

Economy, Regulatory Issues & Globalization

Top 2002 Challenges for Finishers



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The year 2002 brought significant challenges for the surface finishing industry. Like the nation and the larger manufacturing community, finishers bristled at what seemed to be a continuous stream of sour news on the economic front. As steady work from reliable customers disappeared or moved offshore, the term *globalization* trickled into the plating vocabulary as more than a mere abstraction. Indeed, for many the accelerating transformation of the manufacturing supply chain in response to foreign competitive pressures was downright painful.

The outlook on the regulatory front contained possibilities equally as bleak, namely the likelihood that the U.S. Environmental Protection Agency (EPA) would manage to finalize for plating operations a set of draconian yet arguably unjustifiable effluent discharge limits under the Metal Products & Machinery Rule (MP&M). At an estimated cost to job shops and captives of over \$1 billion, the MP&M package looked to be the last thing industry needed. As the year closed, however, finishers were poised to achieve their biggest regulatory victory in Washington in a generation and were moving EPA to a decision on MP&M of “no further regulation” for both job shops and captive operations.

Another bright spot for some came in the national election results, as Republicans won back control of the Senate and picked up seats for an expanded majority in the House. While certainly not a mandate, the election provided modest traction for the prerogatives of business to be aired—tort and tax reform, regulatory relief, and a meaningful economic growth package, to name a few.

But even this better news remained overshadowed by a controversial decision by the White House in March to protect the integrated steel industry with tariffs on foreign steel imports. The action was aimed at providing relief for a long beleaguered sector and winning political support in the 04 presidential election in key battleground states like Pennsylvania and West Virginia. The tariffs, however, suppressed supply and jacked up the cost of domestic steel, put-

ting severe pressure on a wide range of steel-consuming industries, and exacerbating what was already a tough economic climate for the plating industry.

On all these issues—globalization, regulation, small business relief and trade—the government relations program in Washington is engaged to educate policy makers and protect surface finishing interests. While not exhaustive, the list that follows reviews some key recent developments on issues affecting the plating industry.

Federal Court Extends Deadline For EPA to Finalize MP&M Rule

The DC Federal Court of Appeals has granted an EPA request for a 45-day extension to finalize the MP&M rule. Facing a looming year-end deadline and the risk of not completing the final MP&M rulemaking package, EPA recently sought relief from the court. While the finishing industry's leadership had been concerned that the primary litigant—Natural Resources Defense Council (NRDC)—would demand significant concessions from EPA in exchange for an extension, the NRDC did not seek to impose conditions associated with moving the deadline. Under the new terms of the consent decree, EPA has until February 14, 2003 to finalize the rule.

Government Relations met with key Agency officials in December to confirm that EPA would maintain its current position of “no further regulation” for jobshops and captive operations. One of the reasons for the delay is that EPA has remained undecided on whether to impose new MP&M effluent limits on captive facilities discharging directly to water bodies. At press time, all jobshops and all captive facilities that discharge to municipal waste treatment works are expected to see no new MP&M limits. Additionally, Government Relations efforts have succeeded in keeping the Agency from requiring 413 operations to upgrade to 433 status.

EPA was originally scheduled to send the final MP&M rulemaking package to

the White House Office of Management and Budget (OMB) for review by mid-December. After OMB review and comment, EPA's Office of Water is scheduled to finalize the MP&M rule and submit the package to EPA Administrator Christie Todd Whitman for her signature.

The significant efforts of industry and Government Relations and an investment of nearly \$1 million to correct the errors in the proposed rule appear to have succeeded in saving jobshops alone an estimated \$750 million in avoided regulatory costs! While the current EPA position is very favorable for metal finishing jobshops and captive operations, nothing will be final until the EPA Administrator signs the rule on February 14, 2003. Government Relations does not expect any changes to EPA's position, and will continue to work closely with EPA officials to ensure that a “no further regulation” determination will be included in the final MP&M rule.

