#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**March 28, 2014**[[1]](#footnote-1)

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**FEDERAL ISSUES**

**EPCRA ISSUES**

**EPA Withdraws Proposed Rule Clarifying Reporting Of Metal Mining Releases From OMB Review**

On March 7, 2014, EPA withdrew from OMB review a proposed rule intended to clarify which metal mining releases must be reported under the TRI Program. The rule would have clarified the definitions of manufacturing and processing, and would have specified which information would have to be reported about toxic chemicals produced and used at industrial facilities and how they should be managed. Metal mining companies currently are required to report from facilities where they manufacture or process at least 25,000 pounds or use at least 10,000 pounds of a listed chemical. EPA submitted the rule to OMB for review on May 13, 2011. EPA responded to a press inquiry by stating: “EPA currently collects a variety of information from metal mining facilities through the TRI program. The agency will continue to do so and will continue to disclose this information to the public.” EPA noted that “[i]ndividual metal mining facilities will remain responsible for complying with their statutory TRI reporting obligations” under EPCRA Section 313.

**TSCA ISSUES**

**House Subcommittee Holds Hearing On TSCA Sections 4 And 8**

On February 4, 2014, the House Energy and Commerce Subcommittee on Environment and the Economy held a hearing entitled “Testing of Chemicals and Reporting and Retention of Information under TSCA Sections 4 and 8.” This was the fifth hearing on TSCA convened by the Subcommittee. The Subcommittee held oversight hearings on June 13, 2013, July 11, 2013, September 18, 2013, and November 13, 2013, that reviewed several core sections of Title I of TSCA and proposed Senate amendments to those sections. The February 4 hearing was intended to provide the Subcommittee an opportunity to examine the way EPA collects information on existing chemicals under TSCA. A webcast of the hearing and the background memorandum are available at <http://energycommerce.house.gov/hearing/testing-chemicals-and-reporting-and-retention-information-under-tsca-sections-4-and-8>. More information is available in B&C®’s February 4, 2014, memorandum, which is available at <http://www.lawbc.com/regulatory-developments/entry/house-subcommittee-holds-hearing-on-tsca-sections-4-and-8/>.

**EPA Files Brief In Opposition To Elementis’ Appeal Of Penalty For Failure To Disclose Public Health Risks**

On February 24, 2014, EPA filed its brief in opposition to Elementis Chromium Inc.’s appeal of EPA’s November 12, 2013, administrative decision ordering a penalty of $2,571,800 for failing to disclose information about substantial risk of injury to human health from exposure to hexavalent chromium. EPA argued that “the Final Report’s substantial risk conclusion was based on a statistically significant finding derived from different exposure data than previous studies,” so while it may have made similar statistically significant findings to an EPA-funded study, it was reportable information. EPA also argued that the statute of limitations had not expired because the TSCA Section 8(e) disclosure requirement is continuing in nature. On March 5, 2014, Elementis filed a motion for leave to file a reply brief. In support of its motion, Elementis states that EPA’s position is that the information in the Final Report was new, and thus reportable, because the plants studied and the methodology used had not been employed before. Elementis argues that this position would imply that “any epidemiology study would be reportable under Section 8(e) because every epidemiology study, by its very nature, is unique and thus different from every other epidemiology study.” According to Elementis, this position “is wholly inconsistent” with EPA’s own guidance on Section 8(e) reporting. More information is available at <http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/23ac48fc6a55aa1885257c2200687473!OpenDocument>.

**Shimkus Releases Draft TSCA Reform Legislation**

Representative John Shimkus (R-IL), Chair of the House Energy and Commerce Subcommittee on Environment and the Economy, released on February 27, 2014, a discussion draft of the CICA. According to Shimkus, the approach is similar to S. 1009, the bipartisan bill introduced by the late Senator Frank Lautenberg (D-NJ) and Senator David Vitter (R-LA). Shimkus stated that Republican and Democratic staff have been meeting and sharing language, and “[w]e do want a bipartisan bill.” Shimkus stated: “It’s not a final product, otherwise we’d drop a bill. The plan is to let everyone see what we have right now.” B&C’s March 3, 2014, memorandum on the discussion draft is available at <http://www.lawbc.com/regulatory-developments/entry/shimkus-releases-discussion-draft-of-tsca-reform-legislation/>.

