#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**January 28, 2013**[[1]](#footnote-1)

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**FEDERAL ISSUES**

**CERCLA ISSUES**

**EPA Preparing Proposed Rule Regarding Financial Responsibility Requirements For Hard Rock Mining Industry**

According to a notice in EPA’s 2012 Regulatory Agenda, which EPA published on January 8, 2013, EPA intends to publish in **May 2014** an NPRM concerning financial responsibility requirements under CERCLA Section 108(b) for classes of facilities in the hard rock mining industry. According to the notice, EPA intends to include requirements for financial responsibility, as well as notification and implementation.

**EPCRA ISSUES**

**Final Rule Would Require Electronic Reporting Of Toxics Release Data**

According to a notice in EPA’s 2012 Regulatory Agenda, which EPA published on January 8, 2013, EPA intends to publish in **August 2013** a final rule that would require facilities to report non-confidential information via TRI-MEweb. EPA states that facilities reporting trade secrets would continue to file paper forms. According to EPA, the use of TRI-MEweb will help ensure data accuracy, while also enabling EPA “to more effectively provide the public with access to the latest TRI data on toxic chemical releases and other waste management within communities.”

**EPA Will Update TRI Reporting NAICS Codes**

According to a notice in EPA’s 2012 Regulatory Agenda, which EPA published on January 8, 2013, EPA will issue a direct final rule to incorporate the 2012 NAICS codes for TRI reporting purposes. OMB approved the 2012 NAICS codes on August 17, 2011, and the new NAICS codes were effective for calendar year 2012. The TRI Program currently uses 2007 codes. While the notice states that EPA is to implement the 2012 codes for TRI reporting year 2012, for reports due by **July 1, 2013**, the timetable states that EPA intends to issue a direct final rule in **September 2013**.

**EPA Announces 2011 TRI Analysis, States Total Increase In Releases Is Due To Mining**

EPA announced on January 16, 2013, that, according to 2011 TRI data, total toxic air releases declined 8 percent from 2010, mostly because of decreases in HAP emissions, even while total releases of toxic chemicals increased for the second year in a row. According to EPA, the 2011 TRI data show that 4.09 billion pounds of toxic chemicals were disposed of or released into the environment, an eight percent increase from 2010. EPA notes that the difference “is mainly due to increases in land disposal at metal mines, which typically involve large facilities handling large volumes of material. In this sector, even a small change in the chemical composition of the ore being mined -- which EPA understands is one of the asserted reasons for the increase in total reported releases -- can lead to big changes in the amount of toxic chemicals reported nationally.” More information is available at <http://www.epa.gov/tri/tridata/tri11/nationalanalysis/index.htm>.

**TSCA ISSUES**

**EPA Withdraws Final TSCA Section 8(d) Rule For Cadmium**

EPA published a December 28, 2012, *Federal Register* notice withdrawing its December 3, 2012, TSCA Section 8(d) rule, which would have required manufacturers (including importers) of **cadmium** or **cadmium compounds**, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies to EPA. According to the notice, EPA received a number of letters, “including requests for withdrawal under Section 716.105(c)–(d), asking questions and raising concerns about the scope and extent of the immediate final rule that indicate that there is significant confusion and uncertainty about the final rule in certain industrial sectors subject to the final rule.” EPA “believes that some of the points raised in the letters warrant additional consideration by the Agency.” ICdA submitted a letter to EPA on December 6, 2012, asking EPA to extend the deadlines under the December 3, 2012, rule “to allow ICdA and other affected parties sufficient time to prepare requests that EPA withdraw the listing or that EPA withdraw or stay the final rule.” In its letter, ICdA noted that although the rule requires that manufacturers or importers determine whether **cadmium** or **cadmium compounds** “have been, or are reasonably likely to be, incorporated into consumer products,” EPA failed to provide a clear standard or guidance concerning how this determination will be made. ICdA also commented that EPA repeatedly uses language in the preamble indicating that the listing extends to manufacture or importation of **cadmium** or **cadmium compounds** “as part of an article.” This language is not consistent with the text of the specific amendments as promulgated, however, nor does this broad language find support in the general provisions of the TSCA Section 8(d) rule.

