



## Industry Approaches New OSHA Standard on Several Fronts



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

### Industry Focuses on Compliance Deadlines and Legal Challenge of New OSHA Chrome PEL Standard

As summer approaches, the finishing industry is continuing its litigation effort and engagement with OSHA since the agency issued its new final workplace exposure standard for hexavalent chromium. Aside from the first compliance deadline this fall, the most important provision of the new rule for affected companies will be the rule's Action Level at  $2.5 \mu\text{g}/\text{m}^3$  associated with the new Permissible Exposure Level of  $5.0 \mu\text{g}/\text{m}^3$ . Facilities will have to meet the Action Level to avoid a range of medical monitoring and related requirements.

The new standard overall poses some serious compliance challenges for many in the metal finishing industry. To address these issues, Government Relations has responded to the new regulation on several fronts, including identifying the compliance requirements that must be met by the regulatory deadlines, seeking clarification from OSHA on how best to implement the regulatory requirements, and pursuing the legal challenge to OSHA's new standard. A brief summary of the industry's efforts in each of these areas is provided below.

#### *Compliance Deadlines*

Certain facilities must comply with the applicable regulatory requirements of the rule by November 27, 2006 (for facilities with 20 or more employees) and by May 30, 2007 (for facilities with fewer than 20

employees). These regulatory requirements include exposure monitoring, medical surveillance, personal protective equipment, respiratory protection, housekeeping, hygiene practices, change rooms, training, hazard communication and record keeping. While OSHA allowed facilities up to four years to implement engineering controls, employees exposed to levels above the PEL must be fitted with respirators by these dates until engineering controls achieve compliance. The deadline to meet the new limit with engineering controls is still held off until 2010.

To determine which regulatory requirements are applicable, facilities must conduct exposure monitoring. Joelle Zak of Scientific Control Laboratories prepared an exposure monitoring guidance for the industry that provides a summary of the procedures that should be followed in collecting and analyzing exposure monitoring data. Facilities should make efforts to collect this data now, so that it can address the regulatory requirements before the applicable compliance deadlines.

#### *Regulatory Clarification*

Under the new standard, the applicability of some of the regulatory requirements may be subject to interpretative debate. For example, while more frequent exposure monitoring and medical surveillance appear to be needed for exposures over the action level, it is not clear what other requirements, if any, are triggered above the action level. Similarly, the industry has been trying to seek clarification from

OSHA officials when change rooms may be needed for metal finishing operations under the new standard. In addition, we have also been discussing the need for respiratory protection for employees exposed to levels over the PEL before engineering controls are implemented, in light of OSHA's conclusions that respirators may cost as much as engineering controls for metal finishing operations.

The industry has discussed these and other issues with OSHA officials to determine how such clarifications can be addressed. Some can be included in OSHA's compliance directive for the rule, which is expected sometime this summer. Other issues may need to the focus of more specific regulatory interpretations that may be applicable only for the metal finishing operations. The industry has also been reviewing what regulatory flexibility, if any, may be available with respect to the infeasible implementation of respiratory protection requirements for the metal finishing industry. Industry leadership will continue to engage OSHA officials to pursue these and other regulatory clarifications as needed.

#### *Legal Challenge*

Finally, the industry has filed a legal challenge against OSHA claiming that the PEL of  $5 \mu\text{g}/\text{m}^3$  is not economically feasible for the metal finishing industry. Based on the rulemaking record, OSHA has made some egregious errors in assessing the economic impact and feasibility of the standard. In addition, the interest group Public Citizen

has also challenged OSHA's standard claiming that it is not protective enough and should be set at  $0.25 \mu\text{g}/\text{m}^3$ . The industry will also need to defend OSHA against these spurious claims of Public Citizen.

While we recognize that the industry has some very strong legal arguments to challenge OSHA's rule, the litigation effort will be a challenging task and will require substantial financial resources to make the appropriate case in court. In addition to the legal fees, technical support and economic impact analysis will be needed to support the industry's arguments.

### **Comment Period Extended for Proposed Ban on Fume Suppressants**

EPA recently agreed to extend the comment period to August 8, 2006 on its March 10, 2006 proposed significant new use rule (SNUR) for over 180 perfluoroalkyl sulfonates (PFAS) substances. The proposed rule would effectively ban the use of fume suppressants in metal finishing operations such as chrome plating.

At the request of the metal finishing industry, EPA had already extended the comment period. Additional time was also requested by several other groups – including the Semiconductor Industry Association, the American Chemistry Council, the Synthetic Organic Chemical Manufacturers Association (SOCMA), and the National Paint and Coatings Association, among others.

In the proposed rule, EPA identified several existing industrial uses of PFAS substances (such as aviation hydraulic fluids) and granted an exemption for the continued use of these specific applications. Despite the extensive use of fume suppressants in the metal finishing industry to meet the requirements of EPA's MACT standard for chromium air emissions and OSHA's new workplace exposure standard for hexavalent chromium, EPA did not include an existing use exemption for metal finishing applications.

As part of the industry's comments, Government Relations will be providing technical information to document the environmental and workplace safety benefits of fume suppressants in metal finishing operations and why the continued use of these materials are needed. To this end, the industry has already have several discussions with EPA officials regarding the need for an existing use exemption for PFAS fume suppressants in the metal finishing industry. We will continue to communicate any further developments to the industry on this critical regulatory action.

### **EPA Issues 2006 Sector Strategies Performance Report**

On May 1, 2006, EPA released its 2006 Sector Strategies Report that profiles environmental trends in eleven major industry sectors, including metal finishing. The 2006 report identifies sector-specific trends in air emissions, water discharges, waste generation, recycling, chemical releases and energy efficiency. The report can be found on the EPA website at: <http://www.epa.gov/sectors/performance.html>.

The Sector Strategies program has been the logical outgrowth of the industry's work with EPA under the Common Sense Initiative and Strategic Goals program. As a participant in EPA's Sector Strategies Program, the metal finishing industry works cooperatively with EPA to document its environmental performance and identify opportunities for further environmental improvement.




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