

US EPA ARCHIVE DOCUMENT

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Re: Comments on MWRDGC Project XL Proposal

The Chicago Metal Finishers Institute (CMFI) appreciates the opportunity to provide comment on this Project XL proposal. CMFI is a trade organization of metal finishers and electroplaters located throughout the Chicagoland area, many of whom would have the opportunity to participate in this proposal with the MWRDGC. Our industry is primarily small to mid-sized businesses that provide employment to unskilled and semi-skilled laborers throughout the Chicago metropolitan area. We feel that regulators should create sensible rules with the cooperation of all parties involved, and enforce those rules fairly and equally amongst the regulated community. To that end, we have been participating with the regulatory community on the Metal Finishing Strategic Goals Program since its inception several years ago.

CMFI is pleased to participate in this stakeholder process. We feel that the effort put forth by MWRDGC representatives in writing this ambitious proposal represents a significant leap forward in the relationship between the Metal Finishing industry, the regulatory community, and the citizens of the communities in which our facilities are located. We feel that the District is truly making an effort to inject some "common sense" into the Byzantine system of regulations that our industry now faces. Their proposal offers concrete, measurable benefits to all of the stakeholders.

However, CMFI wishes to express its concern over the recent revelation by USEPA staff that the Pretreatment Streamlining proposal made by EPA in the fall of 1999 (*Federal Register* 64 FR 39564, July 22, 1999) has been put on the "back burner" with no action expected until late 2001. While we realize that the EPA representatives participating in the Project XL are not specifically soliciting comment on this issue, CMFI feels compelled to state that with thirty years of pretreatment experience behind us the time has come to take the lessons learned by the regulatory community and industry to reform the pretreatment system as a whole. The piecemeal fashion in which the XL proposals will be applied - to a limited number of POTWs around the nation - represents a small step forward. We feel that EPA should concentrate on system-wide changes that can benefit all stakeholders nationwide.

Comment 1:

The conditions and timeline under which a Non-significant Categorical Industrial User (NCIU) reverts to Significant Industrial User (SIU) status need to be clearly defined in the proposal.

Section (B)(2) of the January 5, 2000 modified "XL Project Description" sets forth the circumstances under which an Industrial User becomes an NCIU. The modified proposal states the following with regards to an NCIU reverting to SIU status:

"Conformance with the conditions set forth in the NCIU definition would be reassessed at least annually by the POTW. If a facility no longer qualifies for NCIU status because of a change in the nature of its operations or if the facility is found in significant noncompliance, the facility's status as a NCIU would be revoked and the facility would revert to full SIU status."

While CMFI appreciates the need for the POTW to maintain control over the movement of an IU between these categories, it is imperative for the protection of both the POTW and the IU that the timeline for the transition between NCIU and SIU status be clearly defined. Explicit dates must be established for this changeover so that a facility participating in this process understands which regulatory requirements he is subject to and when those requirements are effective. Furthermore, the participating facility should be given a set period of time to make an orderly transition to SIU status to ensure that the facility is in compliance with all applicable regulations.

CMFI wishes to propose the following language:

"Conformance with the conditions set forth in the NCIU definition ~~would~~ shall be reassessed at least annually by the POTW using data collected by the POTW and the Industrial User from the previous calendar year. Such reassessment shall take place no later than January 31st of the following year and will be subject to review by an impartial arbitrator should a dispute arise. If a facility no longer qualifies for NCIU status because of a change in the nature of its operations or if the facility is found in significant noncompliance, the facility's status as a NCIU would be revoked and the facility would revert to full SIU status 90 days after the determination is made."