**House Subcommittee Holds Hearing On Draft TSCA Reform Legislation**

On March 12, 2014, the House Energy and Commerce Subcommittee on Environment and the Economy held a hearing focused on the discussion draft of CICA. The March 12 hearing was intended to provide the Subcommittee an opportunity to review the provisions of CICA. The background memorandum and a webcast of the hearing are available at <http://energycommerce.house.gov/hearing/chemicals-commerce-act>. Shimkus stated that he intends to hold another hearing on the discussion draft, which might include a revised bill. More information regarding the hearing is available in B&C’s March 12, 2014, memorandum, which is available at <http://www.lawbc.com/regulatory-developments/entry/house-subcommittee-holds-hearing-on-draft-tsca-reform-legislation/>.

**TSCA Section 8(e) Notifications And FYI Submissions May Be Made Electronically**

On March 19, 2014, EPA published a notice in the *Federal Register* announcing that notifications of substantial risk under TSCA Section 8(e) and voluntary FYI submissions may now be filed electronically using EPA’s CDX, an electronic document submission system. EPA states: “Use of this electronic reporting option will streamline and reduce the administrative costs and burdens of submitting paper-based notifications of substantial risks and FYI submissions.”

**MISCELLANEOUS ISSUES**

**ACGIH Releases 2014 NIC And Under Study Lists**

As reported in our February 3, 2014, e-mail, ACGIH recently released the 2014 NIC and under study lists for its TLV and BEI Committees. The BEI Committee’s under study list includes: **cadmium and inorganic compounds**. ACGIH will update the under study lists by **July 31, 2014**, into two-tier lists, indicating which substances may move forward as NICs or notices of intent to establish in the coming year, and which will not move forward. More information is available at <http://www.acgih.org/TLV/NIC.htm>.

**Responsible Electronics Recycling Act Could Stall In House**

According to a spokesperson for Representative John Shimkus (R-IL), Co-Chair of the Congressional Recycling Caucus and Chair of the House Energy and Commerce Subcommittee on Environment and Economy, the Responsible Electronics Recycling Act (H.R. 2791) is not a priority for him, which could prevent the bill from moving forward. The bill would prohibit certain used electronics from being exported to developing countries, and would increase EPA’s authority to regulate electronic waste. Restricted electronic waste would include items of covered electronic equipment that include, contain, are derived from, or consist of batteries or other listed items containing **cadmium**. Shimkus’ spokesperson stated that Shimkus believes there is insufficient evidence to support Congressional action on the issue. While the bill has received bipartisan co-sponsors and is supported by CAER, ISRI disputes claims that the bill will increase the number of American recycling jobs. On March 6, 2014, Senator Sheldon Whitehouse (D-RI) introduced companion legislation (S. 2090) in the Senate. The bill was referred to the Senate Committee on Environment and Public Works.

**CPSC Will Hold Workshop On Potential Ways To Reduce Third Party Testing Costs**

On **April 3, 2014**, CPSC will hold a workshop on potential ways to reduce third party testing costs through determinations consistent with assuring compliance. The February 27, 2014, *Federal Register* notice announcing the meeting states that CPSC intends to discuss the three areas in which determinations may be made: lead content, phthalate content, and the solubility of the eight elements listed in the Toy Standard. **Cadmium** is one of the eight elements. Regarding the eight elements listed in the Toy Standard, the notice states that staff is interested in learning:

* Which materials, by their nature, do not, and will not contain any of the eight elements in content above their solubility limits?
* Which materials have a solubility of all seven elements other than lead that is low enough for a determination to possibly be recommended that the material will comply with ASTM F963-11, regardless of the elements’ content levels (lead content must not exceed 100 ppm for substrates, and 90 ppm for surface coatings)?
* How can compliance with the solubility limits of the elements other than lead be inferred from content measurements, irrespective of the shape or other physical characteristics of the material as a component part of a toy?
* Which materials would present the greatest cost reduction if CPCS determined that third party testing is not required, especially considering that compliance with the underlying standard(s) would still be required?
* What other information staff should consider before potentially making recommendations to CPSC regarding a determination of compliance with the limitations on the eight elements listed in the Toy Standard?