According to a notice in EPA’s 2012 Regulatory Agenda, which EPA published on January 8, 2013, EPA intends to promulgate a final TSCA Section 8(d) rule requiring reporting from manufacturers (including importers), and also intends to propose a rule to require reporting from processors and distributors. According to the notice, EPA would use the health and safety studies to help determine if a potential hazard exists from **cadmium** or **cadmium compounds** and whether a product should be banned as a hazardous substance under guidelines established by CPSC. EPA intends to publish an NPRM in **August 2013**.

**EPA To Post CDR Data In Mid-January**

According to an EPA spokesperson, EPA will post on its website non-confidential data submitted under the CDR rule in mid-**January 2013**. EPA had intended to make the data available by the end of 2012. According to EPA, companies reported more than 7,600 chemical substances for over 4,700 sites.

**EPA Preparing Final Rule On Electronic Reporting Under TSCA**

According to a notice in EPA’s 2012 Regulatory Agenda, which EPA published on January 8, 2013, EPA intends to promulgate a final rule in **May 2013** requiring electronic reporting of certain information that must be submitted under TSCA. Under EPA’s April 2012 proposed rule, test data developed under a TSCA Section 4 test rule or an enforceable consent agreement, TSCA Section 8(a) PAIR information, and TSCA Section 8(d) health and safety data would be submitted electronically. In addition, EPA also proposed amendments to TSCA Section 5 reporting regulations to require electronic reporting for NOCs and support documents. EPA intends the rulemaking “to streamline the reporting process, reduce the administrative costs associated with submission and recordkeeping required for the rules, and establish standards for using EPA’s Central Data Exchange (CDX), which provides a single portal to enable electronic submission of forms, reports, and other documents to the Agency.”

**STATE ISSUES**

**Safer States Claims At Least 26 States Will Consider Chemical Legislation In 2013**

On January 23, 2013, Safer States posted an article entitled “26 States to Consider Toxic Chemicals Legislation in 2013.” According to Safer States, “at least 26 states to consider legislation and policy changes” that include banning **cadmium**, “a dangerous, persistent metal that is often found in inexpensive children’s jewelry.” The article states:

**Identification and Disclosure of Chemicals Harmful to Children**. At least 14 states, including Alaska, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New York, Nevada, Oregon, Vermont, and Washington will consider policy to identify chemicals of concern for children’s health and require makers of consumer products to disclose their use of the chemicals. Many of these bills and rule changes include provisions to encourage manufacturers to identify and use safer alternatives in their products.

The article is available at <http://www.saferstates.com/2013/01/legislation.html>.

***Hawaii***

**Bills Would Prohibit Cadmium In Reusable Bags**

Under H.B. 663 and S.B. 318, which were introduced on January 22 and January 18, 2013, respectively, reusable bags would need to meet certain requirements, including not containing lead, **cadmium**, or any other heavy metal in toxic amounts as defined by applicable federal standards and regulations for packaging or reusable bags. H.B. 663 passed its first reading and was referred to the House Committees on Energy and Environmental Protection and Consumer Protection and Commerce. S.B. 318 passed its first reading and was referred to the Senate Committees on Energy and Environment, Economic Development, Government Operations, and Housing, and Ways and Means.

**Bills Would Prohibit Cadmium In Packages And Packaging**

H.B. 351 and S.B. 640, which were introduced on January 22 and January 18, 2013, respectively, would prohibit the manufacture, sale, or distribution of child care products and toys for young children that contain BPA or phthalates; require manufacturers to choose safe alternatives; prohibit the use of packages and packaging containing lead, **cadmium**, mercury, and hexavalent chromium; and prohibit the Hawaii Health Systems Corporation from purchasing and using vinyl intravenous solution bags and vinyl tubing. The prohibitions would take effect **January 1, 2014**. H.B. 351 passed its first reading and was referred to the House Committees on Health and Consumer Protection and Commerce. S.B. 640 passed its first reading and was referred to the Senate Committees on Health and Commerce and Consumer Protection.

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

H.B. 585, which was introduced on January 22, 2013, would prohibit the sale, manufacture, and distribution of children’s products that contain **cadmium** more than .004 percent by weight. The bill was referred to the House Committees on Health and Consumer Protection and Commerce. A hearing on the bill is scheduled for **January 30, 2013**.

