NASF Public Policy Update
January 2021

NASF's advocacy and public policy work has kicked off this year in a stressful and volatile moment in the nation's history. Leaders in Washington are wrestling over consequential decisions in the coming days with implications for how our institutions, parties and politics function in the months and years ahead. In the meantime, as the transition between administrations takes place, NASF and other organizations continue to regularly meet (mostly virtually, for now) with federal and state officials on what will be a very full policy and regulatory agenda for 2021.

Early last week, NASF participated in discussions with the White House regulatory review office to address one of the U.S. Environmental Protection Agency's (EPA) final water rules under the Trump Administration. The agency also just released its latest plan for reviewing the adequacy of federal wastewater limits for surface finishing and other industry sectors. With the incoming Biden administration, the association will continue to be actively engaged at the agencies and in Congress on new regulatory, legislative and policy developments affecting the finishing industry.

This month's NASF Public Policy Update is the first installment of monthly alerts on emerging issues as well as the activities of the NASF to advance the industry's agenda. If you have any questions or would like additional information, please contact Christian Richter or Jeff Hannapel with NASF at crichter@thepolicygroup.com or jhannapel@thepolicygroup.com.

A New Agenda

The incoming Biden administration has been working to finalize its slate of nominees for the cabinet and independent agencies. In recent weeks, transition officials were sitting down with some industry groups to exchange perspectives. Departures from and reversals of Trump-era regulations are expected across the executive branch, but changes to some major decisions and specific rules will not happen quickly. The industry is already in discussions with EPA and other agencies on major issues.

On Capitol Hill, until last week's run-off elections in Georgia, the incoming Biden White House was looking at a steeper climb to advance cabinet nominees, judges and its policy agenda on Capitol Hill. If Republicans had retained control of the Senate, the Biden White would be forced to depend more on executive orders and action instead of legislation to implement efforts on, for example, climate or other priorities.

The Impact of the Georgia Elections

With Democratic pickups of both Georgia Senate seats, the Senate is now evenly divided 50-50 between Republicans and Democrats, with a tie-breaking vote to be cast by incoming Vice-President Kamala

Harris. This allows more room for the Administration to advance key parts of its legislative agenda. However, with a thin margin in the House and a razor-thin margin in the Senate, Democrats will likely have to "walk a tightrope on every vote." The only legislation likely to pass will be measures built from the center out, and a handful of moderate Senators will gain new leverage on both sides of the aisle. NASF members should expect a shift in direction on the environmental policy front with climate change, chemicals policy (including PFAS regulation) and environmental justice at the top of the agenda, as well as new initiatives on the labor, health and safety, tax, trade and other fronts. We will be updating members in greater detail in future alerts.

NASF Virtual Public Policy Updates – Virtual Chapter Webinars Scheduled for the Coming Weeks

In the meantime, the NASF Government Affairs team will be providing the next public policy updates to several NASF chapters in January and February, including Michigan, Wisconsin, Minnesota and other states. Please let us know if you would like to schedule a briefing for your chapter, by reaching Matt Martz at mmartz@nasf.org or Jeff Hannapel at jhannepal@thepolicygroup.com.

LATEST DEVELOPMENTS

In the meantime, please see details below on selected current regulatory and legislative issues at the federal and state level that NASF will continue to work on in the coming months.

COVID-19 Relief Legislation

Congress will soon be focusing another potential round of COVID relief measures. The $900 billion coronavirus relief legislation just recently passed extends and modifies several provisions of the CARES Act passed in March. It extends relief through mid-March of 2021, providing support to assist individuals and businesses for the next several months of the pandemic. Additional information on specific provisions of the small business provisions under the Paycheck Protection Program will be forthcoming from NASF. The key provisions include, among others:

Individual Benefits: (1) $600 direct payment checks for every adult and child earning up to $75,000, the benefit are reduced for individuals who earn between $75,000 and $87,000; (2) extended unemployment benefits for jobless workers, who will receive up to $300 per week through mid-March -- self-employed people and gig workers will also receive extended assistance; (3) $25 billion in rental assistance to help families pay their rent, and it extends the eviction moratorium now in effect until January 31, 2021; and

Paycheck Protection Program: $284 billion for Paycheck Protection Program loans, with expanded eligibility for nonprofits and local newspapers, and television and radio stations. $15 billion would also be reserved for live venues, independent movie theaters, and cultural institutions.

