



NASF Public Policy Update October 2022

Headlining the fall for the industry are new legislative and regulatory developments at the federal and state levels. In addition to Michigan Congresswoman Debbie Dingell's recent letter to the automotive industry on its use of hexavalent chromium plating, EPA has now released its long long-awaited draft health assessment for hexavalent chromium, intensifying pressure at the federal level for restricting or controlling uses as well as laying the groundwork for tighter cleanup standards. Industry will have major concerns over the science behind EPA's approach, and a major science panel will convene early next year to review the agency's work.

Also at the top of the list is the US Environmental Protection Agency's work on new federal PFAS discharge standards and possible new treatment technology requirements for the finishing industry. The agency is moving closer to sending out a major questionnaire to over 2000 surface finishing operations nationwide. The questionnaire, likely to go out by next February or March, is being developed under EPA's federal Clean Water Act authority and will request highly detailed information on facility operations and company financials. EPA will make sampling visits to some facilities as well.

Additional updates on related issues are highlighted in this month's summary below and in updates to follow:

- **EPA Releases Milestone Health Assessment for Hexavalent Chromium** – The U.S. Environmental Protection Agency announced in recent days the release of its long-anticipated human health assessment for hexavalent chromium. The assessment is expected to drive tighter requirements and pressure for new restrictions, and industry has major concerns with the agency's science in early reviews of the draft. NASF plans to submit comments during the 60-day comment period, which ends on December 19, 2022.
- **EPA Submits Proposed PFAS Drinking Water Standard to White House** – The new drinking water standard for PFOS and PFOA was submitted to the White Office of Management and Budget (OMB) for interagency review. The proposed rule is expected to be issued by the end of 2022.

- **Congressional Letter Sent to Automakers Regarding Hexavalent Chromium** – Congresswoman Debbie Dingell (D-MI) recently sent a major letter to automotive industry CEOs regarding the use of hexavalent chromium from plating in the automotive supply chain. NASF Government Affairs through The Policy Group spoke on this and related topics last week at the Automotive Industry Action Group’s fall conference on the International Material Data System (IMDS).
- **EPA Creates New Environmental Justice and Civil Rights Office** – EPA formally announced the creation of its new Office of Environmental Justice and External Civil Rights. The office is expected to have 200 EPA employees and could have a significant impact of facility permits.
- **U.S. Supreme Court Hears Oral Argument on WOTUS Rulemaking** – Stakeholders looking to Supreme Court for much-needed clarity on the definition of waters of the U.S. (WOTUS) under the Clean Water Act.

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

EPA Releases Milestone Health Assessment for Hexavalent Chromium – The U.S. Environmental Protection Agency [announced](#) in recent days the release of its long-anticipated human health assessment for hexavalent chromium. The highly technical draft document has been developed over the past decade by agency scientists under EPA’s Integrated Risk Information System (IRIS) program in the Office of Research and Development.

The IRIS assessment is not a rulemaking itself. Rather, it produces toxicity values associated with cancer and other health endpoints that the agency and state regulators can use to develop new or revise existing chromium requirements. Among the most important regulatory decisions informed by the IRIS assessment are federal drinking water and Superfund clean up standards. Future use restrictions or substance bans under the federal Toxic Substances Control Act (TSCA) will also rely on the IRIS hexavalent chromium health assessment.

NASF and others are reviewing the draft. Early analysis of the document shows that EPA has taken an extremely strict approach in generating its new cancer estimate, relying on the same logic that informed its controversial 2010 draft. If not revised, there will be new pressure for a tighter federal drinking water standard. EPA’s existing maximum contaminant level (MCL) for drinking water, issued in 1991, is 100 parts per billion (ppb) for total chromium. However, many in the activist community have advocated for a much lower MCL, arguing that the current 100 ppb level dramatically underestimates the risks of hexavalent chromium.

The document is now available for a 60-day public comment period, which ends on December 19, 2022. An external peer review process will also be launched in early 2023, which will include formal review of the draft by a newly selected Science Advisory Board panel of outside academic and other experts.

EPA Submits Proposed PFAS Drinking Water Standard to White House for Review

EPA has submitted its proposed drinking water rule for PFOS and PFOA to the White House Office of Management and Budget (OMB) for formal interagency review and approval. EPA has indicated that it plans to issue the proposed drinking water standard by the end of 2022. The proposed standard would set enforceable drinking water requirements for PFOS and PFOA, and these would also serve as the basis for uniform nationwide cleanup standards.

What will National Drinking Water Standards Look Like?

At this point it is not clear what the specific drinking water standards will be. EPA has set interim lifetime drinking water health advisory levels (HALs) for PFOA (4 parts per quadrillion (ppq)) and for PFOS (20 ppq), which are both substantially below the current detection methods for PFOA and PFOS. Drinking water standards generally include a maximum contaminant level goal (MCLG) (which is a non-enforceable, aspirational goal) and a maximum contaminant level (MCL) (which is an enforceable standard that drinking water agencies must meet).

In setting the MCL, EPA is required by the Safe Drinking Water Act (SDWA) to take into account cost and technical feasibility or identify an available treatment technology. In addition, EPA officials have indicated that the proposed standard will also take into account the current feasibility of laboratory detection methods.

EPA Weighing Decisions and Options

It appears that EPA has been weighing whether to set an MCL (the maximum level of PFOS and PFOA allowed in drinking water) or a treatment technique (an enforceable procedure or level of technical performance that drinking water agencies must implement to ensure control of PFOS and PFOA).