The workshop will be webcast at <http://www.cpsc.gov/live>. CPSC will accept written comments until **April 17, 2014**.

**IRIS Assessment**

***EPA Opens A New General Comments Docket For The IRIS Program***

EPA announced on March 13, 2014, the availability of a “General Comments” docket for the IRIS Program. EPA states that the docket will be used to accept public comments that have broad applicability to the IRIS Program, which may include comments on general scientific issues that apply to all assessments and/or other non-chemical-specific comments about the IRIS Program. EPA notes that the docket does not replace the IRIS Hotline, but instead provides another avenue to submit feedback to the IRIS Program. According to EPA, the docket will remain open indefinitely (or until otherwise announced that it will be closing). The docket is available at <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-ORD-2014-0211>.

**OSHA Extends Comment Period On Potential Revisions To PSM Standard**

OSHA announced on March 5, 2014, that it is extending the public comment period on the RFI on potential revisions to the PSM standard and related standards to **March 31, 2014**. The PSM standard applies mainly to manufacturing industries, particularly those pertaining to chemicals, transportation equipment, and fabricated metal products. More information is available at <https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=25194> and in our January 28, 2014, Update.

**HealthyStuff.org Announces Results Of Study Of Mardi Gras Beads**

On February 26, 2014, HealthyStuff.org announced the results of a study of Mardi Gras beads. The study was a follow-up to a 2013 study that HealthyStuff.org states found similar results in used beads that were collected after Mardi Gras. According to the press release, the study found that over 90 percent of the all beads contained at least one of the following harmful chemicals: lead, hazardous flame retardants, arsenic, or **cadmium**. More information is available at <http://www.healthystuff.org/release.02262014.mardigrasbeads.php>.

**HealthyStuff.org Announces Results Of Study Of University-Themed Products**

On March 19, 2014, HealthyStuff.org announced the results of its “March Badness tournament to determine the MTP -- Most Toxic Product.” HealthyStuff.org states that seven in ten (71 percent) of university-themed products sold at top retailers contain one or more hazardous chemicals, including arsenic, lead, bromine, chlorine, mercury, and **cadmium**. Researchers tested 65 university-themed products, including wallets, key chains, seat cushions, and sports jerseys purchased at major retailers including Home Depot, Kroger, Target, Walgreens, and Walmart. The products tested represent 19 national universities, including the University of Michigan, University of Pittsburgh, University of Connecticut, Duke University, and Michigan State University. The highlights include “[a] Michigan State University Seat Cushion [that] contained high levels of both **cadmium** (226 ppm) and lead (176 ppm).” More information is available at <http://www.healthystuff.org/get-stuff.php?report=March+Badness+-+How+toxic+is+your+university+fan+gear%3F>.

**Walmart Sustainable Chemistry Implementation Guide Includes Reference Lists Of Priority Chemicals**

In September 2013, Walmart launched a Policy on Sustainable Chemistry in Consumables. Walmart states that “Sustainable Chemistry is the design of chemical products and processes that reduce or eliminate the use or generation of hazardous substances, both to humans and the environment.” The Policy defines the following:

Priority chemical: priority chemicals are substances with certain hazardous properties that can affect human health, and/or the environment. A priority chemical is defined as a chemical that meets the criteria for classification as a carcinogen, mutagen, reproductive toxicant, or is persistent, bioaccumulative, and toxic; or any chemical for which there is “scientific evidence of probable serious effects to human health or the environment which give rise to an equivalent level of concern.”

Walmart Priority Chemicals: Walmart U.S. and Sam’s Club U.S. have defined a list of authoritative and regulatory lists (see Appendix 1) to identify “Walmart Priority Chemicals” within the scope of this policy.

Walmart High Priority Chemicals: From among Walmart Priority Chemicals, Walmart U.S. and Sam’s Club U.S. have identified a subset of approximately ten “Walmart High Priority Chemicals” as a starting point for suppliers. For business reasons, Walmart has elected not to publish the list of Walmart High Priority Chemicals and will inform its suppliers of the presence of Walmart High Priority Chemicals through its partner, The Wercs.

