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## Industry Focuses on Chemical Security, Workplace Safety and New Air Emission Regulation

### DHS Chemical Facility Security Regulations could apply to your facility

If you have chemicals at your facility, you may need to register and submit information to the Department of Homeland Security (DHS). On April 9, 2007, DHS published final regulations in the Federal Register that establish risk-based and performance-based standards for chemical plants to help protect against terrorist attacks. Under the new regulations, chemical facilities must complete a secure online risk assessment to assist in determining overall level of risk. Facilities determined to be "high-risk" will then be required to conduct vulnerability assessments and submit site security plans that meet the appropriate performance standards. DHS will validate the information provided by the facilities through audits and inspections.

### Finishers and chemical suppliers should review Appendix A

All facilities that manufacture, use, store or distribute chemicals listed in the rule's Appendix A at or above the screening threshold quantities (STQ) must submit a Chemical Security Assessment Tool (CSAT) Top-Screen. You should review the regulation and determine if you need to register and submit a Top-Screen for your facility. A copy of the regulation and Appendix A can be found on the DHS website at [http://www.dhs.gov/xprevprot/laws/gc\\_1166796969417.shtm](http://www.dhs.gov/xprevprot/laws/gc_1166796969417.shtm).

The CSAT Top-Screen Questions and User Manual are also available online at the DHS website at [http://www.dhs.gov/xprevprot/programs/gc\\_1169501486197.shtm](http://www.dhs.gov/xprevprot/programs/gc_1169501486197.shtm). Failure to submit the Top-Screen may result in civil penalties, a DHS audit and inspection or an order to cease operations.

The initial CSAT Top-Screens must be submitted within 60 days of the effective date of the final Appendix

A. The DHS accepted comments on Appendix A until May 9, 2007 and expects to finalize it by the end of June 2007. Accordingly, Top-Screens would then have to be submitted before the end of August 2007.

### Some changes are expected for Appendix A

DHS is expected to make some changes to Appendix A based on the comments that it received. Some of the modifications to the list that are being considered are provided below.

1. DHS plans to include a mixtures approach where some chemicals will be listed at or above specific concentrations.
2. DHS will establish an STQ for each chemical included on the final Appendix A list, so the "any amount" thresholds will be replaced with numerical STQs.
3. DHS anticipates that a few chemicals will be dropped from the list (e.g., acetone), but does not anticipate adding any chemicals.
4. DHS is looking to minimize impacts on "non-industrial-scale" agricultural activities through its changes to Appendix A, though agricultural distribution and storage operations may still trigger Top-Screen.

Facilities will not be required to initiate the Top-Screen process until the final Appendix A list is published in the Federal Register, unless a facility is specifically asked in writing by DHS after June 8 (when Top-Screen was operational) to initiate the process at some sooner date. These letters will be addressed to the head



of corporate security or the plant manager. Such facilities will likely receive notification by telephone prior to receiving the letter. These letters and notifications are most likely applicable only to larger "high risk" chemical facilities.

For more information on the applicability of this new regulation to your facility, contact The Policy Group at:

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crichter@thepolicygroup.com.

### **Industry completing initial work with EPA on new emissions rule for plating and polishing operations**

EPA is under court order to promulgate a new air emissions rule for plating and polishing operations. A team of industry representatives led by John Lindstedt of Artistic Plating Company in Milwaukee, Joelle Zak of Scientific Control Labs in Chicago and B. J. Mason of Mid-Atlantic Finishing Corp in Capitol Heights, MD have been working closely with The Policy Group and EPA officials on identifying appropriate control options for the proposed rule.

Following EPA's presentation on the proposed rule development at the Washington Forum in early May 2007, EPA and the industry have been engaged in an active exchange of information on plating processes and practices, use of wetting agents to reduce the surface tension of plating baths, and generally available control technologies for plating and polishing operations. These activities have included conference calls, numerous exchanges with surface finishing chemical suppliers and the submission of materials assembled by Mr. Lindstedt on nickel, tin-lead and cyanide plating processes. The industry is also in the process of collecting additional information to respond to the requests for information from EPA.

EPA is currently considering several control options for the proposed rule, including the use of wetting agents to reduce surface tension of plating baths, implementation of management and housekeeping practices, use of covers for inactive tanks, reliance on ventilation hoods, mist eliminators and scrubbers and employment of filters for operations such as polishing and thermal spray. The industry will continue to work closely with EPA to provide relevant technical information, real-world experiences from the industry and potential implications of the control options under consideration for the surface finishing industry. Additional conference calls and meetings are scheduled to assist EPA in developing the proposed rule, which is tentatively

scheduled for publication in October 2007. The final rule must be promulgated by June 2008.

### **Briefs filed in OSHA litigation on hexavalent chromium workplace exposure standard**

Although the NASF reached a settlement with OSHA on its challenge to the hexavalent chromium workplace exposure standard, other parties to the litigation continue the legal challenge of the rule in the U.S. Court of Appeals for the Third Circuit. Public Citizen recently submitted its brief in this case, and as expected, Public Citizen has taken an approach that focuses on the following issues:

- Significant risk still exists under the new standard of  $5 \mu\text{g}/\text{m}^3$ ;
- The remaining risk should outweigh any concerns regarding technological and economic feasibility;
- OSHA's technological feasibility analysis is flawed because it concludes that a lower standard is not feasible for some industry sectors and not all;
- OSHA's economic feasibility analysis for electroplating job shops is unsubstantiated and not clearly identified;
- OSHA should have set separate PELs for separate industry sectors rather than one PEL for all industry sectors and
- Because of the significant risk at the new PEL level, OSHA should have set the Action Level lower than half of the PEL.

Public Citizen's brief appears to focus largely on the substantial risk to workers at the PEL of  $5 \mu\text{g}/\text{m}^3$  and why the single PEL for all industry sectors is not appropriate. In addition, Public Citizen does not reference its preferred PEL of  $0.25 \mu\text{g}/\text{m}^3$  in the brief, but focuses its arguments on the final PEL of  $5 \mu\text{g}/\text{m}^3$  and the proposed level of  $1 \mu\text{g}/\text{m}^3$ .

The remaining industry parties and OSHA will have an opportunity to respond to Public Citizen's arguments. After all of the briefs are submitted, the court will set a time for oral argument for this case and begin deliberating on the arguments presented in the litigants' briefs. Although no time has been set for oral argument, it is likely to be scheduled for Fall 2007.

As with any litigation, it is difficult to predict how the court will rule. In the event that the court rules against OSHA in this case, it would not specify a new PEL, but would instruct OSHA to issue a new regulation or some portion of the regulation to address the deficiencies noted by the court. The surface finishing industry would then have an opportunity to submit comments on the new proposed rule regarding economic feasibility or other issues as part of the notice and comment period of rule-making.

The Policy Group will continue to actively monitor the litigation as it proceeds this Summer and Fall. If you have any questions about the status of the OSHA litigation, please contact Jeff Hannapel at [jhannapel@thepolicygroup.com](mailto:jhannapel@thepolicygroup.com). P&SF

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