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New EPA Rules May Be Beneficial to the Surface Finishing Industry

EPA Expected to Finalize Revised Definition of Solid Waste

In March 2007, the Environmental Protection Agency (EPA) proposed a revised definition of solid waste rule to encourage more recycling of hazardous secondary materials. Because these materials, when recycled, never enter the waste stream, EPA proposed to exclude them from the regulatory definition of solid waste and they would not be subject to regulation under the Resource Conservation and Recovery Act (RCRA).

On June 25, 2007, the NASF submitted comments on how the new proposed definition of solid waste affects the surface finishing industry and to what extent it would facilitate recycling of secondary materials in the industry. A copy of the industry's comments is available on the NASF website at www.nasf.org.

The White House Office of Management and Budget has been reviewing the draft final rule since April and has recently completed its review of a final rule. Following OMB's input on the rule, EPA is expected to issue a final rule this Fall that could alter the solid waste universe by removing certain spent materials, listed sludges, and listed byproducts destined for recycling from the definition of solid waste. The changes to the definition are in response to several court decisions that held EPA's regulatory definition was overly broad and did not clearly delineate when a material is discarded.

The proposed new definition of solid waste could facilitate more recycling of electroplating waste water treatment sludge, i.e., the listed hazardous waste, F006. For example under the proposed new definition of solid waste, sludge that is reclaimed for metals recovery would not be "discarded" for regulatory purposes,

and would not, therefore, be subject to hazardous waste regulations, provided that plating facilities and reclamation facilities meet a set of conditions regarding the management and recycling of the sludge. Excluding the recycling of F006 sludge from the hazardous waste regulatory restrictions can encourage more recycling of the sludge and save platers money.

EPA has estimated that the rule could affect 4,600 facilities in 530 industries and 17 economic sectors including mining, construction, transportation, health care, and surface finishing. It could also affect 650,000 tons per year of recyclable industrial materials and affect companies' bottom lines. EPA estimates the rule could result in regulatory cost savings of approximately \$107 million per year.

Despite being ten years in the making, the rule has been criticized from all sides. Environmental advocates fear that it amounts to a deregulation of types of waste that EPA is required by RCRA to manage. But some generators said the new process could be too burdensome to be used effectively and efficiently. Both supporters and opponents of the rule are also concerned it could lead to problems with interstate transport of the excluded materials. In addition, because states are not required to adopt solid waste rules less stringent than those regulations that are already in place, some states may not incorporate the new definition of solid waste into its state regulations. This could lead to a checkerboard pattern of regulation with an inconsistent system for managing recycled materials nationwide.

As soon as the new rule is finalized by EPA, the NASF Government Relations program will provide a summary of the new rule and its impacts on the surface finishing industry. If you have any ques-

tions or would like additional information on this rule, visit the NASF website at www.nasf.org or contact Christian Richter or Jeff Hannapel.

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EPA Announces New Electronic Audit Policy Procedures

The Environmental Protection Agency recently unveiled a pilot program that allows regulated facility owners to self-disclose environmental reporting violations electronically. Initially, companies nationwide will be able to self-report electronically violations of the Environmental Planning and Community Right-to-Know Act, but EPA expects to expand the program to allow facilities to disclose violations of all environmental laws electronically. With the new Audit Policy Self-Disclosure system, or eDisclosure, EPA expects to reduce transaction costs for the companies that report environmental violations.

Under its Audit Policy, EPA has created a series of incentives for facility owners to self-report environmental violations, resolving violations at nearly 10,000 facilities since 1995, according to the agency. Fines and penalties may be reduced or waived (but not in all cases) if a facility owner voluntarily reports a violation. Penalties are not waived for repeat offenders or violations that caused actual harm.

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More information about EPA's Audit Policy Self-Disclosure pilot program is available at <http://www.epa.gov/compliance/incentives/auditing/edisclosure.html>.