

COPPER & BRASS FABRICATORS COUNCIL, INC.

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May 20, 2004

Ms. Lorraine Hunt
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB, Room 10202
725 17th Street, NW
Washington, DC 20503

**RE: 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulation:
69 Fed. Reg. 7987, February 20, 2004**

Dear Ms. Hunt:

On behalf of the Copper and Brass Fabricators Council, Inc. ("Council"), set forth below are comments in response to the Office of Management and Budget ("OMB") Notice and Request for Comments, "2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations," published in the February 20, 2004, Federal Register at 69 Fed. Reg. 7987. (Hereafter "Draft Report"). The Council welcomes the opportunity to nominate specific existing manufacturing regulations and guidance documents for regulatory reform.

The Copper and Brass Fabricators Council is a trade association that represents the principal copper and brass mills in the United States. The 20 member companies (see attached appendix A for a list of member companies) together account for the fabrication of more than 80% of all copper and brass mill products produced in the United States, including sheet, strip, plate, foil, bar, rod, and both plumbing and commercial tube. These products are used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries. Many Council member companies qualify as small businesses (750 employees or less) under the definitions of the Small Business Administration, classified within the 1997 North American Industrial Classification System code 331421, "Copper rolling, drawing, and extruding."

The nominations listed below are the result of a survey of some of the technical professionals within the industry who deal with regulations at the operating level on a daily basis. The first six nominations were also submitted during the 2002 request for public nominations and are resubmitted here because they have not been resolved by the agencies and remain troublesome and inefficient elements in the regulatory scheme. The final two submissions are new for this year.

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The Council greatly appreciates OMB/OIRA's efforts to bring attention to wasteful and inefficient regulations, and we especially appreciate the emphasis you have placed on manufacturing regulations for this year's nominations. We also commend OMB/OIRA for soliciting public nominations of regulations in need of reform.

I. Lead/TRI Rule: Restoration of *de minimis* Exemption:

Agency: U.S. Environmental Protection Agency.

Citation: 40 C.F.R. 372.

Authority: Emergency Planning and Community Right-To-Know Act (EPCRA); Toxic Chemical Release Forms, 42 U.S.C. 11023.

Description of Problem: On April 17, 2001, the U.S. Environmental Protection Agency finalized a rule that revised EPCRA by lowering the Toxic Release Inventory (TRI) reporting threshold for lead to 100 pounds. Previously the threshold was 25,000 pounds manufactured or processed, or 10,000 pounds otherwise used. Those who exceed the annual threshold were required to report usage and releases of lead beginning with the July 1, 2002 annual TRI report. In addition to lowering the reporting threshold, the new rule eliminated the *de minimis* exemption for reporting facilities. Previously, under the *de minimis* exemption, a reporting facility could disregard very small amounts of lead (less than 1%) that may be contained in mixtures or other trade name products used by the facility. With the loss of the exemption, the facilities now must spend resources tracking minute quantities of lead that may be contained in mixtures or other trade name products imported into the facility.

Proposed Solution: Restore the *de minimis* exemption for lead TRI reporting.

Estimate of Economic Impacts: Estimated ten to twenty hours preparation time per facility for each of thousands of facilities in exchange for very little benefit. Including the small quantities of lead contained in mixtures and trade name products in a facility's threshold manufacture, process or otherwise use determinations is unlikely to sweep very many additional facilities into the TRI reporting scheme. Furthermore, for those already reporting, the small quantities will not likely increase the reported usage and releases to a significant or useful degree.

II. Stormwater Regulations:

Agency: U.S. Environmental Protection Agency

Citation: 40 C.F.R.122.26

Authority: Clean Water Act, 33 U.S.C. 1342(p)

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Description of Problem: The EPA is required under the Clean Water Act to issue permits to point sources controlling the discharge of pollutants to the nation's waters. This includes discharges of storm water runoff from industrial activities. In 1990, EPA issued Phase I regulations requiring certain categories of storm water dischargers associated with industrial activity to obtain authorization to discharge storm water under a storm water permit. As part of the permit process, industrial dischargers are required to develop and submit Storm Water Pollution Prevention Plans using Best Management Practices. When the regulations were promulgated, the controls necessary to meet permit requirements were expected to be low-cost and low-technology, including such items as good housekeeping, preventative maintenance, spill prevention and response, employee training and proper material handling. However, as the program has evolved, the present requirements for satisfactory SWPPP's now frequently include major construction expenses for capturing and treating stormwater before discharging to the waters of the United States. It is suspected that these major expenses may be incurred for minimal reductions in pollutant discharges in most cases.