Because the District determines SNC on a rolling 6-month basis at the time an inspection report or IU self-report is being evaluated, the proposed restriction of evaluating NCIU status during January of each year is inappropriate. Under this approach, it is quite conceivable that information collected during the first calendar quarter could not be evaluated for NCIU status until the data were more than nine months old. The District's current "evaluate-on-demand" approach has worked well for a number of years, and we anticipate that we will continue this approach for NCIU evaluations. With regard to the need for dispute resolution, the District has a multi-step appeal process in place with regard to its User Charge program. This involves first an appeal to the Director of Research and Development, then to an independent Hearing Officer appointed by the District's Board of Commissioners. This appeal process would be appropriate for reviewing disputed NCIU determinations. With regard to the proposed 90-day reversion period, the District agrees that the 90-day period is warranted both to allow for reissuance of the CIU's Discharge Authorization and to allow the CIU to establish and implement actions necessary to revert to full CIU status. Finally, the District will propose that it automatically reevaluate each reverted CIU for NCIU status upon completion of eight calendar quarters of non-SNC.

Comment 2:

The "Interagency Task Force" that will develop Toxic Reduction Action Plans (TRAPs) should take more advantage of input from the industrial sector when identifying potential pollutants for inclusion on the list of "pollutants of concern."

Identifying potential pollutants of concern that fall outside of the current regulatory structure and making an effort to reduce those pollutants in the ambient environment is a laudable goal. The entire community may indeed benefit from such reductions. However, it is important to note that identifying the sources of these pollutants will be instrumental in achieving the elimination of

their discharge to the environment. Input from the industrial community would be key in helping to ascertain the origins of many of these pollutants. Furthermore, industrial participation on the "Task Force" will give all participants a sense of ownership for this non-regulatory process.

CMFI asks that industrial participants be given a formal role in the "Task Force" that will develop TRAPs. We ask that this role be clearly called for in the Project XL proposal.

The District envisions the TRAP process as sequential in that the "Task Force" will identify the pollutants of concern for investigation. In response to NGO comments, it would appear appropriate to open the first phase to NGOs. Sector participation in this first phase might be construed as influencing the pollutant selection process, and may not be appropriate. However, the activities described by CMFI (identifying pollutant sources and establishing reduction goals) belong in the second phase. It is the District's intent that this second phase of the TRAPs involve extensive sector participation.

Comment 3:

The conditions under which industry participants in the Strategic Performance Partnerships will receive a deferral from future categorical pretreatment standards need to be more clearly delineated.

CMFI has grave concerns over the potential impact that future categorical pretreatment standards will have on our industry. The limits set forth in the original Metal Products and Machinery (MP&M) proposal (*Federal Register* 60 FR 28210, May 30, 1995) left many in our industry wondering how such miniscule restrictions would be met. CMFI also wishes to note that while EPA is under court order to re-propose the MP&M regulation in October of this year, the agency is under no obligation to re-regulate the Metal Finishing industry under MP&M. Our concerns over the potential impact of this regulation on our industry remain strong. As small businesses with limited resources, we feel that without a clearly defined deferral from future regulations - like MP&M - we will be forced to choose between scrambling to meet draconian future regulations and doing what makes the most sense to help protect the environment. While we are pleased that the MWRDGC recognizes this quandary in their XL proposal, CMFI is concerned over the vague wording in the document:

"... Specifically, where a proposal to modify an existing categorical pretreatment standard or to develop a new categorical pretreatment standard conflicts with the environmental performance strategy of a Partnership participant, the District is seeking deferral of the new standard or requirement during the duration of the Partnership effort."

While we recognize that without a proposed MP&M rule from EPA on the table, envisioning where these conflicts will take place is difficult. However without this specifically delineated deferral, many job shops will be forced to conserve their resources in anticipation of the October MP&M proposal and will choose not to participate in this important project.

As an enticement for participation in this XL project, CMFI asks that the deferral from future categorical pretreatment standards be more clearly defined in the XL proposal.

It is the District's understanding that the USEPA's Engineering and Analysis Division is currently reviewing the District's proposal and is formulating strategies for integrating the Metal Finishing Strategic Goals Program into the upcoming MP&M categorical pretreatment standards. The District will continue its dialogue with USEPA to integrate the Strategic Performance Partnerships with the MP&M categorical pretreatment standards, as well.

CMFI looks forward to its continued participation in this Project XL stakeholder process. Please keep us updated as to the changes to the proposal as well as the schedule for future discussions.

Cordially,

David Jacobs
Northwestern Plating Works, Inc.
CMFI President

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