Appendix 1 includes the following reference lists of priority chemicals:

* EU -- Endocrine Disruptors -- Ranked Priority List -- Human Health Categorizations 1 and 2;
* EU -- Interim Strategy for Management of PBT and vPvB Substances;
* EU -- REACH (1907/2006):
* Annex XIV -- Substances Subject to Authorization;
* Annex XV -- Candidate List of SVHCs for Authorization;
* Annex XVII Appendices 1 and 2 -- Carcinogens Categories 1A and 1B;
* Annex XVII Appendix 4 -- Mutagens Category 1B;
* Annex XVII Appendices 5 and 6 -- Reproductive Toxicants Categories 1A and 1B;
* IARC -- Groups 1 (Carcinogenic to Humans), 2A (Probably Carcinogenic to Humans), and 2B (Possibly Carcinogenic to Humans);
* UNEP -- Stockholm Convention Secretariat Stockholm Convention on POPs;
* U.S. EPA -- Priority PBT List;
* U.S. EPA -- TRI PBT Chemicals;
* U.S. EPA -- National Waste Minimization Program -- Priority Chemicals;
* NTP -- *RoC* -- Known to be Human Carcinogens and Reasonably Anticipated to Be Human Carcinogens;
* California -- Proposition 65 -- Developmental/Reproductive Toxicants;
* Maine:
* Chemicals of High Concern;
* Priority Chemicals;
* Minnesota:
* Chemicals of High Concern;
* Priority Chemicals;
* Washington -- Chemicals of High Concern to Children; and
* Washington -- PBTs.

More information is available at <http://www.walmartsustainabilityhub.com/app/answers/detail/a_id/316>.

**STATE ISSUES**

**NGO States 2014 State Legislation Will Include Identification Of Chemicals Of Concern And Restriction Of Cadmium**

On January 28, 2014, Safer States published its predictions for state legislation in 2014. According to Safer States, “[a]t least seven states will consider policies that restrict phthalates, lead and/or **cadmium** in children’s products, including Hawaii, Massachusetts, Maine, Michigan, Mississippi, New Jersey, and New York.” Safer States states that another highlight will be identification and disclosure of chemicals harmful to children: “At least eleven states including Alaska, California, Connecticut, Delaware, Florida, Massachusetts, Michigan, Minnesota, New York, Oregon and Vermont will consider policy to identify chemicals of concern and require makers of consumer products to disclose their use of chemicals. Some of these policies will include provisions to encourage manufacturers to identify and use safer alternatives in their products.” The predictions are available at <http://www.saferstates.com/2014/01/states.html>.

***Alaska***

**Bill Would Require Publication Of List Of Chemicals Of High Concern To Which Children Are At High Risk Of Potential Exposure**

On January 31, 2014, a bill (S.B. 151) was introduced that would require the publication of a list of chemicals of high concern to which children are at high risk of potential exposure. To determine that a chemical is a chemical of high concern, the chemical must have been identified by a government entity, based on credible scientific evidence, as: (1) a carcinogen, a reproductive toxicant, a developmental toxicant, or an endocrine disruptor; (2) PBT; or (3) vPvB. To determine that there is a high potential for children to be exposed to a chemical of high concern, biomonitoring studies must demonstrate the presence of the chemical in human breast milk, human urine, or other bodily tissues or fluids; sampling and analysis must demonstrate the presence of the chemical in household dust, household indoor air, household drinking water, or elsewhere in the home environment; or the chemical must be an additive to or otherwise present in a consumer product. Companion legislation (H.B. 348) was introduced on February 26, 2014.

***California***

**OEHHA Draft Pre-Regulatory Warning Would Require Disclosure Of Cadmium**

OEHHA announced on March 7, 2014, that it will hold a public workshop on **April 14, 2014**, concerning potential amendments to the regulation governing Proposition 65 warnings. OEHHA released a draft pre-regulatory warning regulation and a draft pre-regulatory Initial Statement of Reasons. OEHHA states that its intent is “to make Proposition 65 warnings more informative and meaningful while providing certainty for businesses on the content and methods for providing warnings.” Section 25605 of the draft pre-regulatory regulation would require 12 chemicals, including **cadmium**, to be specified in the warning. The draft pre-regulatory Initial Statement of Reasons states: “Section 25605 identifies twelve currently listed chemicals that are commonly found in consumer products, including foods, and those that commonly are involved in occupational or environmental exposures.” OEHHA notes: “This is a pre-regulatory proposal. The potential regulation may change substantially prior to the eventual initiation of a formal regulatory proceeding. If OEHHA decides to formally propose changes to Section 25601, additional opportunities for public input will be provided during the formal process.” Comments are due **May 14, 2014**. More information is available at <http://oehha.ca.gov/prop65/warnings/030714warningworkshop.html>.