Proposed Solution: Minimize the costs for obtaining stormwater permits by focusing on the low-cost, low-technology best management practices requirements as originally intended.

Estimate of Economic Impact: Indeterminate.

III. Spill Prevention Plans: Threshold Quantity too Low:

Agency: U.S. Environmental Protection Agency.

Citation: 40 C.F.R. 112

Authority: Clean Water Act; Oil Pollution Act of 1990, 33 U.S.C. 2701-2761.

Description of Problem: In 1973, the U.S. Environmental Protection Agency (EPA) issued the Oil Pollution Prevention Regulation based on the requirements contained in the Clean Water Act of 1972. The regulation was codified at 40 C.F.R. 112, and was revised in 1991 and 1994 based on the requirements of the Oil Pollution Act of 1990. The regulation requires industrial facilities to develop and implement spill prevention, control, and countermeasures (SPCC) plans. The SPCC requirement applies to all facilities that have aboveground storage capacity of more than 660 gallons in a single tank, or an aggregate aboveground storage capacity of more than 1,320 gallons, levels that are too low and burdensome to small businesses in particular. The current interpretation of 'oil' has expanded over the years and in addition to new and used petroleum oils, greases, fuels, and some solvents, now even includes waterbase oils for machining fluids which may be 95% water, and vegetable oils. Compounding the problem is an interpretation of 'aggregate' to include drums that may be spread over several acres at a site. Furthermore, a proximity to waterways trigger is too broadly defined in the regulation; in many cases a surface stream a mile away from a facility triggers the SPCC requirement. As a result, the low threshold sweeps many small facilities into the program that represent little risk to the waterways of the United States.

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Proposed Solution: A higher threshold would relieve the burden on small businesses without altering significantly the protection of the environment. A more precisely defined description of "reaching a waterway" would also provide relief at little risk to the waterways. Clarification of 'aggregate' to mean drums that are stored at a single location would also provide significant relief. This definition is followed in the Clean Air Act, section 112(r), where a process threshold determination for Risk Management Programs is based on volume of inter-connected storage vessels to include "any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process."

Estimate of Economic Impact: Not estimated.

IV. **Definition of Volatile Organic Compound (VOC):**

Agency: U.S. Environmental Protection Agency.

Citation: 40 C.F.R. 51.100

Authority: Clean Air Act, 42 U.S.C. 7401 et seq.

Description of Problem: The definition of volatile organic compound (VOC) as found in 40 C.F.R. 51.100(s) and as applied by the U.S. EPA has no volatility element and therefore disregards whether a compound is even volatile at all. The definition defines VOCs very broadly as any carbon compound, but appropriately narrows the definition somewhat by limiting VOCs to those carbon compounds that "participate in atmospheric photochemical reactions." VOCs are of concern because they are ozone precursors. Certainly, photochemical reactivity is one measure of an organic compound's ability to be an ozone precursor, but is not the only measure. A carbon compound must also be volatile to be an ozone precursor. The EPA recognized this when they promulgated a rule on VOC Emission Standards for Consumer Products in 1996, and included a volatility threshold (0.1 mm Hg) as part of the rule. In the consumer rulemaking process, the EPA acknowledged that the definition of VOC was extremely broad as stated in 40 C.F.R. 51.100(s) and included virtually any organic compound not specifically exempted. A volatility component in the definition was needed and was inserted. The problem is exacerbated by the EPA's treatment of the 'photochemically active' exemption. All organic compounds are assumed to be participants in atmospheric photochemical reactions. A petition with extensive test results must be submitted to the agency, and the petitions are rarely granted.

Proposed Solution: Include a vapor pressure threshold of 0.1 mm Hg below which a carbon compound would not be considered volatile and would not meet the definition of Volatile Organic Compound.

