#### THE INTERNATIONAL CADMIUM ASSOCIATION

**MONTHLY REGULATORY UPDATE**

**February 28, 2011**[[1]](#footnote-1)

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**FEDERAL ISSUES**

**CAA ISSUES**

**EPA Proposes Amendments To The NESHAP For Primary Lead Smelting**

On February 17, 2011, EPA published in the *Federal Register* proposed amendments to the NESHAP for primary lead smelting to address the results of the residual risk and technology reviews conducted as required under CAA Sections 112(d)(6) and (f)(2). The proposed amendments include revisions to the emission limits for lead, the addition of a lead concentration in air standard, and the modification and addition of testing and monitoring and related notification, recordkeeping, and reporting requirements. EPA also proposed to revise provisions addressing periods of startup, shutdown, and malfunction to ensure that they are consistent with a recent court decision. Finally, EPA proposed revisions to the rule’s applicability provision to make it consistent with the definition of the source category and proposed other minor technical changes to the standard. EPA also responded to a petition for rulemaking filed on the standard with regard to lead as a surrogate and regulation of VOCs and acid gases. According to the notice, for the primary lead smelting source category, EPA conducted an inhalation risk assessment for all HAP emitted, and a multi-pathway analysis for **cadmium** and lead. The proposed rule states:

We further note that the same controls we have proposed for the three emission points to reduce lead emissions are the same controls that would reduce risks from **cadmium** and all other metal HAP known to be emitted from this source category. Thus, we are proposing that the controls required to ensure that risk from lead emissions from those three emission points is acceptable also protect public health with an ample margin of safety with regard to emissions from all metal HAP from these three emission points.

Comments are due **April 4, 2011**. Requests for a public hearing are due **February 28, 2011**.

**House Resolution Would Prevent EPA From Implementing Rules Concerning Cement Kilns**

Representative John Carter (R-TX) introduced a resolution (H.J. Res. 9) under the Congressional Review Act that would prevent EPA from implementing the NESHAP and NSPS rules for portland cement manufacturing. Under the Congressional Review Act, Congress can nullify a major rule, defined as one with more than $100 million in economic impact, by passing a joint resolution of disapproval within 60 legislative days of the rule’s publication. Carter introduced a similar bill (H.J. Res. 100) in November 2010. EPA’s September 2010 rules require both major-source cement kilns and smaller area-source kilns to control emissions of mercury, total hydrocarbons, and PM. Under the rules, measurement of PM is used as a surrogate for toxic metals, including arsenic, **cadmium**, beryllium, and lead. Cement industry groups, including the Portland Cement Association, filed lawsuits in the U.S. Court of Appeals for the District of Columbia Circuit in November challenging the emissions standards as too stringent. The Sierra Club and other environmental groups filed their own challenges to provisions that exempt the kilns from civil penalties for violating the emissions standards if they can demonstrate it was the result of malfunctioning equipment. *Portland Cement Ass’n v. EPA*, D.C. Cir., No. 10-1358, 11/5/10; *Portland Cement Ass’n v. EPA*, D.C. Cir., 10-1359.

**EPA Releases Final Rules To Reduce Emissions Of Air Pollutants From Existing And New Boilers, CISWI, And SSI**

EPA released on February 21, 2011, signed final rules intended to reduce emissions of air pollutants from existing and new boilers, CISWI, and SSI:

* *Emissions Standards for Area Source Industrial, Commercial, and Institutional Boilers* -- The final rule is intended to reduce emissions of air pollutants, including **cadmium**, from existing and new industrial, commercial, and institutional boilers located at area source facilities. An area source facility emits or has the potential to emit less than 10 tpy of any single air toxic or less than 25 tpy of any combination of air toxics. EPA states that it listed industrial coal combustion, industrial oil combustion, industrial wood combustion, commercial coal combustion, commercial oil combustion, and commercial wood combustion sources under CAA Section 112(c)(3) for their contribution of mercury, arsenic, beryllium, **cadmium**, lead, chromium, manganese, nickel, POM, ethylene dioxide, and PCBs. EPA states that, with respect to the CAA Section 112(c)(3) pollutants, it used surrogates because it was not practical to establish individual standards for each specific HAP. **Cadmium** is included in the grouping for non-mercury metallic HAP, for which EPA selected PM as a surrogate. EPA’s fact sheet states: “The rule will also reduce emissions of other pollutants including **cadmium**, dioxin, furans, formaldehyde and hydrochloric acid. These pollutants can cause cancer or other adverse health effects in adults and children.”
* *Emissions Standards for Major Source Industrial, Commercial, and Institutional Boilers and Process Heaters* -- The final rule is intended to reduce emissions of toxic air pollutants from new and existing industrial, commercial, and institutional boilers and process heaters at major source facilities. According to the final rule, metals, including **cadmium**, make up about six percent of the total HAP emissions. EPA states that it has classified four of the HAP, including **cadmium**, as probable human carcinogens. Under the final rule, industrial/commercial/institutional boilers and process heaters located at major sources must meet HAP standards reflecting the application of MACT. EPA identified 15 different subcategories of boilers and process heaters based on the design of the various types of units, and the final rule includes specific requirements for each subcategory.
* *Emissions Standards for CISWI* -- The final rule covers four CISWI subcategories, incinerators, energy recovery units, waste burning kilns, and small incinerators in very remote locations, and will establish emission limits for nine pollutants, including **cadmium**.
* *Emissions Standards for SSI* -- The final rule promulgates EPA’s new source performance standards and emission guidelines for SSI units located at wastewater treatment facilities designed to treat domestic sewage sludge. The final rule sets limits for nine pollutants under CAA Section 129, including **cadmium**.