***Illinois***

**Senate Bill Would Make Technical Change To Cadmium-Safe Kids Act**

S.B. 857 would amend the **Cadmium**-Safe Kids Act, making a technical change in a section concerning the short title. The bill was introduced on January 24, 2013, and referred to the Committee on Assignments.

***Massachusetts***

**Bill Would Regulate Cadmium In Children’s Jewelry**

S.D. 237, which was filed on January 15, 2013, would regulate **cadmium** in children’s jewelry. At this time, the text of the bill is not available online.

***Michigan***

**Senate Bill Would Ban Cadmium In Toys And Child Care Articles**

Under S.B. 17, a toxic substance would be defined as a substance that contains more than 0.06 percent of the total by weight of one or more heavy metals, including **cadmium**. The bill would prohibit a person from using or applying a toxic substance in or onto any toy or child care article, or manufacturing a toy or child care article with a part that is a toxic substance. The bill would also prohibit a person from selling, offering for sale, or transferring a toy or child care article that contains a toxic substance. The bill has been referred to the Senate Government Operations Committee.

***New York***

**Senate Bill Would Regulate Cadmium In Children’s Jewelry**

S.B. 854 would regulate **cadmium** in substrate in children’s jewelry and provide that no children’s jewelry shall be sold or distributed that contains **cadmium** in accessible metal or plastic substrate components exceeding certain levels. The bill would take effect one year after becoming law. The bill was introduced on January 9, 2013, and committed to the Committee on Health.

***North Carolina***

**NCSAB Meeting Agenda Includes Cadmium Discussion**

The agenda for NCSAB’s **January 30, 2013**, meeting includes **cadmium**. More information regarding NCSAB is available at <http://daq.state.nc.us/toxics/risk/sab/>.

**MISCELLANEOUS ISSUES**

**ATSDR Announces Final Toxicological Profile For Cadmium**

As reported in our December 13, 2012, e-mail, ATSDR published a notice in the December 13, 2012, *Federal Register* announcing the availability of ten final Toxicological Profiles of priority hazardous substances. The final Toxicological Profiles include **cadmium**. The Toxicological Profile is available at <http://www.atsdr.cdc.gov/ToxProfiles/tp.asp?id=48&tid=15>.

**DOE Announces Critical Materials Institute**

DOE announced on January 9, 2013, that a team led by Ames Laboratory in Ames, Iowa, has been selected for an award of up to $120 million over five years to establish an Energy Innovation Hub intended to develop solutions to the domestic shortages of rare earth metals and “other materials critical for U.S. energy security.” The Critical Materials Institute will bring together leading researchers from academia, four DOE national laboratories, as well as the private sector. The Institute plans to organize its efforts in four “mutually supporting focus areas”:

* Diversify Supply: Enable new sources of critical materials that are not now commercially viable, improve the economics of processing existing sources, and identify new uses for co-products and by-products that do not currently contribute to the economics of materials production;
* Develop Substitutes: Design and deploy replacement materials that have lower or zero critical materials content, and develop a knowledge-based approach to accelerate advanced material development and deployment;
* Improve Reuse and Recycling: Both reduce demand and increase supply by developing economically viable technologies for efficient material use in manufacturing, recycling, and reuse; and
* Conduct Crosscutting Research: Develop theoretical, computational, and experimental tools necessary to support the basic science needs of the other focus areas; develop and apply strategies to assess and address environmental sustainability and the life cycle of new Critical Materials Institute developed materials and processes; and evaluate the social and economic viability of the Critical Materials Institute developed science and engineering solutions.

More information is available at <http://www1.eere.energy.gov/manufacturing/rd/critical_materials_hub.html>.

**DOL Releases Web Tool Concerning OSHA’s Cadmium Biological Monitoring Requirements**

As reported in our December 12, 2012, e-mail, DOL announced on December 11, 2012, a new web tool intended to help medical professionals and workers exposed to **cadmium** in the workplace understand the federal monitoring and surveillance requirements of the general industry **cadmium** standard. DOL states that the **cadmium** standard provides guidance on conditions that may require a worker to be removed from further **cadmium** exposure. According to DOL, the OSHA **Cadmium** Biological Monitoring Advisor relies on data from biological monitoring tests and analyzes biological monitoring lab results for currently exposed workers. It determines the biological monitoring and medical surveillance requirements of the general industry **cadmium** standard applicable to those results. The OSHA **Cadmium** Biological Monitoring Advisor is available at [www.dol.gov/elaws/cadmium.htm](http://www.dol.gov/elaws/cadmium.htm).