Estimate of Economic Impact: Unknown.

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V. **Removal Credits for POTW's:**

Agency: U.S. Environmental Protection Agency.

Citation: 40 C.F.R. 403.7

Authority: Clean Water Act, 33 U.S.C. 1251-1387

Description of Problem: Under the provisions of the Clean Water Act, limits are placed on the amount of a pollutant that an industrial water discharger in a particular industrial category is allowed to discharge. In many cases, the effluent from the industrial discharger is sent to a publicly owned treatment work (POTW) and the effluent undergoes further treatment. As provided by statute and under procedures outlined in 40 C.F.R. 403.7, POTWs with the capability to remove pollutants may apply for authorization to grant "removal credits" to facilities which discharge to the POTW, for the purpose of avoiding the unnecessary expense of treating the effluent twice. The effect of the removal credit is to grant to the NPDES permit holder a higher limit on the subject pollutant than would otherwise be allowed, with no increase in the level of that pollutant ultimately discharged by the POTW to the waterways. Removal credits are most critical to indirect, categorical dischargers (those facilities, usually small businesses, which discharge to a POTW) whose volumes are too small to justify the investment in treatment equipment dedicated to their operations. If POTWs do not have removal credit authority, then the small indirect discharger is prevented from trucking waste to the POTW, even though the POTW has the capacity to treat the waste in question and the industrial discharger does not. As a result, the small discharger is required to invest in dedicated treatment facilities that are not economical to operate due to small volume, and POTWs lose a potential revenue stream. The problem arises from the unreasonable procedures established in 40 C.F.R. 403.7, which make it extremely difficult to obtain removal credits, and require testing procedures that do not accurately reflect the actual pollutant removal capability of the POTW. For example, 40 C.F.R. 403.7(b) requires that the POTW calculate the removal rate based on the average of the *lowest* half of the removal measurements taken according to listed procedures. As a result, many qualified POTWs are not granted removal credit authority, many are discouraged from even applying, and industrial users of the POTW must treat the effluents prior to the POTW treating the effluent, creating expenses with no benefit.

Proposed Solution: The regulations governing removal credits should be revised to more accurately reflect the total removal by the POTW. The overall procedures in 403.7 for a POTW to apply for removal credit authority should be modified to facilitate the granting of the authority when justified.

Estimate of Economic Impacts. National cost impact is not determined. The impact is especially onerous on smaller manufacturers who legitimately should be able to rely on the capability of the POTW to remove certain pollutants. For any POTW, several small businesses being served may each be required to install and operate unnecessary on-site treatment facilities because the POTW has not been granted authority to grant removal credits for pollutants that the POTW is fully capable of removing.

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VI. Safety Standards Not Permitting the Use of Ship Stairs and Spiral Stairs:

Agency: Department of Labor, Occupational Safety and Health Administration.

Citation: 29 C.F.R. 1910.24 – Fixed Industrial Stairs

Authority: OSH Act

Description of Problem: OSHA regulations under some circumstances require the use of fixed ladders when spiral stairways or ship stairs would be safer. Under Walking-Working Surfaces regulations, the standard for Fixed Industrial Stairs is contained in 1910.24, which defines the requirements for stairs around machinery, tanks, and other equipment, and leading to or from floors, platforms, or pits. Section 1910.24(b) requires fixed stairs to be used in certain situations, and as defined in other sections, fixed stairs can only include conventional stairs. While 1910.24(b) permits an exception for fixed ladders where they are commonly used, such as for access to tanks, towers, and overhead traveling cranes, etc., no allowance is made for the use of ship stairs or spiral stairs unless they are wrapped around a structure with at least a five foot diameter. Furthermore, section 1924(e) prohibits any stairs with an angle of rise greater than 50 degrees. Unfortunately, it is very common to have a tight location in industry where there is insufficient space for stairs with an angle of 50 degrees or less. Traditionally, these areas would use ship stairs that have separate handles from the stair tread but steps that are less deep than a traditional 8 inch to 12-inch step. Otherwise, a spiral stair was used which allowed a deeper tread. Under the present regulation, industries are required to use rung ladders in these locations, which is less safe than spiral stairs or ship stairs.