The final rules will be effective 60 days after publication in the *Federal Register*. On February 21, 2011, EPA announced that it will “reconsider” certain aspects of the boiler and CISWI rules. The SSI rule is not part of the reconsideration. According to EPA, the final boiler and CISWI rules reflect “reasonable approaches consistent with the requirements of the Clean Air Act. However, some of the issues identified in the comments on our April 2010 proposals raised difficult technical issues that the Agency believes would benefit from additional public involvement.” Prepublication versions of the final rules and additional information are available at <http://www.epa.gov/airquality/combustion/actions.html>.

**EPCRA ISSUES**

## EPA Recommends Facilities Report TRI Information Electronically

In a January 14, 2011, *Federal Register* notice, EPA “strongly recommends” facilities use the TRI-MEweb to report and submit TRI data to EPA. According to EPA, TRI-MEweb “provides useful features to facilitate the submission process and validates data to help ensure accuracy.” For reporting year 2009, 94.6 percent of the submissions were electronic, and “this request largely recognizes and applauds those facilities that already use the application and encourages the remainder of facilities to use TRI-MEweb as well.” Since some facilities still use paper forms rather than TRI-MEweb, EPA is providing a new electronically fillable version of Form R, Form R Schedule 1, and Form A to make it easier for respondents to complete these forms and for EPA to read and process the submitted forms. More information is available at <http://www.epa.gov/tri/report/software/trimeweb/index.htm>.

**STATE ISSUES**

**Safer Chemicals, Healthy Families Says States Will Introduce Bills Banning Cadmium In Children’s Products**

In a January 18, 2011, press release entitled “30 States Nationwide to Announce Upcoming Bills to Protect Kids and Families from Toxic Chemicals on Wed. Jan 19,” Safer Chemicals, Healthy Families states that “[a]t least eight states will be introducing or have introduced policies to ban the use of **cadmium** in children’s products, including: Florida, Kentucky, Maine, Maryland, Michigan, Mississippi, New Jersey and New York.” To date, bills have been introduced in Florida, Kentucky, Maine, Maryland, Mississippi, and New York. The press release is available at <http://www.saferchemicals.org/2011/01/30-states-nationwide-to-announce-upcoming-bills-to-protect-kids-and-families-from-toxic-chemicals-on.html>.

**IC2 Developing Priority Chemicals Database**

On January 26, 2011, environmental officials from ten state and local governments announced the creation of IC2, which intends to:

* Avoid duplication and enhance efficiency and effectiveness of state, local, and tribal initiatives on chemicals through collaboration and coordination;
* Build agency capacity to identify and promote safer chemicals and products; and
* Ensure that state, local, and tribal agencies, businesses, and the public have ready access to high quality and authoritative chemicals data, information, and assessment methods.

IC2 projects include developing an online, searchable database that will combine the lists of priority chemicals developed by individual IC2 member states. Members as of January 26, 2011, include CalEPA; Connecticut Department of Environmental Protection; Massachusetts Department of Environmental Protection; Michigan Department of Environmental Quality; MPCA; New Jersey Department of Environmental Protection; New York Department of Environmental Conservation; Oregon Department of Environmental Quality & Oregon Health Authority; METRO Regional Government (Portland, Oregon); and Washington Department of Ecology. More information on IC2 is available at <http://www.newmoa.org/prevention/ic2/index.cfm>.

***California***

**EU Concerned CDTSC’s Draft Green Chemistry Regulations Conflict With Trade**

The EC submitted comments on December 2, 2010, to CDTSC on its October 2010 draft green chemistry regulations. At a November TBT Committee meeting, U.S. officials argued that the regulations do not need to be notified under the agreement because they would not contain any direct obligations for producers and would not fall under the definition of technical regulations referred to in the TBT agreement. In its comments to CDTSC, the EC stated that it disagrees with the U.S. authorities’ position because the draft regulations would establish a number of direct obligations for producers of chemical substances when those substances, mixtures, or articles are listed as a “priority product,” containing “priority chemicals.” The EC also expressed concern that CDTSC “has not provided information on possible costs or other impacts on companies, nor any feasibility studies or considerations on whether and how the proposed regulation would actually work in practice, nor quantitative or semi-quantitative estimates of any expected benefits.” There is also no analysis on how many products or companies could be affected by the draft regulations, and, in particular, no examination on how the draft regulations would affect companies in other countries.