**IRIS Assessment**

***NRC Committee To Review The IRIS Process Holds Second Meeting***

The NRC Committee to Review the IRIS Process held its second meeting on December 13-14, 2012. During the meeting, senior IRIS staff stated that EPA intends to roll out over time the approaches it could use to implement the improvements recommended by the National Academies. According to Lynn Flowers, NCEA Associate Director, EPA should soon be able to provide the Committee examples of 15 to 20 IRIS assessments that are in various stages of development. More information on the second meeting is available at <http://www8.nationalacademies.org/cp/meetingview.aspx?MeetingID=6386&MeetingNo=2>.

***EPA Announces Development Of Updated Schedules***

EPA announced on December 20, 2012, that the IRIS Program is developing updated schedules “for many chemicals in the assessment development process.” According to EPA’s announcement, EPA will regularly update the schedules and incorporate additional stakeholder engagement. The announcement states: “New schedules will be announced on the IRIS website and available in IRISTrack in the near future. While the new schedules are being developed, the IRIS Program is continuing to improve the development process to meet our goal to complete IRIS assessments in a timely manner.” IRISTrack currently lists the completion dates reports for all assessments, including **cadmium**, as “TBD.”

**USCC Releases 2012 Annual Report To Congress**

The USCC released its 2012 *Report to Congress* on November 14, 2012. The annual report discusses recent developments in the U.S.-China trade and economic relationship; the role of state-owned enterprises in China; the U.S.-China trade and investment relationship; recent developments in China’s military; China’s cyber capabilities; developments in China’s nuclear and strategic abilities; China in the South China Sea, Taiwan, Hong Kong; China in Europe; China’s demand and control of global resources; China’s efforts to become a more innovative society; and the Chinese political transition. Regarding global resources, the USCC offers the following conclusion:

The United States is heavily dependent on China for much of its mineral imports. China is a primary supplier of 21 mineral commodities upon which the United States is 100 percent dependent.

Beijing demonstrated during a diplomatic row with Japan that it was willing to use its dominant role in the rare earths supply chain as leverage against Tokyo.

The USCC recommends:

Congress direct the administration to establish an interagency task force with the secretaries of Commerce, Defense, Energy, the Interior, and State and the director of the U.S. Geological Survey to (a) develop a governmentwide definition and list of “critical minerals”; (b) develop a plan regarding those minerals to reduce the vulnerability of the United States to pressure from China or any other country for political or economic advantage; and (c) require federal agencies to use existing statutory and regulatory tools to encourage critical minerals extraction and manufacture in the United States.

Congress assess the mandate, activities, and effectiveness of the Department of Defense’s Strategic Materials Protection Board in order to ensure that the board meets its statutory responsibilities as mandated in 10 U.S.C. § 187.

The report is available at <http://www.uscc.gov/annual_report/2012/2012-Report-to-Congress.pdf>.

**INTERNATIONAL ISSUES**

**China Publishes Catalogue Of Substitutes For Hazardous Substances, Including Heavy Metals**

On January 14, 2013, MIIT published a catalogue of information on possible alternatives to 81 hazardous substances, including heavy metals. The catalogue includes three sections, based on stage of substitution: development of alternatives; application; and promotion. As reported in our July 28, 2012, Update, MIIT asked chemical companies that use certain priority hazardous substances, including heavy metals such as **cadmium**, to submit information on the substitution of those substances. More information is available, in Chinese, at <http://www.miit.gov.cn/n11293472/n11295091/n11299329/n15122867.files/n15122760.pdf>.

**Korean MOE Finds Unsafe Toxin Levels At Children’s Facilities**

MOE announced on January 2, 2013, that a third of children’s playgrounds and day care centers built before 2009 were found to have metals at levels exceeding government standards. MOE surveyed 700 playgrounds and 300 indoor facilities that were established before the government began to regulate environmental safety of new construction more strictly under a 2009 law. According to MOE, its survey found that 243 outdoor sites used varnish and finishing materials that contained heavy metals, including **cadmium**, at levels exceeding MOE standards. A MOE spokesperson stated that MOE renovated 12 playgrounds and seven day care centers that contained excessive heavy metals.

