



NASF Public Policy Update August 2022

The NASF continues to be active over the summer on major regulatory and legislative issues at the federal and state level that specifically impact member companies. Several new developments should be of interest to the industry and are summarized below.

- **EPA Ready for Fall Nationwide PFAS Survey of Metal Finishing Industry to Inform New Water Discharge Rule** – NASF continues discussions with US EPA on the agency’s plans for a nationwide survey of the metal finishing industry on its use of PFAS. NASF plans to review the draft survey and provide feedback to the agency prior to its distribution. Surveys will likely go to a wide range of job shop and captive operations and are scheduled to be sent out in the fall.
- **NASF Meets with White House as EPA Moves Closer to Proposing New Rule to List PFOS and PFOA under the Superfund Clean Up Law** – EPA’s proposed rule to list PFOS and PFOA as hazardous substances has cleared White House review and will likely be issued for public comment soon. Industry has called for statutorily required risk evaluation and impact analysis as a condition to support the decision.
- **Industry Challenges “Parts per Quadrillion” New Federal Drinking Water Health Advisories for PFAS** – A major legal challenge is underway targeting EPA’s new stringent drinking water lifetime health advisory levels for PFOA and PFOS. Arguments include a flawed review process and the fact that the new levels are below detection limits for these chemicals in drinking water.
- **Supreme Court Limits EPA Authority to Regulate GHG Emissions** – The Supreme Court limits the scope of EPA’s authority to regulate greenhouse gas emissions without action from Congress, but the agency is still able to set carbon emission limits for key sectors of the economy.
- **Metal Finishing Facility Released Hexavalent Chromium into Huron River in Michigan** – Wastewater discharge of hexavalent chromium into Huron River results in

“no contact” health advisory, sparking calls for more stringent pollution controls and automotive industry action to reduce hexavalent chromium uses.

A more detailed summary of these issues is provided below.

NASF Meets with White House on EPA Move to Propose Rule to List PFOS and PFOA under the Federal Superfund Clean Up Law

EPA’s proposed rule to list PFOS and PFOA as hazardous substances has cleared White House review and will likely be issued for public comment soon. Agency officials continue to state publicly that the listing is a top priority for the agency. NASF and other industry associations have called for statutorily required risk evaluation and impact analysis as a condition to support the decision.

The agency has never before sought to issue a rule to list a chemical as a Superfund hazardous substance. As such, the rule is facing significant scrutiny from industry and other potentially liable parties, who fear it will drive significant new cleanup liabilities. In the meantime, environmental advocacy groups submitted a July 27, 2022 letter to EPA urging the agency to issue the rule promptly. A group of U.S. House of Representative members sent a similar letter to EPA on August 3, 2022.

Massive Impact for US Manufacturing

The U.S. Chamber of Commerce conducted a study that found cleanup costs would be nearly \$1 billion a year, in contrast to EPA’s cost estimate of less than \$100 million annually, which coincidentally is the threshold for determining whether rules are economically significant and should be subject to heightened cost-benefit scrutiny and potential review of impact on small business.

NASF Meeting with White House on Industry Success, Remaining Challenges

NASF recently participated in an industry meeting with the White House discussing the potential cost-benefit and small business impacts the proposed listing could have on the surface finishing industry. On behalf of NASF, The Policy Group noted that the surface finishing industry is the only industry to request and receive a major federal standard that included the industry’s phase-out by 2015 of the use of PFOS – which EPA itself earlier recommended to reduce emissions of hexavalent chromium. Despite these proactive efforts, the industry continues to face legacy issues from its past use and could potentially be subject to significant Superfund liability for cleanup costs.

If you have any questions or would like additional information regarding this issue, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

EPA Readying Fall Nationwide PFAS Survey of Metal Finishing Industry to Inform New Water Discharge Rule

NASF continues discussions with US EPA on the agency's plans for a nationwide survey of the metal finishing industry on its use of PFAS. NASF plans to review the draft EPA survey and provide feedback to the agency prior to its distribution. The survey – which is required by EPA to collect information on the industry and prepare proposed first-of-its-kind PFAS discharge standards for the industry – will likely go to a wide range of job shop and captive operations and are scheduled to be sent out in the fall.

In the meantime, NASF is reviewing EPA's current list of facilities scheduled to receive the PFAS survey. The agency's current list is a product of integrating current regulatory databases along with federal consultations with state and local regulatory jurisdictions in key states.

The Policy Group is now working with NASF chapter leaders to provide corrections to the list of 2100+ facilities that are possible PFAS or chromium users. While the evaluation is not yet complete, it's clear there are a large number of facilities on the list that are now closed.