**Legislation Would Prohibit Reusable Bags Containing Cadmium In “Toxic Amounts”**

Under a bill (A.B. 298) introduced on February 9, 2011, manufacturers would be prohibited from selling or distributing reusable bags that contain “lead, **cadmium**, or any other heavy metal in toxic amounts.” The bill was referred to the Committee on Natural Resources.

**Bill Would Create Product Stewardship Program For Household Batteries**

S.B. 515 would require, by **September 30, 2012**, a producer or the household battery stewardship organization created by one or more producers of a household battery to submit a stewardship plan to CDRRR. The bill would allow a registered hazardous waste transporter to elect to submit a household battery stewardship plan to CDRRR on behalf of one or more producers and would require a hazardous waste transporter making that election to comply with the provisions of the bill applicable to a household battery stewardship organization. Producers, wholesalers, and retailers would be prohibited from selling a household battery after **January 1, 2014**, unless CDRRR deems the plan complete. The bill notes that, under state law, “household batteries” are “batteries made of mercury, alkaline, carbon-zinc, and nickel-**cadmium**, and other batteries typically generated as household waste, including, but not limited to, batteries used in hearing aids, cameras, watches, computers, calculators, flashlights, lanterns, standby and emergency lighting, portable radios, television sets, meters, toys, and clocks.”

***Florida***

**House And Senate Bills Introduced Concerning Cadmium In Children’s Products**

Identical bills have been introduced in the House (H.B. 111, introduced on January 3, 2011) and Senate (S.B. 272, introduced on December 16, 2010) concerning **cadmium** in children’s products. The bills would prohibit the use or application of **cadmium** in excess of 75 ppm on any item of children’s jewelry, toy, or child care article sold in Florida. Child is defined as an individual seven years old or younger. The bills would take effect on **July 1, 2011**. The House bill was referred to the Business and Consumer Affairs Subcommittee on January 10, 2011. The Senate bill was referred to the Committees on Commerce and Tourism, Health Regulation, Judiciary, and Budget on January 5, 2011.

***Hawaii***

**House And Senate Bills Introduced Concerning Cadmium In Children’s Products**

On January 24, 2011, bills were introduced in the House (H.R. 722) and Senate (S.B. 916) that would prohibit the sale, manufacture, and distribution in Hawaii of children’s products that contain **cadmium** in an amount more than .004 percent by weight. Children’s product means any consumer product or component thereof that is designed and intended primarily for use by children under 12 years of age, including but not limited to jewelry, clothing and accessories, decorative objects, backpacks, candy, food, dietary supplements and other edible or chewable items, toys, or furniture. The prohibition would take effect on **July 1, 2013**. The House bill was referred to the Committees on Health, Consumer Protection and Commerce, and Judiciary. The Senate bill was referred to the Committees on Health and Judiciary and Labor.

***Kentucky***

**House Bill Would Restrict Cadmium In Children’s Articles**

Under H.B. 443, which was introduced on February 10, 2011, the manufacture, sale, offer for sale, or distribution of any children’s product that contains **cadmium** at more than .004 percent by weight would be prohibited. Children’s product would mean any consumer product, and component thereof, designed or intended primarily for children under 12 years of age, including but not limited to jewelry, clothing, accessories, decorative objects, backpacks, candy, food, dietary supplements or other edible or chewable items, toys, or furniture. The bill was referred to the Veterans, Military Affairs, and Public Safety Committee.

***Maine***

**Bill Introduced To Ensure Children’s Products Are Free Of Cadmium**

On February 9, 2011, a bill (H.B. 385) was introduced to ensure that children’s products are free of **cadmium**. The manufacture, sale, distribution, or offer for sale or distribution of a children’s product containing cadmium at more than .004 percent by weight would be prohibited beginning **July 1, 2013**. Children means person under 12 years of age, and children’s product means a consumer product, including any component of the consumer product, designed or intended primarily for use on or by children, including but not limited to: children’s clothing; accessories, decorative objects, backpacks, car seats, furniture, and other articles used by or intended to be used by children; candy, food, dietary supplements, and other edible or chewable products used by or intended to be used by children; and any item sold for residential or commercial use, including any component parts and packaging, but not including a food or beverage or additive to a food or beverage. The bill limits substances that may be used as alternatives to cadmium in children’s products. The bill was referred to the Committee on Health and Human Services.

***Maryland***

**House Bill Would Prohibit Cadmium In Children’s Jewelry**

H.B. 145 would prohibit a person, on or after **July 1, 2012**, from manufacturing, selling, offering for sale, or distributing children’s jewelry that contains cadmium at more than .0075 percent by weight. Children’s jewelry would be defined as any jewelry designed or intended to be worn or used by a child under the age of 12 years. The bill would take effect on **July 1, 2011**. On January 26, 2011, the bill was referred to the House Committee on Health and Government Operations.

