

NEW WATER REGULATIONS INCREASE COST OF MANUFACTURING AND METAL FINISHING

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Many companies covered by the proposed rules will have to choose between substantial outlays and shutting down operations covered by the rules

A broad array of manufacturers and metal finishing shops are the subject of a sweeping new federal regulatory initiative. Earlier this year, the U.S. Environmental Protection Agency formally proposed a package of wastewater regulations for a newly designated "metal products and machinery" (MP&M) industry category. The new rules will tighten discharge restriction-and increase treatment requirements and costs-for thousands of companies engaged in a wide variety of industrial operations.

The MP&M rules were initially proposed in 1995 for a smaller group of industrial operations. The initial proposal was withdrawn and re-proposed, in a vastly expanded form, on Jan. 3, 2001. The rules are the result of a consent decree between the EPA and the Natural Resources Defense Council. Under that decree, the EPA has until Dec. 31, 2002 to promulgate a rule package. Companies covered by the rules will then have three years to come into compliance.

Some industry commenters consider the MP&M rule package to be the most significant regulatory development under the Clean Water Act in many years, eclipsing even the 1995 Great Lakes Initiative in economic impact. Even the EPA itself predicts that the rules will result in a number of facility closures. At a minimum, it is clear the the MP&M rules will increase the cost of manufacturing and finishing metal goods in the U.S.

The proposed rules will cover scores of industries, including aerospace, aircraft, buses and trucks, electronic equipment, hardware, household equipment, instruments, job shops, mobile industrial equipment, motor vehicles, office machines, ordinance, precious metals and jewelry, printed wiring boards, railroads, ships and boats, stationary industrial equipment, steel forming and finishing, and miscellaneous metal products. The scope of the program is enormous: even if we look at only a small fraction of the covered facilities, the rule encompasses the entire domestic automotive, aircraft, computer and metal finishing industries.

Under the Clean Water Act, the EPA has developed wastewater discharge standards for dozens of industry categories, from paper to pharmaceuticals, to iron and steel. The EPA's "categorical standards" typically include restriction on "direct" dischargers referring to plants that treat and discharge their wastewater themselves-as well as restrictions for "indirect" dischargers who send their wastewater to municipal wastewater treatment plants. The MP&M rules cover both direct and indirect dischargers, although companies whose discharges fall below specified annual volume thresholds (for example,



1 million gallons per year) are exempt from some requirements.

Many of the facilities covered by the MP&M rules are already regulated under existing categorical standards. For many companies, the MP&M rules will substantially eclipse the current categorical standards for the electroplating and metal finishing industry categories. The metal finishing standards are familiar territory for metal finishing job shops and companies that engage in metal cleaning, etching, plating and related operations.

The discharge limits imposed by the MP&M rules are dramatically lower than any existing categorical standards. A comparison of the proposed limits in the MP&M rules with the current metal finishing categorical standards is instructive; the MP&M monthly average numbers for cadmium, chromium, copper, lead, nickel and other metals are all only a small fraction (in some cases only about one-tenth) of their counterparts under the metal finishing rules including manganese, molybdenum and tin.

The EPA is proposing to tighten the discharge restrictions for metal discharges to a level that will require substantial new capital investment and perpetual operation and maintenance costs. The proposed discharge restrictions are "technology based", meaning that the EPA is basing the restrictions on the performance capabilities of specific treatment technologies. Many companies covered by the proposed rules will have to choose between substantial outlays and shutting down operations covered by the rules. For some manufacturing operations, this may mean outsourcing your plating to another domestic or foreign company. For other kinds of operations in particular, independent metal finishing job shops - it may mean closing your doors. Again, the EPA itself acknowledges that the rules will likely cause some companies to shut down.

Some industry commenters have expressed concern that the MP&M discharge numbers will be impossible to reach even with the newest and best technology. There is precedent for this. After the Michigan Department of Environmental Quality was federally required to adopt an impossibly low water quality standard for mercury, the state effectively had to adopt a variance from its own standard in order to avoid throwing everyone in the state into perpetual violation of the Clean Water Act (punishable by fines of \$27,500 per day and up). Unfortunately, there is no similar "off ramp" available under the proposed MP&M rules.

The MP&M rules are being watched closely by industry and trade association. The MP&M rules will materially increase the cost of doing business in the U.S. The most likely result of the rules is that metal finishing and related operations will simply be moved across the border to Mexico or across the Pacific. While it is true that the rule package is driven by a court order, some observers feel that the EPA is overplaying that card in order to give short shrift to the outcry from the industrial community over the proposal.

Companies covered by the proposed rules are strongly encouraged to evaluate the impact of the rules on their operations and financial condition. If the rules are issued in their current form, we can expect to see challenges for industry associations and other sources. However, as in the case of the Great Lakes Initiative, it may be unwise to rely on an after-the-fact court challenge by someone else. If your company may be covered by the new rules, now is the time to undertake a thorough evaluation to identify and define timetables, costs, operational impacts and available alternatives.

This article presents a greatly simplified and generalized explanation of the MP&M rules. The reader should consult environmental counsel for



advice on the details of the rules and their application to a particular operation.

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