Vaccines: $68 billion to purchase and distribute COVID-19 vaccines and help states conduct testing — $20 billion of that funding will make the vaccine available at no cost for anybody needing it.

Broadband Access: $7 billion to increase access to broadband Internet, including a new Emergency Broadband Benefit to help millions of students' families and unemployed workers afford the broadband they need during the pandemic.

Transportation aid: Lawmakers also agreed to provide $45 billion in transportation-related assistance, including 1) $16 billion for airlines to pay the salaries of workers and contractors; 2) $14 billion for mass transit agencies; 3) $10 billion for highways; and 4) $1 billion for Amtrak.

Education: $82 billion in funding for schools and universities to assist with reopening, including, $2.75 billion for private K-12 education.

Agriculture: $13 billion for farmers and agriculture, including money under the Coronavirus Food Assistance Program for growers and livestock, dairy and poultry producers.

Medical bills: **a** provision ending surprise medical billing.

Many in Congress have expressed the position that they view this legislation as a "down-payment" on relief needed and will be pushing for additional economic stimulus. If you have any questions regarding COVID relief legislation, please contact Christian Richter at crichter@thepolicygroup.com or Jeff Hannapel at jhannapel@thepolicygroup.com.

EPA Released Updated 2019 TRI Data

EPA released updated 2019 Toxics Release Inventory (TRI) data, continuing the agency's commitment to providing the public with important data and information about chemicals in their communities. The TRI is a resource for learning about toxic chemical releases and pollution prevention activities reported by industrial and federal facilities. The TRI Program was created by the Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

EPA's TRI data release includes summary and trend information, but does not include EPA's full analysis of the 2019 data. The 2019 TRI National Analysis, to be published in early 2021, will examine different aspects of the data, including trends in releases, other waste management practices, and pollution prevention activities. The 2019 TRI data as well as TRI tools, data files, and location-based TRI factsheets are available on the EPA website at: https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-and-tools.

Multi-Sector General Permit for Industrial Stormwater Discharges

On March 2, 2020 EPA published its proposed 2020 National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit (MSGP) that authorizes stormwater discharges associated with industrial activity in areas where EPA is the NPDES permitting authority. The proposed MSGP and additional resources are available on the EPA website at https://www.epa.gov/npdes/proposed-2020-msgp-public-comment.

The comment period for the proposed MSGP closed on June 1, 2020. NASF submitted comments on the proposed MSGP: 1) to reduce burdens associated with universal benchmarks and monitoring requirements for pH, TSS and COD; 2) eliminate mandatory compliance with the stormwater control measures (SCM) listed in Appendix Q; and 3) establish an inspection-only option to demonstrate the effectiveness of a facility's SCM in lieu of benchmark monitoring.

The draft final MSGP rule is currently being reviewed by the White House Office of Management and Budget (OMB), and NASF participated in a meeting with OMB officials to advocate for reducing the burdens associated with the MSGP. The current MSGP expired on June 4, 2020, but will remain in effect until the 2020 MSGP is finalized. The final MSGP is expected in early 2021.

EPA Risk Evaluation under TSCA for N-Propyl Bromide

EPA identified n-propyl bromide (1-bromopropane) as one of its first ten high priority chemicals under the Toxic Substances Control Act (TSCA). N-propyl bromide is used as a solvent to clean parts prior to surface finishing. As part of this process, EPA conducted a risk evaluation, and in August 2020, EPA determined that n-propyl bromide presents an unreasonable risk for 16 of 25 conditions of use, including use as a solvent for industrial cleaning and degreasing.

The next step in the process is for EPA to initiate a rulemaking to determine what risk management options may appropriate for the use of n-propyl bromide. EPA has one year from the risk evaluation to issue a proposed rule and two years from the risk evaluation to issue a final rule. EPA must convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel because it cannot certify that the rule will not have a significant economic effect on a substantial number of small entities. Accordingly, EPA has recently convened a SBREFA panel to determine if risk management options under consideration may impact small businesses.