**Maryland Intends To Sue Power Company Over Coal Ash Disposal Operations**

MDE filed on January 3, 2011, a notice of intent to sue Mirant Mid-Atlantic, LLC, and its subsidiary, Mirant Maryland Ash Management, LLC, under the CWA citizen suit provisions seeking an injunction and civil penalties for unauthorized discharges of “toxic pollutants” such as arsenic, **cadmium**, copper, lead, mercury, selenium, and zinc into state and federal waters. The filing targets the company’s operations in Charles and Montgomery counties, which the state says it will seek to consolidate with an existing federal CWA suit Maryland brought against the company’s Prince George’s County facility.

***Massachusetts***

**Bill Would Designate Cadmium As A Priority Chemical Substance**

H.B. 1136, which was introduced on January 19, 2011, would establish safer alternatives to toxic chemicals. Upon enactment, **cadmium**, trichloroethylene, and nonyolphenol ethoxylates would be designated as priority chemical substances. The bill would require the promotion of safer alternatives to priority chemical substances. No consumer product containing a priority chemical substance shall be sold, offered for sale, or distributed for use unless the product’s manufacturer has submitted notification to Massachusetts, and no priority chemical substance shall be used unless the user of a priority chemical substance has submitted notification to Massachusetts. For manufacturers, the notice must identify the consumer product, the approximate number of units distributed in Massachusetts, an estimate of the amount or concentration of the priority chemical substance contained in each unit, the purpose for including the priority chemical substance, and the name, address, and phone number of a contact person. Users of a priority chemical substance must identify the name and address of each facility where the priority chemical substance is manufactured, processed, or otherwise used, the mass of each priority chemical substance manufactured, processed, or otherwise used, the purpose for using the priority chemical substance, and the name, address, and phone number of a contact person. Within 18 months of a substance being designated a priority chemical substance, a chemical action plan must be prepared. The chemical action plans would establish a goal of accomplishing the substitution of identified safer alternative(s) for the priority chemical substances in designated priority chemical substance uses as expeditiously as possible, and establish requirements for manufacturers and users to accomplish this goal.

***Michigan***

**Senator Intends To Introduce Legislation Concerning Children’s Products**

Michigan Senator Roger Kahn (R) announced on January 19, 2011, that he intends to introduce legislation that would provide parents with information about toxic contamination of children’s products. According to a January 19, 2011, press release issued by the Michigan Network for Children’s Environmental Health, the legislation would:

* Give families the right to know about harmful chemicals in children’s products by providing information in an accessible way;
* Adopt a science-based list of the most harmful chemicals in children’s products;
* Require large manufacturers and importers of children’s products to disclose their use of the identified priority chemicals in children’s products;
* Join with other states to implement the law most efficiently; and
* Promote safer alternatives.

The press release states that “[c]hildren are particularly vulnerable to toxic chemicals like **cadmium**, arsenic, brominated flame retardants, and other chemicals.” According to a January 31, 2011, press release issued by Kahn, he is “working on the legislation with a wide-ranging group that includes health professionals, businesses, consumer advocates and environmental organizations from across the state.” More information is available at <http://www.senate.michigan.gov/gop/readarticle.asp?ID=3640&District=32>.

***Minnesota***

**MDH Releases List Of Priority Chemicals**

The Priority Chemicals under the Toxic Free Kids Act includes **cadmium**. MDH states that there are currently no requirements related to the Priority Chemical list in Minnesota, but in other states where similar lists have been required by statute, “manufacturers or importers of chemicals may be required to report to the state government if the chemicals are within particular consumer products.” MPCA and MDH submitted a report to the Minnesota legislature on December 15, 2010, entitled “Options to Reduce and Phase-out Priority Chemicals in Children’s Products and Promote Green Chemistry,” which outlines some options related to regulating or reducing the use of Priority Chemicals in consumer products. More information is available at <http://www.health.state.mn.us/divs/eh/hazardous/topics/toxfreekids/priority.html>.

***Mississippi***

**Bill To Ban Cadmium And Other Ingredients From Children’s Products Dies In Committee**

H.B. 169 would have banned, beginning **July 1, 2011**, the manufacture, sale, offer for sale, distribution for sale or use of a children’s product or product component containing certain substances, including **cadmium** at more than .004 percent by weight (40 ppm). Children’s product would have included toys; children’s cosmetics; children’s jewelry; a product designed or intended to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or child car seats. The bill, which was introduced on January 4, 2011, was referred to the Public Health and Human Services Committee, where it died in Committee on February 1, 2011.