If there is no reliable, economically and technically feasible method to meet the health-based MCL, EPA could set a treatment technique as the standard. In addition, EPA is also considering whether to include in the drinking water standard other PFAS beyond PFOS and PFOA that might be co-removed by the treatment method for PFOS and PFOA.

Potentially Significant Impacts Ahead

While having a national enforceable drinking water standard for PFOS and PFOA has its advantages over a patchwork of different state standards, the proposed new drinking water standard could have a significant impact on surface finishing operations as well as other industry stakeholders.

The Policy Group will continue to monitor this rulemaking and its potential impacts and provide updates to NASF members. If you have any questions or would like additional information about this issue, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

Rep. Dingell Sends Letter to Automakers Regarding Hexavalent Chromium

Michigan Congresswoman Debbie Dingell recently sent a letter to the CEOs of several automotive companies urging them to stop the use of hexavalent chromium in their supply chain. The letter was triggered by the recent facility release of hexavalent chromium near the Huron River in the Detroit Metropolitan area.

Rep. Dingell specifically called upon the automobile industry “to act immediately to not only remove hexavalent chromium from its supply chain, but the industry must also take meaningful steps to review the actions of its current and future suppliers to ensure they are meeting strong environmental and public health safety standards.”

NASF and Industry Stewardship and Accomplishments

NASF has led several discussions since early this year on continued stewardship efforts of the finishing industry on the use, control and management of hexavalent chromium and appropriate alternatives in the surface finishing industry. Since the early 1990s, the surface finishing industry has reduced hexavalent chromium air emissions by over 99.7 percent and reduced the amount of chromium discharged in wastewater by 90-95 percent.

Recent Dialogues with EPA, Michigan and Automotive Supply Chain

NASF has been actively engaged in 2022 in a dialogue with EPA Region 5, the Michigan Department of Environment, Great Lakes and Energy (EGLE), and representatives from the automobile industry on the topic of alternatives to hexavalent chromium and PFAS in the automotive supply chain and to ensure that the use of hexavalent chromium in the supply chain is managed appropriately.

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

New Environmental Justice and Civil Rights Office at EPA

EPA has formally announced the creation of its new Office of Environmental Justice and External Civil Rights. This move will elevate equity, nondiscrimination, and environmental justice issues on par with other major program offices such as air, waste, water, chemicals and enforcement. A high-ranking EPA official noted that “equity and justice issues are as centrally important as air pollution issues and as contamination cleanup issues,” and now complying with civil rights law is a fundamental bedrock part of efforts to address pollution. The new office is expected to have 200 EPA employees and its future programs will be partly funded with new resources under the Inflation Reduction Act.

The Impact of Environmental Justice Initiatives

Environmental justice initiatives will continue to have a significant impact on environmental compliance for facilities. Specifically, compliance with applicable environmental requirements alone may no longer be sufficient to get approval for new permits or extend existing permits. EPA’s Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions (FAQs) details how permit writers should assess cumulative impacts including the option of denying a permit under civil rights law, even if it meets all environmental requirements and there is no intentional discrimination.

The concern is that civil rights concerns could hold up a permit and mitigation efforts may not suffice to address the civil rights issues. Based on EPA’s current guidance, the only way to avoid a disparate impact on a vulnerable community is to not emit or discharge a pollutant. The regulated community is awaiting further guidance from EPA next year on how to address cumulative impacts for new permits and permit renewals.

Facility Awareness and Engagement Ahead

As EPA continues to advance the agenda for environmental equity, facilities will need to recognize and be aware of these concerns in their environmental compliance and regulatory planning. The Policy Group will continue to monitor these developments and provide timely updates to NASF members. If you have any questions or would like additional information about environmental justice, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygroup.com or crichter@thepolicygroup.com.

U.S. Supreme Court Hears Oral Argument on WOTUS Rulemaking

On October 3, 2022, the U.S. Supreme Court heard oral argument in the case (Sackett v. EPA) that addresses the uncertain and inconsistent definition of waters of the U.S. (WOTUS) under the Clean

Water Act (CWA). The debate centers on whether CWA jurisdiction extends to: (1) a narrow definition of wetlands – specifically, whether waters that are “relatively permanent, standing or continuously flowing” and to the wetlands that are immediately adjacent to such waters, or (2) a broader definition of wetlands – where there is a so-called “ ‘significant nexus’ between the wetlands in question and navigable waters in a traditional sense.”

Expectations for the Supreme Court’s Approach

Most observers expect the Supreme Court to take a middle-ground approach to the expansive “significant nexus” test and the more restrictive “permanent, standing, and continuously flowing” test, and provide much needed direction for future rulemakings to define WOTUS. The Biden Administration has already indicated that it intends to wait for the Supreme Court decisions before proceeding on its new rulemaking to define WOTUS.

The Supreme Court could also apply the “major questions doctrine” that would require specific legislative authorization and direction from Congress before EPA and the Army Corps of Engineers (Corps) can finalize a revised definition of WOTUS on such a high-profile rulemaking. This could further delay or complicate a new decision from EPA and the Corps until Congress provides the requisite legislative authority.

The Supreme Court decision will provide some much-needed clarity on this issue. In the meantime, the long-term future of WOTUS will remain uncertain. If you have any questions or would like additional information about the Supreme Court case and the WOTUS rulemaking, 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.