NASF as well as a few of its members have been invited to participate in the SBREFA panel as small entity representatives (SERs) to provide input how n-propyl bromide is used, what management controls are in place to reduce emissions and potential exposures to workers and the public, and how the management options under consideration by EPA may impact small businesses that use or rely on the use of n-propyl bromide. The first meeting of SERs was conducted in early November 2020, and another SER meeting is expected early in 2021. If you have any questions or would like additional information about the n-propyl bromide regulatory process of SBREFA panel, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

EPA Risk Evaluation under TSCA for Trichloroethylene (TCE)

EPA identified trichloroethylene (TCE) as one of its first ten high priority chemicals under the Toxic Substances Control Act (TSCA). TCE has been used as a solvent to clean parts prior to surface finishing. On November 23, 2020 EPA released the final risk evaluation for TCE and found that 52 of the 54 conditions of use that EPA reviewed present an unreasonable risk to workers, occupational non-users (ONU), consumers, and bystanders.

The next step in the process is for EPA to initiate a rulemaking to determine what risk management options may appropriate for the use of TCE. EPA has one year from the risk evaluation to issue a proposed rule and two years from the risk evaluation to issue a final rule. EPA indicated that it plans to move quickly to develop risk management options for this chemical. The potential actions that EPA could take to address these risks include regulating how TCE is used or limiting or prohibiting the manufacture, processing, distribution in the marketplace, use, or disposal of TCE, as applicable.

EPA must also convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel because it cannot certify that the rule will not have a significant economic effect on a substantial number of small entities. EPA is in the process of soliciting small entity representatives (SERs) to participate on the SBREFA panel.

NASF Developed PFAS Sampling and Analysis Plan for Members

NASF, with the assistance of Dr. Janet Anderson, developed a PFAS Sampling and Analysis Plan (SAP) for NASF members. The SAP is a comprehensive tool that includes the best practices for collecting PFAS samples and issues to consider for the analysis of those samples. This document is available to all NASF members. If you have any questions or would like additional information about the PFAS SAP, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

EPA Proposed Regulatory Determination for PFOS and PFOA Drinking Water Standard

The Safe Drinking Water Act (SDWA) requires EPA to make regulatory determinations every five years on at least five unregulated contaminants. On March 10, 2020 EPA proposed a regulatory determination to regulate PFOS and PFOA in drinking water. This is the first step in the regulatory process to establish a federal drinking water standard for PFOS and PFOA.

In comments on the proposed regulatory determination, NASF has encouraged EPA to consider a treatment-focused regulatory approach to a drinking water standard for PFOS and PFOA, and that the treatment technologies considered must be technologically and economically feasible, consistent with the SDWA. In late December 2020 EPA sent the draft final SDWA determination to OMB for review. A final determination is expected soon, with a statutory deadline of January 4, 2021. If you have any questions or would like additional information on this proposal, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

EPA SNUR for Long-Chain Perfluoroalkyl Carboxylate (LCPFAC) Chemical Substances

In July 2020 EPA issued a final significant new use rule (SNUR) for long-chain perfluoroalkyl carboxylate (LCPFAC) chemical substances that imposes notification and other regulatory requirements on the manufacture, import or processing of certain new uses of specified LCPFAC substances, including PFOA and its salts. A copy of the SNUR is available at: https://www.regulations.gov/document?D=EPA-HQ-OPPT-2013-0225-0232. Specifically, this would include any new uses or other uses that are no longer

occurring after January 21, 2015. The SNUR also includes articles that may contain these specified LCPFAC substances. EPA also issued a guidance on the SNUR on December 9, 2020 and clarified that it would apply to articles with surface coatings. A copy of the guidance is available at: https://www.epa.gov/sites/production/files/2020-12/documents/draft_lcpfac-snur_surface-coating-compliance-guide_2020-12-09.pdf
Fortunately, this SNUR does include PFOS or 6:2 FTS, the substances used in fume suppressants in the surface finishing industry. Accordingly, the article exemption for PFOS and 6:2 FTS would not be impacted by this SNUR. Accordingly, this SNUR should not substantially impact NASF and its members. If you have any questions or would like additional information on the SNUR, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

