#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**May 28, 2012**[[1]](#footnote-1)

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**FEDERAL ISSUES**

**CWA/SDWA ISSUES**

**EIP Claims Disposal Sites At 49 Coal-Fired Power Plants Polluted With Toxins, Including Cadmium**

EIP announced on April 26, 2012, that based on information obtained from EPA through FOIA requests, at least 49 power plants have acknowledged groundwater contamination at levels that exceed federal or state standards. EIP states that plants reported exceeding federal or state groundwater standards for multiple pollutants that are subject to SDWA or federal Health Advisory standards, including, **cadmium**, “a toxic pollutant that can damage the kidneys, lungs, and bones.” More information is available at <http://www.environmentalintegrity.org/news_reports/04_27_2012.php>.

**RCRA/CERCLA ISSUES**

**NGOs File Suit Against EPA Seeking Coal Ash Regulations**

On April 5, 2012, Earthjustice announced that environmental and public NGOs would file a lawsuit in the U.S. District Court for the District of Columbia to force EPA to complete its rulemaking process and promulgate final public health safeguards against toxic coal ash. The NGOs contend that RCRA requires EPA to ensure that safeguards are regularly updated to address threats posed by wastes, but EPA has never revised the safeguards to ensure that they address coal ash. According to Earthjustice, coal ash “includes a toxic mix of arsenic, lead, hexavalent chromium, mercury, selenium, **cadmium** and other dangerous pollutants.” On April 13, 2012, Headwaters Resources, Inc., the largest manufacturer and marketer of coal combustion residuals, filed a lawsuit against EPA in the U.S. District Court for the District of Columbia, asking the court to set deadlines for EPA to issue final regulations. Headwaters asked the court to consolidate its complaint with the one filed by Earthjustice. Earthjustice’s April 5, 2012, press release is available at <http://earthjustice.org/news/press/2012/community-groups-file-lawsuit-for-federal-coal-ash-protections>.

**TSCA ISSUES**

**EPA Proposed Rule Would Require Electronic Reporting For Chemical Information**

On April 17, 2012, EPA issued a proposed rule that would require electronic reporting for certain information submitted under TSCA. The proposed rule would require electronic reporting for various TSCA actions, including submission of information relating to chemical testing, health and safety studies, and other information. Over the coming months, EPA plans to offer a number of opportunities for potential users to become familiar with the new requirements, including an initial webinar to introduce the web-based electronic reporting tool; follow-up webinars and testing of specific applications; and opportunities for submitters and others to provide feedback on their experiences using the tool before its release. Comments must be received on or before **June 18, 2012**. More information is available at <http://www.epa.gov/oppt/chemtest/ereporting/index.html>.

**NAMC Requests Extension Of TSCA Chemical Data Reporting Period**

On May 18, 2012, NAMC requested a 90-day extension of the reporting period for the CDR rule. The requested extension would result in a **September 30, 2012**, deadline for CDR reporting, a date that is aligned with future CDR reporting periods. According to NAMC, the extension request is necessitated by unexpected problems encountered with the electronic reporting system that EPA requires CDR submitters to use and by EPA’s failure to respond in a timely manner to questions or requests for clarification. The additional time is essential for impacted companies to respond appropriately, adequately, and comprehensively to this complicated and time-consuming reporting requirement. Without this additional time, companies may be forced into positions of non-compliance, which includes the potential for severe penalties, due to no fault of their own. In a May 22, 2012, statement, EPA maintained that the **June 30** deadline gives chemical manufacturers adequate time to fulfill their regulatory obligations. According to EPA, it installed updates to its computer system, which it stated was working as of May 22.

**69th Report Of The TSCA ITC Adds Category Of Cadmium Compounds**

As reported in our May 23, 2012, e-mail, on May 23, 2012, EPA published in the *Federal Register* the TSCA ITC’s 69th Report to the EPA Administrator. In the 69th ITC Report, the ITC added a category of **cadmium compounds**, including any chemical that contains **cadmium** as part of that chemical’s structure. In addition, the ITC removed 103 **cadmium compounds** from the Priority Testing List during this reporting period (June to November 2011). According to the notice, the ITC added the category of **cadmium compounds** and removed 103 **cadmium compounds** “to provide a more comprehensive approach to assessing **cadmium compounds’** safety.” Comments are due **June 22, 2012**.

**EPA Will Hold Meeting To Discuss Public Release Of CDR Information**

EPA will host a meeting on **May 31, 2012**, with industry and NGOs interested in the public release of information obtained under the CDR rule. Among the questions EPA is posing is what types of electronic search capabilities it should provide to help interested parties review the information. EPA also is asking for opinions about which types of data analyses should be submitted in the near term and what types in the long term.

