

## Closing Arguments Given on Chrome PEL



Christian Richter & Jeff Hannapel, The Policy Group, LLC, Washington, DC

### **GR Makes "Closing Arguments" to White House on Proposed OSHA Chrome PEL**

OSHA has submitted its draft final rule-making package to the White House Office of Management and Budget (OMB) for review. Government Relations met with OMB staff, representatives from OSHA and the Department of Labor and the Small Business Administration Office of Advocacy on December 14, 2005 to express concerns about meaningful review of the rule, as well as remaining substantive issues based on our formal submittals on the proposal through the rulemaking process. In essence, GR made "closing arguments" on the significant problems with the proposed rule, particularly with regards to technological and economic feasibility and the potentially grave impact this rule could have on the metal finishing industry and U.S. manufacturing.

During its review process, OMB is seeking additional input from SBA, the Department of Commerce and the Department of Defense regarding the impacts of the rule on the military, U.S. manufacturing, and specifically small business. GR is also working closely with House and Senate committee staff to insure that the appropriate procedural attention is given to the review of OSHA's rulemaking package and suggesting appropriate changes. As part of the review process, OMB will rely on reports from the other federal agencies and from Capitol Hill and will likely ask OSHA to justify its conclusions or make appropriate changes.

It is still too early to predict a likely outcome for this rule. The critical factor facing both OMB and OSHA is, however, the looming court deadline for issuing a final rule. On December 22, 2005, OSHA did request the U.S. Appeals Court for the

Third Circuit to extend the regulatory deadline from January 18, 2006 to February 28, 2006. Because the request is for a modest extension and none of the parties to the litigation (including Public Citizen) objected to the request, the extension will most likely be granted.

The extension would allow OSHA additional time to complete its analysis for the final rule. GR will continue its efforts to provide key information to the decision makers on this rule such as OMB, Commerce and SBA until OSHA completes its analysis for the rulemaking.

### **EPA Issues Final Rule to Streamline Wastewater Pretreatment Program**

For the past seven years, the metal finishing industry has worked cooperatively with the Environmental Protection Agency (EPA) and the Association of Metropolitan Sewerage Agencies (AMSA) to identify appropriate provisions to streamline the administrative requirements of the existing pretreatment program without compromising the environmental benefits of the program. On October 14, 2005, EPA published the final pretreatment streamlining rule in the *Federal Register*. These new provisions that became effective on November 14, 2005 will make improvements to the pretreatment program without compromising environmental benefits and will minimize unnecessary oversight and paperwork burdens for regulators and industry.

The key provisions to streamline the pretreatment program and reduce considerable administrative burdens for the metal finishing industry include: (1) greater flexibility for publicly owned treatment works (POTWs) to set either mass-based or concentration-based limits to promote water conservation and avoid unnecessary non-compliance actions that do not negatively

impact the environment; (2) reduction of sampling requirements for pollutants not present in a facility's discharge; (3) greater flexibility for POTWs to use grab samples when appropriate; and (4) redefinition of "significant noncompliance" criteria to allow POTW's flexibility in determining that delayed paperwork filings would not necessarily be considered "significant non-compliance" under certain circumstances.

In addition, the rule reduces the oversight requirements for categorical industrial users (CIUs) that have had no significant noncompliance in the last two years. For example, those CIUs with a daily maximum wastewater discharge of 100 gallons per day or less would only be required to submit an annual certification statement indicating the facility's compliance with the applicable standards and requirements. The so-called "Middle Tier" CIUs (*i.e.*, those with discharges no greater than 0.01% of a POTW's design dry weather hydraulic and treatment capacity or 5,000 gallons per day—whichever is smaller) can reduce reporting requirements to one time per year (instead of the previous minimum of twice per year). Similarly, the "Middle Tier" CIUs can reduce their inspection frequency to one time every two years (instead of the previous minimum of one time per year).

Reducing unnecessary administrative burdens is "good government." It is also good for small business. This new rule reduces some unnecessary administrative burdens that POTWs and industry face under the current pretreatment regulations without a negative impact on the environment. Moreover, the rule would also ensure the protection of human health and the environment and provide companies an opportunity to compete successfully in the global marketplace. *P&SF*