Finishing operations should stay tuned for more information from NASF on this extremely important issue.

Industry Files Legal Challenge of New Stringent Drinking Water Health Advisories for PFAS Chemicals

Many NASF members recall EPA's recent issuance of nationwide drinking water lifetime health advisories for:

- PFOA -- 0.004 parts per trillion (ppt) (or 4 parts per quadrillion),
- PFOS – 0.02 ppt (or 20 parts per quadrillion),
- GenX – 10 ppt
- PFBS – 2,000 ppt.

These health advisory levels are not regulations and are not considered legally enforceable standards, but they are problematic for several reasons. They are significant as setting a benchmark for further enforceable regulatory limits for PFAS, and some state and local authorities may find it easy to “copy and paste” the advisories into regulatory limits.

A petition was recently filed by the American Chemistry Council to review the advisories in federal court, with concerns ranging from the fact they are below analytical detection levels and are likely to lead unnecessarily to increased alarm from the public regarding potential risks of PFAS. In addition,

there are concerns regarding how the advisory levels may impact drinking water standards for PFOA and PFOS that EPA is now developing.

NASF will continue to monitor the developments on the legal challenge to the new lifetime health advisories and work with drinking water agencies, EPA officials and industry stakeholders on a drinking water standard for PFOA and PFOS. If you have any questions or would like additional information on these drinking water health advisories, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

Metal Finishing Facility Released Hexavalent Chromium into Huron River

A Michigan plating shop recently discharged approximately 10,000 gallons of wastewater containing hexavalent chromium to the local wastewater treatment authority, prompting state and local regulators to issue a “no contact” advisory for a large section of the Huron River. The cause for the release is still under investigation.

Following the release, the State of Michigan collected 144 samples of downstream water from the Huron River, and only three samples contained detectable amounts of hexavalent chromium. Nonetheless, residents, businesses, and environmental advocacy groups have called for more stringent pollution control laws in Michigan and increased pressure on the automotive industry to stop allowing the use of hexavalent chromium for its parts.

In response to media inquiries regarding the release, The Policy Group noted on behalf of the NASF that the industry continues to promote superior environmental performance and environmentally sustainable practices and faces among the most stringent and comprehensive environmental regulatory requirements in US manufacturing, particularly in the small manufacturing sector.

Over the past two decades the surface finishing industry has reduced hexavalent chromium air emissions by over 99.7 percent and decreased the amount of hexavalent chromium in wastewater discharges by more than 95 percent. In addition, NASF continues to support the use of more sustainable processes such as safer trivalent chromium processes where they are available and meet customer specifications and product quality criteria.

On behalf of NASF, The Policy Group will continue to monitor this incident and work with state and federal regulatory officials on inquiries.

If you have any questions or would like additional information regarding this issue, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

Supreme Court Limits EPA Authority to Regulate GHG Emissions

The U.S. Supreme Court recently issued a milestone decision in *West Virginia v. EPA* that limited the authority of EPA to regulate certain greenhouse gas (GHG) emissions. The Supreme Court ruled that EPA cannot require existing power plants to shift away from fossil fuels to lower-carbon sources of energy, such as nuclear, hydrogen and renewables. The Supreme Court took issue primarily with EPA's *method* to regulate GHG emissions, not its motive or authority to regulate GHG emissions.

In making its ruling in *West Virginia v. EPA* to overturn the federal appeals court, the Court relied on the "major questions doctrine" that requires explicit congressional authorization for action on issues of broad importance and societal impact. The constitutional question at stake is, in short, how much power and authority should be given to federal agencies as the executive branch of the government.

The Supreme Court stated that Congress did not specifically give EPA the authority to implement a rule that requires existing power plants to switch to a more sustainable source of energy to reduce GHG emissions. The decision constrains EPA's ability to issue any regulation that requires a national shift in energy policy to net-zero carbon or renewable energy sources to reduce GHG emissions for the power sector.

The decision signals that the Supreme Court could be a major obstacle to federal agencies seeking to implement broad policies of national importance, such as rules for healthcare, workplace safety, finance, banking, telecommunications, or environmental justice. In such areas, Congress may need to provide explicit authority for federal agencies to issue regulations.

Despite limits on EPA's authority, the agency can still set specific GHG emission limits for power plants based on existing emission control technologies. The agency could also shift its focus to include new GHG emission limits for other industrial sources.

If you have any questions or would like more information on how this decision could impact the surface finishing industry, please contact Jeff Hannapel of Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.