**STATE ISSUES**

***Arizona***

**Arizona Sues IBWC For State Permit And CWA Violations**

Arizona filed suit on May 25, 2012, in the Maricopa County Superior Court against the IBWC, claiming state permit and CWA violations caused by allowing untreated industrial wastewater to cross the U.S. border from Mexico at Nogales. According to the suit, IBWC has failed to implement a program to keep industrial waste from entering domestic sewage, which has resulted in illegal levels of **cadmium**, cyanide, and ammonia nitrogen entering Arizona. ADEQ stated it would ask the court to require that IBWC either implement a pretreatment program or install an industrial waste treatment system at the Nogales International Wastewater Treatment Plant in Rio Rico.

***California***

**Court Grants Preliminary Approval To Proposed Class Action Settlement In Proposition 65 Suit**

According to an April 6, 2012, press release, the Los Angeles Superior Court granted preliminary approval of a settlement resolving Proposition 65 and related legal claims brought against CytoSport. The plaintiffs in this lawsuit alleged that CytoSport did not adequately inform consumers that certain products, including Muscle Milk® and Monster Milk®, allegedly contained lead, **cadmium**, and/or arsenic. The press release states: “CytoSport vigorously denies these claims, responding that trace amounts of metals are found in the environment and in many agricultural products, and that the products are safe, as confirmed by independent testing by accredited third parties.” According to the press release, “the parties agreed to a settlement to avoid the expense and risks of continuing the lawsuits.” More information is available at <http://www.cytosport.com/news/press>.

**DTSC Issues Revised Informal Draft Safer Consumer Products Regulations**

At the request of California Governor Jerry Brown (D), the DTSC withdrew its October 31, 2011, informal draft Safer Consumer Products regulations, as well as a revised formal draft scheduled for release in April. Brown reportedly had concerns regarding the scope of the regulations, the treatment of confidential business information, and duplication of existing federal and state regulations. Brown asked DTSC to issue new informal draft regulations for a limited one-week comment period. The revised informal draft regulations, dated May 18, 2012, are available at <http://www.lawbc.com/uploads/docs/reg051812.pdf>.

DTSC has not posted the revised informal draft regulations on its website or announced the comment period. DTSC reportedly provided copies of the regulations to the GCA and CHANGE, as well as select legislative staff. DTSC intends GCA and CHANGE to serve as repositories for comments from their individual constituents. While DTSC will not reject comments from other individual commenters, it may not closely examine or respond to them. Brown asked DTSC to aim to promulgate formal draft regulations in **June 2012**, at which time a 45-day comment period would begin.

***Maryland***

**Bill Would Extend Deadline For Prohibition Of Cadmium In Children’s Jewelry**

There is no new publicly available information to report regarding S.B. 1017, which would extend from **July 1, 2012**, to **July 1, 2013**, the date on or after which a person is prohibited from manufacturing, selling, offering for sale, or distributing specified children’s jewelry that contains a specified amount of **cadmium**.

***Mississippi***

**Bill That Would Ban Cadmium From Children’s Products Dies In Committee**

H.B. 302, which would ban the manufacturer, sale, and distribution of a children’s product or product component containing certain listed chemicals, including **cadmium**, at more than .004 percent by weight (40 ppm), died in the Judiciary Committee on March 6, 2012.

***Montana***

**County Considering Study On Effects Of Dust From Mine**

The Butte-Silver Bow County Health Department held two public sessions in May 2012 to obtain input on what effects should be included in upcoming studies. Residents are reportedly concerned about the effects of dust from the Montana Resources open pit mine, heavy metals, and other factors that could cause health problems. Terri Hocking, Health Department Director, stated that the county’s goal is to apply the ideas to a plan to make Butte healthier. To do that, they need sound studies. According to Hocking, besides the health effects related to the Superfund site in Butte, they will aim for a comprehensive study looking at all factors. “Some of these issues will be related to Superfund and the past mining, some of these won’t,” she said. Several residents said studies that look at the health effects from mining must branch beyond the three heavy metals of lead, mercury, and arsenic. They said Butte has also been contaminated with zinc, copper, **cadmium**, and other metals, and that a study must look at the effects of combining different toxins. According to news report, Dr. Michelle Watters, CDC, will be in Butte to address the comments at a **May 31, 2012**, meeting.