***New York***

**Bills Introduced Concerning Children’s Products And Novelty Consumer Products**

A number of bills have been introduced that would regulate **cadmium** in children’s products and novelty consumer products:

* A.B. 3141 and S.B. 1526 would regulate toxic chemicals in children’s products. Child means a person of 12 years or less. “Children’s product” means a product primarily intended for use by children, including external component parts and packaging, including baby products, toys, car seats, personal care products, a product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, jewelry, novelty products, bedding, furniture, furnishings, children’s apparel, and the housing of consumer electronic products. The bill would designate several chemicals, including **cadmium**, as priority chemicals. No later than 12 months after a priority chemical is listed, every manufacturer who offers a children’s product for sale or distribution that contains an intentionally added priority chemical must notify New York. The notification must at a minimum identify the children’s product and the priority chemical or chemicals contained in the children’s product. New York may require that the manufacturer provide an assessment of alternatives to the priority chemical. Two years after the effective date of the bills, the distribution, sale, or offer for sale of an item of children’s apparel or a children’s novelty product containing a priority chemical would be prohibited. The bill was referred to the Committee on Environmental Conservation.
* A.B. 1158 and S.B. 2729 would ban the sale or distribution free of charge of any **cadmium**-added novelty consumer product beginning **June 1, 2013**. “**Cadmium**-added novelty consumer product” means a product intended mainly for personal use or adornment that contains **cadmium** in an amount equal to or greater than .0075 percent by weight, including but not limited to jewelry, toys, and ornaments. The bills were referred to the Committees on Environmental Conservation.
* A.B. 3678 would prohibit the use of cadmium in children’s products, including toys, children’s jewelry, or another article, other than clothing, primarily intended for use by a child under 12 years of age. Exemptions would be provided for children’s products or components of children’s products that would not include cadmium except for the addition of recycled materials, provided that the amount of **cadmium** does not exceed .004 percent by weight (40 ppm). The exemptions would expire on **January 1, 2015**. The bill was referred to the Committee on Environmental Conservation.

**House Bill Would Establish Moratorium On Installation Of Synthetic Turf**

A.B. 4543 would establish a moratorium on the installation of synthetic turf pending an environmental and public health study; amend the environmental conservation law, in relation to environmental impact assessments of the use of synthetic turf; and provide for the repeal of certain provisions upon expiration thereof. The bill states that crumb rubber fill is being used as a component of synthetic turf and mulch, and that it includes hazardous components, including **cadmium**. The bill was referred to the Committee on Environmental Conservation.

***Oregon***

**Bill Would Require Product Stewardship Programs For Rechargeable Batteries**

H.B. 2187 would require development and implementation of a product stewardship program for rechargeable batteries, which include nickel-**cadmium** batteries. Before developing the program, ODEQ would consult with the federal government, state agencies, local governments, producers, stewardship organizations, the retail industry, nonprofits, the solid waste industry, environmental groups, and covered entities. ODEQ would also consult with other states for the purpose of achieving uniformity in the development and implementation of the program. Under the bill, ODEQ would have until **January 1, 2014**, to implement the program.

**Senate Bills Would Regulate Brake Friction Materials, Including Cadmium**

Two bills have been introduced in the Senate concerning brake friction material. S.B. 341 and S.B. 945 would prohibit a manufacturer, wholesaler, retailer, or distributor from selling or offering for sale brake friction material or motor vehicles with brake friction material containing certain elements or fibers in an amount exceeding the specified concentrations, including **cadmium and its compounds**, 0.01 percent by weight. The prohibitions would take effect on **January 1, 2014**.

***South Dakota***

**Bill Would Prohibit Use Of Cadmium In Certain Products**

H.B. 1254 would prohibit the use of **cadmium** at more than 0.004 percent by weight in children’s products, including any consumer product, and any component of a consumer product, designed or intended primarily for children under the age of 12, including jewelry, clothing, accessories, decorative objects, backpacks, candy, food, dietary supplements or other edible or chewable items, toys, furniture, or other articles used by intended to be used by children. The ban would take effect on **July 1, 2012**. The bill was referred to the Committee on Health and Human Services on February 17, 2011.

***Tennessee***

**Bills Would Ban Cadmium In Children’s Products**

H.B. 189 and S.B. 244 would prohibit the manufacture, sale, offer for sale, or distribution of children’s products that contain **cadmium** at more than .004 percent by weight, beginning **July 1, 2013**. “Children’s product” would mean any consumer product, and any component thereof, designed or intended primarily for children who are 12 years of age or younger, including, but not limited to jewelry, clothing, accessories, decorative objects, backpacks, candy, food, dietary supplements or other edible or chewable items, toys, furniture, or other articles used by or intended to be used by children. On February 9, 2011, H.B. 189 was referred to the Committee on Conservation and Environment and S.B. 244 was referred to the Committee on Commerce, Labor, and Agriculture.

***Washington***

**WDE Releases Children’s Safe Products Rule, Which Includes Cadmium**

The October 22, 2010, proposed Children’s Safe Products Rule includes **cadmium** and **cadmium compounds** on the list of CHCCs. Under the Rule, a manufacturer must notify WDE if a chemical on the CHCC list is present in a children’s product component. WDE’s tentative timeline for formal rulemaking includes the following actions:

| **Date** | **Action** |
| --- | --- |
| January - February 2011 | * Prepare Concise Explanatory Statement and Public Hearing Memo.
* Draft Rule Adoption Notice.
* Finalize Cost Benefit Analysis, Small Business Impact Statement, Significant Legislative Rules Criteria Document, Citation List, and Rule Implementation Plan.
 |
| March 15, 2011 | Adopt, file, and publish the rule and send out Rule Adoption Notice. |
| April 2011 | Rule goes into effect (31 days after it has been adopted and filed). |

More information on the Rule is available at <http://www.ecy.wa.gov/programs/swfa/rules/ruleChildSafe.html>.

