '95 from the permits division, I asked the same thing (having received lots of permitting questions concerning the electroplating and metal finishing regs). I was told that it was EPA's intention to collect data on jobshops during Phase II of MP&M and thought I had read that in the preamble to Phase I."

A quick review of my copy of the Phase I regulations yielded the following information:

*Scope of Today's Proposed Rule—*  
*"The MP&M Phase I category applies*

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to industrial sites engaged in the manufacturing, maintaining or rebuilding of finished metal parts, products or machines. Today's proposed effluent guideline (MP&M Phase I) applies to process wastewater discharges from sites performing manufacturing, rebuilding or maintenance on a metal part, product or machine to be used in one of the following industrial sectors: Aerospace; Aircraft; Electronic Equipment; Hardware; Mobile Industrial Equipment; Ordnance; and Stationary Industrial Equipment.

MP&M Phase II will be proposed and promulgated approximately three years after the MP&M Phase I schedule. EPA currently intends to cover the following eight industrial sectors in MP&M Phase II: Bus and Truck; Household Equipment; Instruments; Motor Vehicle; Office Machine; Precious and Nonprecious Metals; Railroad; and Ships and Boats."

*A few pages later:*

"Many MP&M sites will also have operations covered by one of the

existing metal processing effluent guidelines listed above. In general, with the exception of the metal finishing regulations, the existing effluent guideline will continue to apply to those operations judged to be covered by it. MP&M will provide the basis for establishing permit limitations for the unit operations, which at present are not covered, covered by the metal finishing effluent guidelines regulation, or covered by best professional judgment. EPA is proposing to require that the MP&M Phase I effluent guidelines regulation replace the metal finishing regulation for sites with operations in an MP&M Phase I industrial sector. Both MP&M and metal finishing apply to the same types of unit operations. EPA has included the metal finishing sites in its data collection and study of the MP&M industry and has estimated the costs and impacts on these sites to comply with the proposed MP&M regulation. EPA anticipates that today's proposed limitations will impose more stringent requirements on wastewater discharges from MP&M/metal finishing sites without undue economic impacts, and therefore is proposing that MP&M replace metal finishing regulations for sites satisfying the MP&M Phase I criteria. **Today's proposal does not apply to surface finishing jobshops and independent circuit board manufacturers as defined in this regulation; they will continue to be covered by 40 CFR Part 413 and 40 CFR Part 433.**

*(Bold and underline added by author.)*

To minimize misunderstanding on the part of the reader, it should be noted that the Phase I proposal was just that—a proposal. EPA certainly can change its mind between the proposal for Phase I and the proposal for Phase II. The EPA appeared to have a very clear intent **not** to regulate jobshop electroplaters in 1995 (a proposal for which the Agency must have developed justification).

We have now been "served notice" of a possible change of mind on the part of the Agency. The industry should continue to request clarification as to what that basis for such a change of intent was. Common sense (hint, hint) dictates it. **P&SF**

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