***New York***

**Senate Passes Bill Restricting Use Of Cadmium In Children’s Jewelry**

There is no new publicly available information regarding legislation (S. 4055A) that would prohibit the sale of children’s jewelry that may contain harmful levels of **cadmium** and other hazardous substances. The bill restricts the use of **cadmium** in children’s jewelry, including in paint and surface coatings. The Senate passed the bill on March 6, 2012, and it was sent to the Assembly.

**Bill Would Prohibit Cadmium-Added Novelty Consumer Products**

On April 25, 2012, the Assembly passed A.B. 3141, and it was referred to the Senate Committee on Environmental Conservation. Effective **June 1, 2013**, the bill would prohibit any person from selling, offering for sale, or distributing free of charge any **cadmium**-added novelty consumer product.

***North Carolina***

**NCSAB To Begin Cadmium AAL Review**

The proceedings for the NCSAB’s April 23, 2012, teleconference state that the NCSAB will begin its review of the **cadmium** AAL once it completes its review of the draft risk assessment for PFOA. While the agenda for the May 23, 2012, meeting of the NCSAB does not include cadmium, the proceedings for the May meeting are not yet available online. More information regarding the NCSAB is available at <http://daq.state.nc.us/toxics/risk/sab/>.

***Rhode Island***

**Senate Committee Recommends Children’s Product Safety Act Be Held For Study**

On March 28, 2012, the Senate Committee on Environment and Agriculture recommended the Children’s Product Safety Act (S.B. 2396), which would ban the use of **cadmium**, mercury, or lead in children’s products, be held for further study. After **June 30, 2013**, no person would be allowed to manufacture, sell, offer for sale, import, or otherwise distribute any children’s product that contains **cadmium**, mercury, or lead. Children’s product would mean any consumer product or component thereof that is designed and intended primarily for use by children under 12 years of age.

**Senate Approves Bill Setting Safety Guidelines For Children’s Jewelry**

The Rhode Island legislature issued a May 9, 2012, press release announcing that the Senate approved the Comprehensive Children’s Jewelry Safety Act (S. 2482), which would require that all children’s jewelry sold in Rhode Island to conform to ASTM standards for children’s jewelry. The bill would require that any jewelry intended for children 12 years old or younger and available in Rhode Island meets the ASTM standards no later than six months after the bill becomes law. The press release states: “Cadmium can cause cancer and has been linked to kidney and skeletal problems, while lead can affect memory, the nervous system and hearing and vision.” The bill will now be considered by the House of Representatives.

**House Bill Would Ban The Use Of Cadmium In Children’s Products**

There is no new publicly available information to report regarding the Children’s Product Safety Act (H.B. 7986), which would ban the use of **cadmium**, mercury, or lead in children’s products. After **June 30, 2013**, no person would be allowed to manufacture, sell, offer for sale, import, or otherwise distribute any children’s product that contains **cadmium**, mercury, or lead. Children’s product would mean any consumer product or component thereof that is designed and intended primarily for use by children under 12 years of age.

***Washington***

**WDE Announces It Will Remove Toxic Metals At Area Beaches**

WDE announced on May 17, 2012, that work will be done to remove heavy metals from four Spokane River beaches. WDE is proposing to remove contaminated soil at three Spokane River beaches and install a protective cap over the remaining soil to reduce the possibility of exposing people and wildlife to contaminants. A fourth beach will be capped only. Ecology and local river groups will plant native vegetation on the shoreline to help stabilize the banks. WDE states: “Historic mining practices in the Coeur d’Alene Basin resulted in contaminants known as heavy metals washing downstream from Idaho. The metals include lead, arsenic, zinc and **cadmium**. They settled in soil and sediments at certain shoreline areas along the Spokane River.”

**MISCELLANEOUS ISSUES**

## ATSDR Requests Comments On Substances To Be Evaluated For 26th Set Of Toxicological Profiles

ATSDR published a notice in the April 3, 2012, *Federal Register* requesting public nominations from the 2011 priority list of hazardous substances to be evaluated for toxicological profile development. The list of 275 substances includes **cadmium**, which is ranked seventh on the 2011 list and was seventh on the 2007 list. ATSDR will also consider the nomination of any additional substances that are not included on the list that may have public health implications. ATSDR will evaluate all data and information associated with nominated substances and will determine the final list of substances to be chosen for toxicological profile development.

**IRIS Assessment**

***EPA Announces IRIS 2012 Agenda***

As reported in our May 9, 2012, e-mail, on May 7, 2012, EPA published a *Federal Register* notice announcing the IRIS 2012 agenda. The assessments in progress include **cadmium**. EPA states that, while it is not expressly soliciting comments on the notice, it will accept information related to the substances included therein.

