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A Peek at What's Ahead for Finishing in 2009

Obama Announces Key Nominees

The U.S. economy continued its slide into December, piling higher the many challenges awaiting President-elect Obama when he takes office in January. He's already announced plans for a major economic stimulus package, a push for "green" jobs, an aggressive focus on climate and regulatory policy and possibly a different tack on the bailout fund. Just this week, Obama took the next step on the energy and environmental front and announced another round of key cabinet nominees and advisors.

In what was viewed a major development, Obama unveiled in a news conference that he'll be creating a new White House energy and climate change office. This leaves no doubt that he's serious about overhauling energy policy and laying the groundwork to address man-made greenhouse gases as top priorities in his first term. Assuming the slot of new climate and energy "czar" will be Carol Browner, with whom the finishing industry worked closely during her record eight years in the Clinton Administration as the longest serving EPA chief.

He also announced that Dr. Steven Chu, director of the Lawrence Berkeley National Laboratory, is his nominee to head the Department of Energy, and that Lisa Jackson, who was recently New Jersey's environmental chief, will be his nominee to run the EPA. Jackson has served as a strong environmental advocate at the state level yet has managed to listen to industry concerns as well.

Obama emphasized the importance of fusing the activities of EPA, the Energy Department and the White House on energy issues in particular. He introduced his nominees by noting that "[i]n the 21st century we know that the future of our economy and national security is inextricably

linked with one challenge: energy," and that energy would not only be a leading priority but would be a "defining test of our time."

At press time, nominees for other key cabinet posts – specifically Labor, Interior, Transportation and Agriculture – had not yet been announced.

Still in the running for a key appointment to run the White House regulatory review shop – the Office of Information and Regulatory Affairs – is Georgetown professor Lisa Heinzerling. She has long been a vocal academic critic of using cost-benefit analysis to drive environmental, safety and other regulations and was a primary author of the plaintiff's case in *Massachusetts v. EPA*. She and others argued on behalf of the State of Massachusetts that the federal government has sufficiency authority to begin regulating carbon emissions. The U.S. Supreme Court issued an historic decision on the case in 2007, ruling that the Clean Air Act does allow EPA to regulate greenhouse gases.

Issues for Finishing Abound in 2009

In light of the President-elect's much anticipated announcement, how will the new leadership in the White House and executive agencies, as well as expanded Democratic majorities in Congress, impact the surface finishing industry in 2009? For that matter, how could new developments on the international front also impact finishing?

While it's still early to make some specific predictions, it is possible to provide a fairly informed view of what's underway for the new year. Some of the most important challenges for the industry have already been in play, so we've assembled below a "starter" list of those issues we know about, even though we're certain to encounter some surprises in the coming

months. We expect to describe the changes and their implications in more detail as the picture becomes clearer in the new year.

EPA – Residual Risk Rule on Chromium Air Emissions – As required by the Clean Air Act, EPA will review the Chromium Electroplating MACT standard to determine what additional controls are needed to address so-called "residual risk" posed by existing chromium air emissions. Based on preliminary data, EPA is scheduled to move forward with an Advance Notice of Proposed Rulemaking on residual risk in 2009.

EPA / European Union – Nickel Risk and Labeling Initiatives – Regulatory and market pressures to restrict nickel uses are rising. The European Union (EU) is ready to announce by the end of 2009 that it is formally revising its nickel hazard classification under the EU Dangerous Substances Directive. This is the second recent action of the EU on nickel hazards, and the action is expected to generate increased concerns over nickel in components and products in the supply chain, as well as a second look at the use of nickel compounds in plating operations.

EPA under the new administration will be working under a recently revised schedule to finalize its long-awaited risk assessment on soluble nickel compounds. The International Agency for Research on Cancer (IARC) is also expected to revisit how nickel compounds are classified as health threats during the spring of 2009.