Substantial Progress On RCRA Regulatory Reforms For F006 Sludge

Government Relations is also working closely with EPA on a proposed rule that would allow wastewater treatment sludge from electroplating operations to be managed as a non-hazardous waste. Based on EPA's preliminary work on this project, wastewater treatment sludge would not be considered hazardous waste (F006) provided that the sludge meets a minimum metal content, and the sludge is recycled for metals recovery. In addition, ion exchange canisters being recharged would not be classified as F006. Under both scenarios, the sludge could be shipped offsite on a non-hazardous waste carrier without a hazardous waste manifest. This regulatory change, if fully implemented, would represent a substantial achievement for the industry, and a significant savings in transportation costs alone.

In addition to the conditional exemptions for sludge destined for recycling and ion

exchange canisters, EPA is also considering a generic delisting for sludge that has minimal levels of hazardous constituents. Excluding such electroplating wastewater treatment sludges from hazardous waste regulations would provide the proper incentive for facilities to use source reduction and pollution prevention techniques to minimize hazardous constituents in its sludge.

While these developments can provide significant savings to the metal finishing industry without increasing any potential risks to human health and the environment, EPA is still working on the details for the proposed regulation.

EPA expects to complete the proposed rule by spring 2003. Following the proposal, EPA would allow a comment period before finalizing the rule in approximately two years. Once promulgated, this federal regulation would have to be adopted in individual states. Government Relations is working with EPA and state officials to lay the groundwork for prompt state adoption of these key changes at the federal level.

Chrome MACT Amendments Will Ease Burdens

EPA proposed Chromium MACT Amendments in the *Federal Register* on June 5, 2002. The suggested changes are consistent with previous discussions between industry and EPA's Office of Air and Radiation. These amendments provide greater flexibility for facilities to demonstrate compliance with currently applicable chrome MACT standards.

The proposal includes the following changes to the current Chrome MACT:

- Flexibility for plating tank reconstruction to avoid review under New Source Review program;
- Flexibility for enclosed tanks "technically" out of compliance with emission standard;
- Expanding pressure drop allowance; and
- Streamlining the current chrome MACT to allow the use of fume suppressants for hard chrome in lieu of mechanical control equipment without having to complete a source test.

Government Relations, under the leadership of AESF Air Committee members Rick Hall of KCH Services, Inc., and consulting engineer Glenn Zinkus of CH2M Hill, submitted comments offering the industry's support and clarification of the proposed amendments. EPA had expected to finalize the amendments in late Spring or early Summer 2003, but the Agency slowed the process in late 2002 as new information was being reviewed.

On related state issues, Government Relations worked in the past year with

California metal finishers and U.S. EPA officials on local enforcement actions against companies using only fume suppressants, rather than control technology, to meet MACT standards. At the urging of California finishers, GR brought this issue before EPA and convinced EPA's Chief of Emission Standards to engage local regulators to clarify the intent of the Chrome MACT standard and turn back unnecessary local enforcement activity.

OSHA Chrome PEL

Early in 2002, Ralph Nader and the Public Citizen Health Research Group, along with the Paper, Allied-Industrial Chemical and Energy Workers Union, petitioned a federal court to direct OSHA to issue a hexavalent chrome workplace permissible exposure level (PEL) rulemaking. In partial response to this petition, OSHA issued in the August 22, 2002 *Federal Register* a Request for Information (RFI) on issues relevant to occupational exposure to hexavalent chromium.

OSHA sought scientific studies and data in the RFI on such topics as the health effects caused by hexavalent chromium, industry profiles for the use of the chemical, the potential economic impact of any new requirements, and training programs and the use of personal protective equipment. The agency stated it intended to address what it views as complex and difficult issues related to occupational exposures in an effort to resolve these issues and determine whether additional regulatory controls are needed.

In response, Government Relations became a more active player in the national Chrome Coalition, comprised of key interested industry producers and users of chromium, to submit appropriate comments and data on applicable health studies regarding exposure to chrome in the workplace.

In a rather ominous development very late in the year, OSHA signaled it was committed to developing a new chrome PEL. The Agency will consider the available data and information to determine to what extent a more stringent chrome worker exposure limit is necessary. Pressure from the labor and activist communities is driving OSHA to consider lowering the PEL to between 0.5 and 5 micrograms/cubic meter. A rule-making schedule was under discussion in mid-December 2002 between industry, the unions and the Labor Department solicitor's office.