***EPA Announces NAS Review Of IRIS Assessment Development Process***

On May 16, 2012, EPA announced that NAS will conduct a comprehensive review of the IRIS Program’s assessment development process. According to EPA, NAS will conduct a review of the IRIS assessment development process and the changes that are currently being made or planned by EPA in response to NAS’ April 2011 recommendations. NAS will also review current methods for weight of evidence analyses and recommend approaches for weighing scientific evidence for chemical hazard identification. More information is available at [http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/1ce2a7875daf093485257a000054df54!OpenDocument](http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/1ce2a7875daf093485257a000054df54%21OpenDocument).

***Cadmium (Qualitative Draft)***

There is no new publicly available information to report regarding the detailed tracking report for **cadmium** (qualitative and quantitative), which 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 |

**FDA Includes Cadmium On List Of HPHCs In Tobacco Products And Tobacco Smoke**

FDA promulgated a final rule on April 3, 2012, establishing a list of HPHCs in tobacco products and tobacco smoke. The list of chemicals and chemical compounds identified as HPHCs includes **cadmium**, which is designated as a carcinogen, respiratory toxicant, and reproductive or developmental toxicant.

**NGO Study Claims To Find Cadmium In Gardening Products**

On May 3, 2012, Healthy Stuff announced the results of a study by the Ecology Center. According to Healthy Stuff, “[n]early 200 hoses, gloves, kneeling pads and tools were tested for lead, **cadmium**, bromine (associated with brominated flame retardants); chlorine (indicating the presence of polyvinyl chloride, or PVC); phthalates and bisphenol A (BPA). Such chemicals have been linked to birth defects, impaired learning, liver toxicity, premature births and early puberty in laboratory animals, among other serious health problems.” Healthy Stuff states that three percent of the products contained greater than 100 ppm **cadmium**. More information is available at <http://www.healthystuff.org/findings.050312.garden.php>.

**Industry Associations File Petitions For Review Of OSHA’s Final HCS Rule**

On May 23, 2012, the American Petroleum Institute filed a petition for review of OSHA’s March 26, 2012, final rule revising the HCS, aligning it with the GHS, in the U.S. Court of Appeals for the District of Columbia Circuit. On May 24, 2012, a coalition of industry associations, including the National Oilseed Processors Association, Corn Refiners Association, Renewable Fuels Association, National Grain and Feed Association, and American Chemistry Council, also filed a petition for review.

**INTERNATIONAL ISSUES**

**Canada Announces Second Phase Of DSL Inventory Update**

On April 21, 2012, Canada announced that it was moving forward with consultations on the second phase of the DSL Inventory Update. According to Canada, based on the first phase of the DSL Inventory Update that began in October 2009, during which Canada collected basic information on approximately 500 chemicals, Canada proposes to request basic information on rounded quantities, use simple “yes/no” questions, and use pre-defined codes for function and product type. Canada also proposes to target those who manufacture and import the substances to capture the substance at the point of entry into Canadian commerce. Canada states that it is considering the use of a concentration threshold for reporting and the exclusion of certain manufactured items of lesser concern for releases to the environment or exposure to humans. Canada proposes to launch the Section 71 survey in **September 2012**, and states that the end of the data collection period will be in **Spring/Summer 2013**. More information is available at <http://www.ec.gc.ca/ese-ees/default.asp?lang=En&n=8F00FA44-1>.

**China’s Guangdong Province Considering Tax On Industries That Emit Heavy Metals**

Guangdong province, in South China, is considering a tax on industries that emit heavy metals in an attempt to reduce soil and water pollution. China’s 12th Five-Year Plan (2011-**2015**) included the province among 14 critical areas instructed to reduce heavy metal emissions 15 percent by **2015** from 2007 levels. The tax could be prepared in final next year, though it will “take some time” to implement and have an effect. It would likely impact five industries: non-ferrous metals mining; non-ferrous smelting; lead battery production; leather production; and chemical production. A spokesperson for the Guangdong Institute of Eco-Environmental and Soil Sciences, who saw the draft Soil Pollution Prevention and Control Law, stated that allowable concentrations of heavy metals could be lowered or raised in the new standard. The spokesperson stated that particular attention should be paid to **cadmium**, which “is more easily transferred from the soil” to products such as rice grains. “**Cadmium** is the biggest heavy metal threat that we need to pay the most attention to.”