**MISCELLANEOUS ISSUES**

**CPSC Initiates “Soft Launch” Of Consumer Product Safety Information Database**

CPSC initiated on January 24, 2011, a “soft launch” of the consumer product safety information database, which is scheduled to launch officially on **March 11, 2011**. According to CPSC, reports and manufacturer comments collected during the soft launch will not be made available for search and review in the database, even after the official launch. CPSC states that it is testing application and internal operating procedures during the soft launch. On December 9, 2010, CPSC promulgated the final rule establishing the consumer product safety information database, as required by CPSIA Section 212. The database must be publicly available, searchable, and accessible through CPSC’s website. CPSC’s final rule interprets various statutory requirements pertaining to the information to include in the database, and establishes provisions regarding submitting reports of harm; providing notice of reports of harm to manufacturers; publishing reports of harm and manufacturer comments in the database; and dealing with confidential and materially inaccurate information. On February 19, 2011, the House passed the appropriations bill for FY 2011 (H.R. 1), which was amended to include a provision that would amend the CPSIA to prevent CPSC from launching the database. Representative Mike Pompeo (R-KS) introduced the amendment after a February 17, 2011, hearing by the House Energy and Commerce Committee’s Subcommittee on Commerce, Manufacturing, and Trade. The purpose of the hearing was to review implementation of the CPSIA by CPSC as part of the Republican’s inquiry into the financial impact of regulation on business. More information regarding the hearing is available on the Internet at <http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=8220>. More information regarding the database is available at <http://www.saferproducts.gov/>.

**CPSC Warns Against Use Of Cadmium In Children’s Products**

In a keynote speech to regulators at the APEC Toy Safety Initiative/Dialogue in Hong Kong, CPSC Chair Inez Tenenbaum warned against the use of heavy metals, “especially **cadmium**,” in children’s products. Tenenbaum encouraged manufactures in China to refrain from substituting **cadmium**, antimony, or barium in place of lead. According to CPSC, it is “moving swiftly” to address the replacement of lead with **cadmium** in certain children’s products imported from China. Tenenbaum noted that “voluntary efforts will only take us so far,” and pointed out that CPSC has been working on testing protocols and lab accreditation rules for regulated children’s products. More information on her speech is available at <http://www.cpsc.gov/onsafety/2010/01/cpsc-chairmans-statement-on-cadmium-in-childrens-products/>.

**CPSC Staff Recommend Deferring Decision On Petition Concerning Cadmium In Toy Metal Jewelry**

CPSC ballot votes were due on February 16, 2011, on CPSC staff’s recommendation that CPSC defer its decision on the petition seeking regulations on **cadmium** in toy metal jewelry. According to the February 10, 2011, ballot vote sheet from CPSC Attorney Hyun Sun Kim, CPSC staff recommend that CPSC defer its decision on the petition for six months and direct staff to participate in the ASTM F15.24 Subcommittee to develop a voluntary standard addressing accessible **cadmium** from children’s metal jewelry, and to work with the ASTM F15.22 Subcommittee on the ASTM F963 standard with respect to toy jewelry. According to the ballot vote sheet, if CPSC votes to defer its decision for six months, at the end of the six-month period, CPSC staff will provide an update on the progress of the voluntary standards for children’s jewelry and toy jewelry. At that time, CPSC could make a determination to continue to defer its decision on the petition and proceed with the voluntary standards process or to pursue other CPSC action. The ballot vote sheet and briefing package are available at <http://www.cpsc.gov/library/foia/foia11/brief/cadmiumpet.pdf>.

**DOJ Announces Consent Decree Arising From Releases Of Smelting Wastes**

In a January 21, 2011, *Federal Register* notice, DOJ announced a consent decree settling claims asserted by the U.S. and Kansas for natural resource damages under CERCLA Section 107. The notice states that the “claims arise from the releases of smelting wastes containing heavy metals, specifically **cadmium**, lead and arsenic, from three smelters owned and operated by a predecessor in interest of the Blue Tee in Dearing, Caney and Neodesha, Kansas.” Under the Consent Decree, Blue Tee will arrange for the purchase of a specified 80 acre parcel of property with natural resources equivalent to those injured, lost, and destroyed by the releases of hazardous substances at the smelters. That property will be transferred to The Nature Conservancy, which will maintain the property and preserve it in perpetuity. Blue Tee will also pay a total of $180,298.27 for past assessment costs, and future restoration planning costs and operation and maintenance costs for the property.

