NASF Public Policy Update
December 2022

While the midterm elections may have shifted the power in Congress, the Executive branch is expected to issue a substantial number of regulations and executive orders to implement its environmental agenda. Critical metals use and chemical risk management will continue to have a primary focus. The surface finishing takes proactive measures to address these issues and minimizes the impacts on the environment, public health and the surface finishing industry.

A summary of these topics is below…

- **EPA Seeks Information from Surface Finishing Industry for PFAS Water Discharge Rule** – EPA proposed an Information Collection Request (ICR) to collect data to be used to develop the wastewater discharge rule to control PFAS from surface finishing operations.

- **EPA Issues Draft IRIS Human Health Assessment of Hexavalent Chromium** – EPA issued draft IRIS human health assessment of hexavalent chromium. The draft assessment is overly conservative and is not consistent with the best available science.

- **EPA Issues Guidance for Reducing PFAS in Water Discharge Permits –** EPA's Office of Water issued guidance to states and POTWs on how it can use existing permit authorities to reduce PFAS in water discharges.

- **CARB to Hold Public Hearing on Rule to Phase Out Hexavalent Chromium Plating and Anodizing –** CARB plans to finalize a rule to phase out all hexavalent chromium electroplating and anodizing and will hold a public hearing on January 27, 2023.

For more details on each of these topics, see the expanded discussion below.

EPA Proposes Information Collection Request for Surface Finishing PFAS Water Discharge Rule

EPA has proposed a formal Information Collection Request (ICR) to collect data from the surface finishing industry to be used for the wastewater discharge rule to control per- and polyfluoroalkyl substances (PFAS) associated with surface finishing operations. *November 16, 2022, Federal Register (87 Fed. Reg. 68689).* The agency plans to issue a proposed rule with new discharge requirements for the finishing sector by the summer of 2024.

NASF Government Affairs through The Policy Group have been working closely with EPA on this process for the past year. More information on the rulemaking is available on the EPA website at: https://www.epa.gov/eg/metal-finishing-effluent-guidelines and https://www.epa.gov/eg/electroplating-effluent-guidelines.

EPA's Proposed Information Collection Request

Currently, EPA does not have sufficient information on specific facility operations (including use of hexavalent chromium or PFAS), generation and management of wastewater, or wastewater characteristics, which the agency has determined as essential information for the development of ELGs to address PFAS discharges. EPA is proposing both a questionnaire and wastewater sampling program for metal finishing and electroplating operations to complete a detailed technical and economic analysis for the entire industry necessary for the rulemaking process.

Specifically, EPA has prepared a mandatory questionnaire to be completed by surface finishing facilities that have conducted chromium plating processes and have used PFAS. NASF has already reviewed EPA's draft survey and submitted informal comments to EPA officials on the draft questionnaire. A copy of the draft questionnaire is available for members' review at: Chromium Finishing Questionnaire_0.pdf (epa.gov).

In the Federal Register notice EPA indicated that it has compiled a list of 1,815 potential chromium plating facilities that it plans to send the questionnaire. All active metal finishing and electroplating facilities that conduct or have conducted one or more of the specified chromium finishing operations will be required to complete the questionnaire.

EPA estimated that the total estimated burden (i.e., the hours needed to complete the questionnaire) is 35,858 hours and the total estimated cost to comply with the ICR is $1,696, 682. That would be approximately only 20 hours per facility at a cost of $934 per facility. NASF's estimates of burden and costs are significantly higher than those from EPA.

Comment Deadline

NASF plans to submit formal comments on the proposed ICR focusing on the need for some of the information and the overall burden for facilities that will be required to provide the information to EPA. There is a 60-day comment period with comments due on January 17, 2023. EPA has indicated that it plans to send out the questionnaire in the March or April of 2023.

After EPA collects data from surface finishing facilities, NASF will closely review and evaluate this information to determine if EPA's analysis reflects the current state of the industry and if any options proposed for PFAS discharge standards are justified or technologically and economically feasible.

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

EPA Releases Draft IRIS Human Health Assessment for Hexavalent Chromium

EPA recently released its Draft IRIS Human Health Assessment of Hexavalent Chromium, which will be used to set regulatory standards for hexavalent chromium. The Draft IRIS Assessment is overly conservative and does not use the best available peer-reviewed science. Based on the draft assessment EPA's new safe concentration of hexavalent chromium is ***35 parts per trillion (ppt)***. This is nearly 3,000 times lower than EPA's current drinking water standard.

EPA currently has in place a maximum contaminant level (MCL) of ***100 parts per billion (ppb)*** total chromium based on the assumption of 100 percent hexavalent chromium in the water. Results from a series of state of the art, peer-reviewed studies provide support that the current EPA drinking water standard is human health protective. These studies show that there was no observed toxicity in rodents exposed to hexavalent chromium concentrations in drinking water at the current total chromium MCL.

In fact, at hexavalent chromium concentrations of 1,400 ppb -- more than ten times the current drinking water standard for total chromium -- there was no observed toxicity in rodents. Researchers did not observe toxicity in the rodents until the hexavalent chromium dose was 5,000 ppb—50 times the total chromium drinking water standard.

This research has been validated by other regulatory bodies, including Health Canada, the World Health Organization, and the Food Safety Commission of Japan. For example, in 2020 the World Health Organization issued a final background document that recommends retaining the current WHO guideline value for total chromium (50 ppb) based on newer, high-quality data from chronic drinking water carcinogenicity studies noting that the overall weight-of-evidence supports this level as safe. Similarly, in 2018 Health Canada issued a final maximum acceptable concentration of 50 ppb for total chromium, finding the weight of evidence, including review of the large body of peer-reviewed published studies.