**Taiwan Issues Test Methods For Plastic Packaging And Food Utensils**

Taiwan’s FDA published Testing Methods for Food Utensils, Containers and Packaging: Test of Plastics with Formaldehyde-Melamine as a Raw Material for Synthesis. The testing methods, which took effect April 1, 2012, include a 0.5 ppm threshold for cadmium. Products that test above the threshold are deemed to contain relevant substances. More information concerning the testing methods is available, in Chinese, at <http://www.fda.gov.tw/news.aspx?newssn=8649&classifysn=3>.

**CFS Announces Food Safety Report For March**

The Hong Kong CFS released on April 30, 2012, its food safety findings for March 2012. Of the 8,800 food samples tested, six were found unsatisfactory. The CFS took about 2,200 samples of fresh vegetables, fruits, legumes, preserved vegetables and pickled fruits, dried vegetables, and ready-to-eat vegetables for analysis. One fresh mushroom sample and one spinach sample were found to contain **cadmium**, at levels of 0.33 ppm and 0.16 ppm respectively, exceeding the legal limit of 0.1 ppm.

**Japan Developing Testing Method For Cadmium And Lead In Silicone Rubber**

At the end of April 2012, Japan issued two guidelines on food contact materials and, according to an NIHS spokesperson, will release three modified testing methods in a “month or two.” Japan is also revising the Guideline for the Validation of Testing Method, which it expects to release within this year. The April 2012 guidelines concern the use of recycled plastics and recycled papers in food contact materials. The three testing methods currently being developed include one for **cadmium** and lead in silicone rubber.

**National Cancer Center Of Tokyo Finds No Link Between Foods With Cadmium And Cancer**

According to the National Cancer Center of Tokyo, ingesting dietary **cadmium** over the long-term is unlikely to cause cancer. In a survey carried out in 1995 and 1998 in nine prefectures, including Iwate and Nagano, the National Cancer Center asked about 90,000 people from ages 45 to 74 about the food they consumed. It then studied 5,849 of those surveyed who had developed cancer -- 3,586 men and 2,263 women -- as of 2006 to determine the relationship between food and cancer. After excluding such risk factors as smoking, the National Cancer Center concluded there was no correlation between the amount of **cadmium** contained in food consumed and cancer. The survey found that men who had developed stomach and pancreatic cancer and women who had kidney and uterine cancer were statistically higher than the national average, but not significantly so.

**Mexican Standard Would Limit Heavy Metals In School Supplies And Toys**

Mexico’s Ministry of Health published an official standard for environmental health limiting the bioavailability of heavy metals in toys and school supplies. The standard also includes chemical specifications for targeted substances and testing methods. The heavy metals include antimony, arsenic, barium, **cadmium**, chromium, mercury, lead, and selenium. The official standard is available, in Spanish, at <http://www.dof.gob.mx/nota_detalle.php?codigo=5247400&fecha=15/05/2012>.

\* \* \* \* \*

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

**AAL** -- Acceptable Ambient Level

**ADEQ** -- Arizona Department of Environmental Quality

**ASTM** -- American Society for Testing and Materials

**ATSDR** -- Agency for Toxic Substances and Disease Registry

**CDC** -- Centers for Disease Control and Prevention

**CDR** -- Chemical Data Reporting

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

**CFS** -- Center for Food Safety

**CHANGE** -- Californians for a Healthy & Green Economy

**CWA** -- Clean Water Act

**DSL** -- Domestic Substances List

**DTSC** -- Department of Toxic Substances Control

**EIP** -- Environmental Integrity Project

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

**FDA** -- United States Food and Drug Administration

**FOIA** -- Freedom of Information Act

**GCA** -- Green Chemistry Alliance

**GHS** -- Globally Harmonized System for Classification and Labeling of Chemicals

**HCS** -- Hazard Communication Standard

**HPHC** -- Harmful and Potentially Harmful Constituent

**IBWC** -- United States International Boundary and Water Commission

**ICdA** -- International Cadmium Association

**IRIS** -- Integrated Risk Information System

**ITC** -- Interagency Testing Committee

**NAMC** -- North American Metals Council

**NAS** -- National Academy of Sciences

**NCSAB** -- North Carolina Scientific Advisory Board on Toxic Air Pollutants

**NGO** -- Non-Governmental Organization

**NIHS** -- National Institute of Health Sciences

**OSHA** -- Occupational Safety and Health Administration

**PFOA** -- Perfluorooctanoic Acid

**ppm** -- Part Per Million

**RCRA** -- Resource Conservation and Recover Act

**SDWA** -- Safe Drinking Water Act

**TBD** -- To Be Determined

**TSCA** -- Toxic Substances Control Act

**WDE** -- Washington State 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)