**IRIS Assessment**

The detailed tracking report for **cadmium** (qualitative draft) includes the following information:

| **Activity/Event** | **Start Date** | **End Date** |
| --- | --- | --- |
| **1. Draft Development** | TBD | TBD |
| **2. Agency Review** | TBD | TBD |
| **3. Interagency Review** | TBD | TBD |
| **4. External Peer Review** | TBD | TBD |
| **5. Final Assessment/Posting** | TBD | TBD |

**NIOSH Posts Draft CIB On Derivation Of IDLH Values**

On January 7, 2011, NIOSH posted a draft CIB regarding the derivation of IDLH values. The primary objective of the draft CIB “is to present a protocol, based on the modern principles of risk assessment and toxicology, for the derivation of IDLH values that characterize the health risks of occupational exposures to high concentrations of airborne contaminants.” The new protocol for deriving IDLH values incorporates the methodology established by the NAC/AEGL Committee “during the derivation of community-based acute exposure limits called Acute Exposure Guideline Levels (AEGLs).” The draft CIB states that the OSHA regulation on “permit-required for confined spaces” defines an IDLH condition as:

Any condition that poses an immediate or delayed threat to life or that would cause irreversible adverse health effects or that would interfere with an individual's ability to escape unaided from a permit space [29 CFR 1910.146]. Note: Some materials (*e.g*., hydrogen fluoride gas and **cadmium** vapor) may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse 12-72 hours after exposure. The victim “feels normal” from recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be “immediately dangerous to life or health.” [29 CFR 1910.146]

NIOSH is requesting comments on the technical accuracy and usefulness of the draft CIB. Comments are due **March 15, 2011**. More information is available at <http://www.cdc.gov/niosh/docket/review/docket156/>.

**Workshop Considers Role Of Environmental Chemicals, Including Cadmium, In The Development Of Diabetes And Obesity**

NTP held a January 11-13, 2011, workshop on the role of environmental chemicals in the development of diabetes and obesity. Participants at the workshop evaluated the strength, consistency, and biological plausibility of findings reported in humans and experimental animals for certain environmental chemicals, including **cadmium**. According to the NTP website, the final product of the workshop will be an NTP monograph with breakout group topics published as individual chapters. Breakout sessions discussed a set of charge questions to focus on the overall interpretation and synthesis of the literature, as well as to identify and discuss areas of complexity and research needs. NTP will modify the draft literature review documents following the workshop to reflect responses to the charge questions. The draft literature review documents and other meeting materials are available at <http://cerhr.niehs.nih.gov/evals/diabetesobesity/index.html>.

## PHMSA Promulgates Revisions To Harmonize The HMR With International Rules

On January 19, 2011, PHMSA promulgated a final rule that amends the HMR to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. According to PHMSA, these revisions are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the UN Recommendations on the Transport of Dangerous Goods -- Model Regulations. The final rule states that, for certain Division 6.1 (toxic) materials, the entries are revised by adding the symbol G. The symbol G identifies proper shipping names for which one or more technical names of the hazardous material must be entered in parentheses in association with the basic description on a shipping paper. Knowledge of the technical name of toxic materials may aid emergency responders with implementing more appropriate first aid measures. The list of materials includes:

* UN2570 -- **Cadmium compounds**.

The effective date of the rule is January 19, 2011. The voluntary compliance date is January 1, 2011, and the delayed compliance date is **January 1, 2012**.

**INTERNATIONAL ISSUES**

**Health Canada Warns Consumers Of Cadmium In Children’s Jewelry**

Health Canada issued a January 15, 2011, press release entitled “Health Canada Advises Consumers of Lead and **Cadmium** Hazard in Children’s Jewellery,” which states that Health Canada “has concerns that **cadmium**, which is a carcinogen, may be increasingly substituted for lead in inexpensive jewellery.” The press release states:

Lead and **cadmium** are toxic metals which can have harmful effects on the behaviour and development of children even at very low levels of exposure. It is illegal under the Hazardous Products Act to import, advertise or sell jewellery items intended mainly for children under 15 which contain more than 600 mg/kg total lead and 90 mg/kg migratable lead. There are no regulatory requirements with respect to **cadmium** levels in children’s jewellery.

The press release is available at <http://www.hc-sc.gc.ca/ahc-asc/media/advisories-avis/_2010/2010_07-eng.php>.

**Canada Consumer Product Safety Act Will Enter Into Force In June**

According to an order published in the February 16, 2011, *Canada Gazette*, the Canada Consumer Product Safety Act will enter into force on **June 20, 2011**. According to Health Canada, the Act will:

* Prohibit the manufacture, importation, advertisement or sale of any consumer products that pose an unreasonable danger to human health or safety;
* Require industry to report when they know about a serious incident or death related to their product to provide government with timely information about important product safety issues;
* Require manufacturers or importers to provide test/study results on products when asked;
* Allow Health Canada to recall dangerous consumer products; and
* Raise fines and penalties for non-compliance.