**Taiwan’s Updated Existing Chemical Substances Inventory Includes Cadmium**

Taiwan announced on December 22, 2012, the availability of its updated existing chemical substances inventory, which includes **cadmium**. According to Taiwan, over 370,000 dossiers covering more than 79,000 substances were notified by 5,500 companies. Approximately 40 percent of the nominated chemical substances are handled in quantities over one tonne per year. Taiwan states that the inventory identifies 19,000 existing chemical substances possessing GHS hazards, and that less than one percent of all substances are listed under data protection. Taiwan’s Environmental Protection Agency stated previously that substances listed on the inventory will need to be pre-registered. Taiwan will then identify priority substances that will be subject to registration. More information is available at <http://csnn.cla.gov.tw/content/englishHome.aspx>. The updated existing chemical substances inventory is available at <http://csnn.cla.gov.tw/content/Substance_home.aspx>, and can be searched in English.

**CLRTAP Executive Body Amends Heavy Metals Protocol**

The CLRTAP Executive Body approved on December 13, 2012, amendments to the protocol on heavy metals to extend compliance deadlines for industry, the second major change to the convention in six months aimed at attracting Russia, Ukraine, and other countries to join Europe and North America in addressing air pollution. Martin Williams, Chair of the Executive Body, stated: “The problem is that more mature countries that have been doing this for some time . . . already have fairly advanced industries that have applied these techniques or will soon do so. But of course the timetable for non-parties -- Eastern European countries -- with more emerging air pollution systems still have some way to go. So the issue was about getting a timetable for the application of these techniques that would be acceptable to Eastern European countries whose legislative timetables are a bit longer than some others.” The amendments to the heavy metals protocol put in place new, stricter limits on emissions of **cadmium**, lead, and mercury from various sources, including cement kilns, coal-combusting facilities, refineries, iron and steel production, and others. They also offer longer compliance time frames to allow more time for implementing best available techniques, particularly for existing sources. The Executive Body also adopted several guidance documents that set out detailed best available techniques for controlling emissions from a variety of sources for heavy metals, sulfur, nitrogen oxides, volatile organic compounds, ammonia, coarse particulate matter, fine particulate matter, and black carbon. The amended heavy metals protocol will now undergo a legal review before being made available for ratification in the coming year. More information is available at <http://www.unece.org/index.php?id=28315>.

**WHO Identifies Ten Chemicals, Including Cadmium, Of Major Public Health Concern**

WHO published a leaflet concerning ten chemicals or groups of chemicals of “major public health concern.” The chemicals include **cadmium**. WHO states that the leaflet summarizes scientific evidence and provides risk management recommendations for the chemicals and groups of chemicals. The leaflet is available at <http://www.who.int/ipcs/assessment/public_health/chemicals_phc/en/index.html>.

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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](mailto:lbergeson@lawbc.com), or Carla N. Hutton at (202) 557-3809 or [chutton@lawbc.com](mailto:chutton@lawbc.com).

## ACRONYMS

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

**CDR** -- Chemical Data Reporting

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

**CLRTAP** -- Convention on Long-Range Transboundary Air Pollution

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

**DOE** -- United States Department of Energy

**DOL** -- United States Department of Labor

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

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

**GHS** -- United Nations Globally Harmonized System of Classification and Labeling of Chemicals

**HAP** -- Hazardous Air Pollutant

**ICdA** -- International Cadmium Association

**IRIS** -- Integrated Risk Information System

**MIIT** -- Ministry of Industry and Information Technology

**MOE** -- Ministry of the Environment

**NAICS** -- North American Industry Classification System

**NCEA**-- National Center for Environmental Assessment

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

**NOC** -- Notice of Commencement

**NPRM** -- Notice of Proposed Rulemaking

**NRC** -- National Research Council

**OMB** -- Office of Management and Budget

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

**PAIR** -- Preliminary Assessment Information Rule

**TBD** -- To Be Determined

**TRI** -- Toxics Release Inventory

**TRI-MEweb** -- TRI Made Easy Web

**TSCA** -- Toxic Substances Control Act

**USCC** -- United States-China Economic and Security Review Commission

**WHO** -- World Health Organization

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)