In a previous proposed rewrite of the walking and working surfaces standard, OSHA proposed to allow ship stairs. However, this rewrite was not promulgated and the needed reform was lost.

Proposed Solution: Revise the Walking-Working Surfaces regulations to permit the use of ship stairs and spiral stairs.

Estimated Economic Impact: Savings reside in fewer injuries to workers.

VII. Categorical Waste Water Sampling and Testing.

Agency: Environmental Protection Agency.

Citation: 40 C.F.R. 403-471.

Authority: Clean Water Act

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Description of Problem: For categorical wastewater dischargers, either direct dischargers or those discharging to Publicly Owned Treatment Works (POTW), the referenced regulation as contained in 40 C.F.R. 403-471 requires the discharger to sample and test for certain categorical pollutants. For example, a copper forming discharger covered by 40 C.F.R. 468, and a copper casting discharger under 40 C.F.R. 464 must sample and test for Total Toxic Organics, chromium, copper, lead, nickel and zinc under the former regulation, and Total Toxic Organics, lead, copper, and zinc under the latter. Some facilities in these categories do not use chromium or lead, and test results over the years have never indicated the presence of lead or chromium. Even so, the facilities must test the discharges for these pollutants under EPA interpretation of the regulations. Furthermore, in the case of a discharger to a POTW, the POTW also is required to test for these non-existent pollutants.

Proposed Solution: Categorical dischargers should not be required to test for all pollutants in the category when it can be independently shown that no possibility exists for certain pollutants to be in the discharge. One way to do this is to relieve the discharger of the requirement to sample for a pollutant as long as the sampling by the POTW continues to show that it is not present.

Estimated Economic Impact: Savings in the costs of testing for various pollutants for a large number of facilities.

VIII. Thermal Treatment of Hazardous Waste

Agency: U.S. Environmental Protection Agency

Citation: EPA Guidance

Authority: RCRA

Description of Problem: Under current EPA Guidance, hazardous waste generators are allowed to treat their hazardous waste without permit if conducted in compliance with standards applicable to "tanks and containers." Initially, EPA allowed evaporation of water when done in this compliance fashion. Later, EPA reversed this position and prohibited "thermal treatment" of hazardous waste. EPA included evaporation of water under this "thermal treatment" prohibition, primarily because direct-fired units were being used by some for incineration and combustion. However, an overbroad interpretation of the term "thermal treatment" by the EPA now prevents reasonable methods of simple evaporation of water to reduce the volume of hazardous waste. Without this or other means available, industry has been incurring the cost of hauling primarily water to a licensed treatment facility to remove what might be only a few parts per million of a hazardous constituent. Although the EPA's position certainly addresses the concerns over incineration, it sweeps away the evaporation option that would reduce the expense without risk to the environment or public health.

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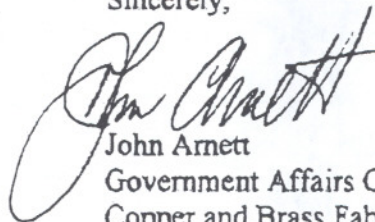
If again allowed, evaporation of water could reduce the volume of hazardous waste generated and transported by some facilities by as much as 95% and allow the remaining 5% of truly hazardous ingredients to be shipped offsite for conventional treatment. The reduce volume of shipping would not only reduce cost, but reduce risk to the environment through a reduction in the volume shipped.

Water evaporation units to reduce the volume of water-oil mixtures are allowed by EPA even though some mixtures might contain levels of hazardous ingredients that would otherwise exceed the limits of hazardous waste. These units are usually employed for machining fluids that are 10% oil and 90% water and are exempt from permitting by most states.

Proposed Solution: The EPA should revisit this issue and permit the simple evaporation of water while retaining the prohibition against incineration/combustion.

The Council appreciates the opportunity to submit the above candidates for improvements in regulatory efficiency, and would welcome an opportunity to work with the agencies or the OMB/OIRA to more fully develop additional background information and cost/benefit analysis. If you have any questions, please feel free to contact the Council.

Sincerely,



John Arnett

Government Affairs Counsel

Copper and Brass Fabricators Council

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