The Act also includes restrictions on the allowable lead content in certain consumer products and children’s toys, and in consumer paints and other surface coatings, and on February 16, 2011, Canada promulgated final amendments to a number of regulations, including those concerning lead in children’s jewelry; consumer chemicals and containers; surface coating materials; and toys. The notice concerning toys prohibits surface coating materials containing a compound of antimony, arsenic, **cadmium**, selenium, or barium if more than 0.1 percent of the compound dissolves in five percent hydrochloric acid after being stirred for ten minutes at 20°C (68°F). To make the transition from the Hazardous Products Act to the new legislation as smooth as possible, Canada “will be actively communicating with industry to inform them of the coming-into-force date and their new obligations and requirements under the Act. The Government is also committed to keeping consumers informed as to how the legislation will affect them and the products they buy.” More information is available at <http://www.hc-sc.gc.ca/cps-spc/legislation/acts-lois/ccpsa-lcspc/index-eng.php>.

**China MEP Announces Plans To Reduce Heavy Metal Pollution**

Zhou Shengxian, Environment Minister, announced on February 18, 2011, that the State Council approved a heavy metal pollution prevention and management project as part of the 12th Five Year Plan (**2011-2015**). The plan calls for reductions in the emissions of arsenic, lead, mercury, chromium, and **cadmium** by 15 percent from 2007 levels by **2015**. MEP listed 138 target zones in 14 provinces and regions, including the Inner Mongolia autonomous region and Jiangsu and Zhejiang provinces. A total of 4,452 enterprises, including non-ferrous metal mines, smelters, lead-acid battery manufacturers, leather producers, and the chemical industry are listed as major monitoring targets. The first national pollution census, published in 2010, shows that China discharged 900 tons of the five metals in 2007. Provincial governments are requested to work out their specific plans and targets by the first of half of **2011**. Local officials who fail to enforce the targets will be held responsible. Zhou estimated a total of 75 billion yuan ($11.41 billion) over the next five years will be needed to address the pollution. Researchers at the Chinese Academy of Sciences have described metal poisoning problems due to years of excessive mining, and Premier Wen Jiabao and Zhou admitted that metal poisoning has become one of the worst pollution problems facing China. A recent report by Nanjing Agricultural University said research in 2007 found ten percent of rice samples collected from markets were found to have excessive levels of **cadmium**. According to Zhou, violations by batter manufacturers will be a major focus in **2011**.

\* \* \* \* \*

Unless otherwise noted, if you have questions about any item summarized above, please call or e-mail Lynn L. Bergeson at (202) 557-3801 or lbergeson@lawbc.com, or Carla N. Hutton at (202) 557-3809 or chutton@lawbc.com.

## ACRONYMS

**APEC** -- Asia-Pacific Economic Cooperation

**CAA** -- Clean Air Act

**CDRRR** -- California Department of Resources Recycling and Recovery

**CDTSC** -- California Department of Toxic Substances Control

**CERCLA** -- Comprehensive Environmental Response, Compensation, and Liability Act

**CHCC** -- Chemicals of High Concern for Children List

**CIB** -- Current Intelligence Bulletin

**CISWI** -- Commercial and Industrial Solid Waste Incinerators

**CPSC** -- United States Consumer Product Safety Commission

**CPSIA** -- Consumer Product Safety Improvement Act of 2008

**CWA** -- Clean Water Act

**DOJ** -- Department of Justice

**EC** -- European Commission

**EPA** -- United States Environmental Protection Agency

**EPCRA** -- Emergency Planning and Community Right-to-Know Act

**EU** -- European Union

**FY** -- Fiscal Year

**HAP** -- Hazardous Air Pollutant

**HMR** -- Hazardous Materials Regulations

**IC2** -- Interstate Chemicals Clearinghouse

**ICdA** -- International Cadmium Association

**IDLH** -- Immediately Dangerous to Life and Health

**IRIS** -- Integrated Risk Information System

**MACT** -- Maximum Achievable Control Technology

**MDE** -- Maryland Department of the Environment

**MDH** -- Minnesota Department of Health

**MEP** -- Ministry of Environment Protection

**mg/kg** -- Milligrams Per Kilogram

**MPCA** -- Minnesota Pollution Control Agency

**NAC/AEGL Committee** -- National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances Committee

**NESHAP** -- National Emissions Standards for Hazardous Air Pollutants

**NIOSH** -- National Institute for Occupational Safety and Health

**NSPS** -- New Source Performance Standard

**NTP** -- National Toxicology Program

**ODEQ** -- Oregon Department of Environmental Quality

**PCB** -- Polychlorinated Biphenyl

**PHMSA** -- Pipeline and Hazardous Materials Safety Administration

**PM** -- Particulate Matter

**POM** -- Polycyclic Organic Matter

**ppm** -- Part Per Million

**SSI** -- Sewage Sludge Incinerators

**TBD** -- To Be Determined

**TBT** -- Technical Barriers to Trade

**tpy** -- Ton Per Year

**TRI** -- Toxics Release Inventory

**TRI-MEweb** -- Toxics Release Inventory-Made Easy Web

**UN** -- United Nations

**VOC** -- Volatile Organic Compound

**WDE** -- Washington Department of Ecology

1. This Update addresses significant federal, state, and international environmental and occupational safety and health regulatory issues and ongoing advocacy efforts pertinent to the ICdA member companies. A list of acronyms used in this Update is provided. [↑](#footnote-ref-1)