EPA – PFOS-based Fume Suppressants – Mounting pressure on the potential environmental and health impacts of perfluorooctane sulfonate (PFOS) compounds may trigger EPA to consider a reversal of its plating use exemption for PFOS-based fume suppressants. Such action would

accelerate and expand the use of alternatives to PFOS-based fume suppressants and new compliance strategies for air emission and workplace exposure standards. At issue for the industry will be appropriate time for full transition to effective alternatives at a reasonable cost. Suppliers and finishers will both have a role to play on this issue.

OSHA – Chromium Workplace Exposure Standard – A 3-judge panel for the U.S. 3rd Circuit Court of Appeals – which included retired U.S. Supreme Court Justice Sandra Day O'Connor – last month heard arguments in the litigation challenging OSHA's Chrome PEL of 5 $\mu\text{g}/\text{m}^3$ set in 2006. While the finishing industry was the key player then in prompting this more reasonable workplace exposure limit, Public Citizen's challenge would have OSHA go back to the drawing board and redo the standard. If indeed the federal appeals court overturns the regulation in a final decision expected during the spring of 2009, OSHA must propose a new standard. In the meantime, the National Institute of Occupational Safety and Health (NIOSH) just recently recommended that OSHA should tighten the hexavalent chromium workplace exposure standard from 5.0 $\mu\text{g}/\text{m}^3$ to 0.2 $\mu\text{g}/\text{m}^3$, with an action level of 0.1 $\mu\text{g}/\text{m}^3$. Based on past and current practice and available technology, this level would be economically and technically infeasible.

Department of Defense – Pending Chromium "Ban" Memorandum – The finishing industry will continue its collaboration with the Department of Defense on environmental and health issues surrounding Cr6 and related issues and an appropriate path forward on advancing coating alternatives. In the meantime, the Pentagon is expected to issue a policy statement near the end of 2008 to ban all uses of hexavalent chromium unless key approvals are in place for specific uses by senior level officials.

EPA – Environmental Justice and Children's Health – EPA is expected to ramp up funding and attention to children's health risks, as well as the environmental impact of industry in low-income and minority communities. This issue was a primary focus of former EPA Administrator, Carol Browner, and EPA nominee Lisa Jackson has already emphasized that these issues will be prominent in driving environmental policy and EPA's program priorities in the new administration.

EPA – Enforcement – Environmental groups issued harsh criticisms of the environmental enforcement record of the Bush Administration. A more aggressive approach to enforcement priority setting and increased civil and criminal penalties are anticipated next year and beyond.

EPA / Department of Energy – Climate Change and Energy Efficiency – As President-elect Obama noted this past week, energy policy will be an overarching priority in Washington for the new White House and Congress. The Democratic leadership on Capitol Hill will likely revisit major climate change legislation to limit greenhouse gas emissions, while EPA will issue milestone decisions, including promulgating a new greenhouse gas emissions reporting rule in June 2009 that could reach broadly across U.S. manufacturing.

Washington will also commit major efforts to advancing a new portfolio of energy policy changes which will include, among other priorities, energy efficiency as the "first fuel", mandates for utilities to increase power generation from renewable energy sources and advancing a "smart grid" for the nation. There will be opportunities for collaboration between finishers and decision makers on energy efficiency issues, but potential cost burdens for industry as well.

OSHA – Ergonomics Standard – OSHA will likely to consider new a ergonomics standard that would overhaul work practices and technology in the workplace, with potentially substantial impacts for small and medium-sized manufacturers. The leadership of the new Congress and labor allies have expressed a strong commitment to getting a strong ergonomics standards from the Department of Labor.

European Union – REACH Implementation – As the EU begins to implement its new legislation, the Registration, Evaluation, Authorization and Restriction of Chemical Substances (REACH), impacts will be felt around the world. While U.S. plating operations are not expected to be impacted directly with new regulatory requirements, REACH is presenting new costs and hurdles for global chemical makers and suppliers and is prompting renewed attention to voluntary restrictions and potential bans of certain chemicals and metals in the supply chain.

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