GR Efforts Shape EPA "Second Look" on Anti-Metals Initiative

Through Government Relations and other industry discussions with top political officials at EPA, the Agency agreed in 2002 to

have its own independent Science Advisory Board (SAB) review the persistent, bioaccumulative and toxic (PBT) chemical methodology for metals and develop a Metals Action Plan for addressing potential health risks from metals. Government Relations has been tracking SAB's scientific review, and participating in meetings as an agency action plan is formulated.

The SAB recently issued a report stating that the PBT criteria used by EPA to assess various chemical hazards are inappropriate for metals and that metals should not be included on the PBT chemical list. It also urged EPA to rely on sound environmental chemistry principles and focus its analysis on the bioavailability of metal compounds. The SAB also concluded that EPA should speciate metal compounds (e.g., soluble vs. insoluble nickel compounds) when making toxicity assessments. This report represents significant progress in challenging EPA's development of the PBT list and how the list is used for regulatory purposes.

Industry Informs EPA on Nickel Human Health Assessment, Problems Posed by HHS

In 2002, Government Relations advanced nickel risk discussions with key EPA research officials to ensure the Agency incorporated appropriate data and joint industry-EPA risk assessment studies in the Agency's pending formal risk assessment

for soluble nickel compounds. The Agency's so-called human health assessment is scheduled for publication in early 2003 through EPA's Integrated Risk Information System (IRIS).

Once the Agency makes public its conclusions on soluble nickel compounds through IRIS, the information will be picked up and utilized by federal, state and local regulators in any regulatory action considered for nickel plating processes. Thus far, EPA appears to have acknowledged the conclusions of the so called TERA report, a study funded a few years ago by the nickel plating and producing industries, EPA and Environment Canada on the risks and cancer-causing potential of soluble nickel compounds. The TERA document, which was peer reviewed by a group of independent

scientists, concluded that evidence is lacking to deem soluble nickel compounds cancer-causing agents.

While EPA appears to acknowledge the scientific validity of the industry's position on soluble nickel compounds, its sister federal agency—the Department of Health and Human Services—was moving forward at press time to list all nickel compounds as known human carcinogens in its 10th Report on Carcinogens. While the HHS report is not intended for use as the final word on risks associated with a chemical or compound, regulators have in the past misused the list as a basis for regulation.

In addition to the federal initiatives on nickel, several states have begun examining whether it would be appropriate to impose chrome-like environmental controls

on nickel plating tanks. While no state has taken affirmative action to regulate emissions from nickel tanks, serious threats of such regulatory controls are under consideration by California, New Jersey and other state regulatory agencies. Government Relations is working with local industry branches and affiliates in several states to prevent further unnecessary regulatory action.

Pending Issues & News

As the industry kicks off 2003, Government Relations will continue work on these and other more critical strategic issues for the finishing industry. A preview of initiatives that will be covered in follow-up articles to this one includes:

- EPA's Flawed Internet-Based Tool to Assess Risks at Metal Finishing Facilities
- Finishing Activity and Progress on Global Competitiveness, Trade Policy and China
- Retooling the Strategic Goals Program to Focus on Benchmarking Best-in-Class-Performance and Environmental Management Systems for Finishers.

Final Compliance Note: Lead TRI Reporting Requirements

More than a year ago, EPA issued the final rule that lowered the TRI reporting threshold for lead and lead compounds to 100 pounds. It requires facilities to calculate the amount of lead and lead compounds that they manufacture (including coincidental manufacture), process or otherwise use to determine whether they trigger the 100-pound threshold starting January 1, 2001.

Given the relatively low reporting thresholds, this new reporting requirement applies to many metal finishing operations. Facilities are required to report any releases of lead and lead compounds exceeding the reporting threshold of 100 pounds for lead or lead compounds in a calendar year on the Form Rs submitted on July 1, 2002.

The new lead reporting requirements present serious compliance challenges for metal finishing facilities. Through discussions with EPA officials regarding lead TRI reporting concerns, Government Relations is working closely with the Agency to develop a metal finishing specific guidance on TRI as a compliance assistance tool. In addition, the recent conclusions reached by EPA's Science Advisory Board in its report on PBT chemicals could alter, but not eliminate, some of the new TRI reporting requirements for lead and lead compounds. *P&SF*