EPA Interim Guidance on Destruction and Disposal of PFAS

EPA has published the draft Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials That Are Not Consumer Products with a 60-day public comment period under docket EPA-HQ-OLEM-2020-0527. A copy of the guidance is available at: https://www.epa.gov/pfas/interim-guidance-destroying-and-disposing-certain-pfas-and-pfas-containing-materials-are-not. Specifically, the new interim guidance outlines the current state of the science on techniques and treatments that may be used to destroy or dispose of PFAS and PFAS-containing materials from non-consumer products. Comments are due February 16, 2021.

EPA Region 5/ORD/MI EGLE PFAS Test Results

EPA Region 5, EPA Office of Research and Development (ORD) and the Michigan Department of Environment, Great Lakes and Energy (EGLE) conducted PFAS testing of fume suppressants currently in use and effluent discharge at approximately 12 plating shops in Michigan. The goal of this project was to determine if any PFOS is present in the fume suppressant currently in use and which PFAS, if any, may be in the effluent discharges of finishing shops.

The report found that 1) the fume suppressants currently used by the facilities tested did not contain any detectable amounts of PFOS or any PFOS precursors; 2) untreated effluent relatively high levels of legacy PFOS (even though the report noted that facilities are no longer using PFOS and most of the facilities are treating for legacy PFOS prior discharge to POTW); and 3) high levels of 6:2 FTS (the PFAS in the current fume suppressant formulations) in the untreated effluent were also detected. The study report is available at the following link: https://www.michigan.gov/documents/egle/wrd-ep-pfas-chrome-plating_693686_7.pdf.

Michigan EGLE Issues Draft Screening Levels for Air Emissions of 6:2 FTS

On September 24, 2020 the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division issued an initial threshold screening level (ITSL) for air emissions of 6:2 fluorotelomer sulfonate (or 6:2 FTS) of 1 $\mu g/m^3$, with annual averaging time. 6:2 FTS is used in the current

formulations of fume suppressants for chrome plating applications. A copy of the document is available at http://www.deq.state.mi.us/aps/downloads/ATSL/27619-97-2/27619-97-2_annual_ITSL.pdf.

NASF submitted comments in mid-November 2020 on the screening level that identified data flaws, scientific policies that are inconsistent with risk evaluation best practices, and other significant technical concerns with how the screening level was developed. NASF in coordination with the American Chemistry Council and the Michigan Chemistry Council had a conference call with state officials and are in process of developing additional comments to submit to the state prior to its January 15, 2021 for responding to comments.

Water and Environmental Technology (WET) Center Annual Meeting

NASF and the AESF Foundation have joined the Water and Environmental Technology (WET) Center Industrial Advisory Board, which focuses on a broad range of water and wastewater technologies and related public health issues. WET is a National Science Foundation (NSF) Industry/University Cooperative Research Center consisting of three sites: University of Arizona; Arizona State University; and Temple University. The WET Center structure and research agenda offers substantial leverage for relevant research and a wide range of expertise.

WET is funded by NSF and public and private sector members who contribute funds for research in areas of interest to them. Collaborative WET projects attract an array of WET members. These include, but are not limited to:

- Municipal drinking water and wastewater utilities
- Water industry organizations/associations
- Water and wastewater treatment technology manufacturers
- Agricultural companies
- Chemical companies
- Food & beverage companies
- State and federal water quality regulators

Industry representatives last participated in formal discussions at the WET Center's Annual Meeting on August 12-13, 2020. At the meeting, the WET Center agreed to fund water research projects totaling over $400,000, including several projects involving PFAS sources and treatment and destruction technologies for complex industrial wastewaters such as from plating baths. If you have any questions or would like more information about NASF's participation with the WET Center, please contact Jeff Hannapel at jhannapel@thepolicygroup.com.

Look for the next NASF update in February.

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