The draft IRIS assessment is at odds with the findings of over 30 peer-reviewed studies supporting the current health standards for hexavalent chromium. In the draft IRIS assessment, EPA relied on studies with exposure levels over 500,000 times higher than the new safe concentration of 35 ppt.

NASF will be engaging EPA to understand why its assessment is not consistent with the best available science.

Comments on the draft human health assessment for hexavalent chromium are due on December 19, 2022. If you have any questions or would like more information regarding this process, please contact Christian Richter or Jeff Hannapel with NASF at crichter@thepolicygroup.com or jhannapel@thepolicygroup.com.

EPA Issues Guidance for Reducing PFAS in Water Discharge Permits

In a December 5, 2022 memorandum EPA provided guidance to states for addressing PFAS discharges when they are authorized to administer the NPDES permitting program and/or pretreatment program (updating the April 28, 2022 guidance to EPA Regions). A copy of the memorandum is available on the EPA website at: https://www.epa.gov/pfas/epa-actions-address-pfas. The recommendations in the guidance direct the Office of Water to leverage NPDES permits to reduce PFAS discharges to waterways at the source and obtain more comprehensive information through monitoring on the sources and quantity of PFAS discharged by these sources.

While EPA's Office of Water works to develop industry-specific Effluent Limitation Guidelines (ELGs) and water quality criteria for PFAS discharges, this guidance identifies steps that states, publicly owned treatment works (POTWs), and industrial dischargers can implement under existing authorities to reduce the discharge of PFAS. EPA recommends the following array of NPDES and pretreatment provisions and monitoring programs to address PFAS discharges.

Recommendation for Industrial Dischargers

- Monitor effluent and wastewater residual for PFAS and provide data on daily monitoring reports (DMRs).
- Implement best management practices (BMPs) for discharges of PFAS, including product substitution, reduction, or elimination of PFAS.
- Implement BMPs to address PFAS-containing firefighting foams for stormwater permits
- Use technology-based treatment to meet site-specific technology based effluent limits developed on a best professional judgment, where no applicable ELGs apply.
- Use water quality-based effluent limits derived from state water quality standards.

Recommendations for POTWs

- Update list of industrial users who may be potential sources of PFAS.
- Monitor effluent, influent, and biosolids for PFAS and provide data on daily monitoring reports (DMRs).
- Utilize BMPs to address PFAS discharges to POTWs.
- Develop local limits for PFAS where appropriate.

- Encourage industrial users to implement pollution prevention, product substitution and good housekeeping practices to reduce PFAS introduced to POTWs.
- Reduce the amount of PFAS in biosolids
- Provide notice to potentially impacted down stream public water systems of any permits with PFAS-specific monitoring requirements.

Until EPA develops a final ELG rule to specifically address PFAS discharges from metal finishing and electroplating operations, states and POTWs can require surface finishing facilities to implement a wide range of actions through existing permitting authorities to reduce water discharges of PFAS. NASF will continue to work with federal, state and local officials to minimize the impacts on the surface finishing industry. If you have any questions or would like additional information about this guidance, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

CARB Looks to Finalize Rule Phasing Out Hexavalent Chromium Plating Processes

The California Air Resources Board (CARB) continues to make efforts to finalize a rule to phase out hexavalent chromium plating. The rule is expected to be finalized by summer 2023 and become effective January 1, 2024. The new rule would impose the following new requirements.

- January 1, 2024 -- The new rule would prohibit any new permits for chromic acid anodizing and hard or decorative chromium electroplating facilities.
- January 1, 2026 -- Hard chromium and chromic acid anodizing facilities would have to implement control requirements to meet stringent air emissions limits.
- January 1, 2027 – All existing decorative hexavalent chromium would be prohibited.
- January 1, 2039 – All existing hexavalent chromium functional plating and chromic acid anodizing would be prohibited.

Prior to the deadline to phase out hexavalent chromium functional plating and chromic acid anodizing, CARB plans to conduct a technology review to determine if the technology is available to replace hexavalent chromium. CARB would either shorten or extend the deadline depending on that review.

Public Hearing and Comments Schedule

NASF has worked closely with the California Chapters on this rulemaking. While these efforts have not yet convinced CARB officials to abandon this draconian rule, they have been successful in delaying the effective dates for the planned phase outs. The industry will have an opportunity to submit written and oral comments on the rule to CARB at a January 27, 2023 public hearing to be held in Riverside, California. There will also be option to attend the public hearing virtually through

Zoom. Interested parties are encouraged to attend and/or submit written comments. For those not intended to submit oral comments at the public hearing, the deadline for submitting written comments is January 17, 2023. More information on the public hearing is available at: Notice of Public Hearing to Consider the Proposed Amendments to the Airborne Toxic Control Measure for Chromium Electroplating and Chromi Acid Anodizing Operations (ca.gov).

If you have any questions or would like additional information about the public hearing or this rule, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

NASF 1000

The **NASF 1000** program was established to ensure that the surface finishing industry would have resources to effectively address regulatory, legislative and legal actions impacting the industry, NASF members and their workplaces. All funds from the NASF 1000 program are used exclusively to support specific projects and initiatives that fall outside the association's day-to-day public policy activities**.** The commitment to this program is one of the most vital contributions made in support of surface finishing and directly shapes the future of the industry.

The sustained commitment from industry leaders has helped the NASF remain strong and credible in informing regulatory decisions across the nation. Specific projects funded through the NASF 1000 make a measurable difference in how the industry navigates emerging challenges, communicates credibly with policy makers, and advocates for a strong science base for rules or standards that affect surface finishing.

Please consider supporting the NASF 1000 program. If you have any questions or would like additional information regarding the NASF 1000 program or the broad array of NASF public policy activities, please contact Jeff Hannapel with NASF at jhannapel@thepolicygroup.com.