**California Announces First Draft Priority Products Under SCPR, Will Hold Workshop On PP Work Plan**

CDTSC announced on March 13, 2014, the first draft PPs under the SCPR. The three draft PPs are:

* Children’s foam-padded sleeping products containing tris(1,3-dichloro-2-propyl) phosphate;
* Spray polyurethane foam systems containing unreacted diisocyanates; and
* Paint and varnish strippers and surface cleaners containing methylene chloride.

CDTSC will hold a series of three public workshops in **May** and **June 2014** to engage in a dialogue with stakeholders on the draft PPs. For input on other potential PP categories that CDTSC might consider for the future, CDTSC will hold a separate workshop in summer 2014 to discuss developing a PP Work Plan. The PP Plan will identify product categories CDTSC will evaluate to identify product-chemical combinations over the following three years. More information is available on CDTSC’s website at <http://www.dtsc.ca.gov/SCP/index.cfm> and in B&C’s March 13, 2014, memorandum, which is available at <http://www.lawbc.com/regulatory-developments/entry/california-announces-first-draft-priority-products-under-safer-consumer-pro/>.

***Connecticut***

**Bill Introduced Concerning Cadmium In Children’s Jewelry**

On February 11, 2014, a bill (S.B. 84) was introduced concerning **cadmium** in children’s jewelry. Under the bill, beginning **July 1, 2014**, no person would be allowed to manufacture, sell, offer for sale, or distribute any children’s jewelry that contains **cadmium** in excess of the level set forth in ASTM standard F2923-11. A public hearing was held on February 18, 2014, and testimony is available at <http://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=SB-00084&doc_year=2014>. The General Law Committee passed the bill by a vote of 17-0 on March 18, 2014. On March 26, 2014, the bill was referred to the Office of Legislative Research and Office of Fiscal Analysis.

**Bill Would Restrict The Use Of Cadmium In Children’s Jewelry**

On February 21, 2014, a bill (H.B. 5305) was introduced that would restrict the use of **cadmium** in children’s jewelry. Under the bill, effective **July 1, 2016**, no person would be allowed to manufacture, sell, offer for sale, or distribute any children’s jewelry that contains **cadmium** at more than .0075 per cent by weight. On March 6, 2014, the Joint Committee on Children held a hearing on the bill. Testimony from the hearing is available at <http://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=HB-05305&doc_year=2014>. On March 26, 2014, the Committee on Children reported that the bill ought to pass.

**Bill Would Create List Of Chemicals Of High Concern To Children**

On February 26, 2014, a bill (H.B. 5354) concerning chemicals of high concern to children was introduced. The bill would define priority chemicals as a chemical that is known, on the basis of credible scientific evidence, to: (a) harm the normal development of a fetus or child or cause other developmental toxicity; (b) cause cancer, genetic damage, or reproductive harm; (c) disrupt the endocrine system; (d) damage the nervous system, immune system, or organs or cause other systemic toxicity; (e) be PBT; or (f) be vPvB. No later than **January 1, 2015**, the Commissioner of Public Health, in consultation with the Commissioner of Energy and Environmental Protection and the Commissioner of Consumer Protection, would create and maintain a list of priority chemicals that are of high concern to children after considering a child’s or developing fetus’s potential for exposure to each chemical. Chemicals may be included that meet one or more of the following criteria: (1) credible biomonitoring studies have demonstrated the presence of the chemical in human umbilical cord blood, breast milk, urine, or other bodily tissues or fluids; (2) the chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or (3) the chemical has been added to or is present in a consumer product used or present in the home. No later than **July 1, 2015**, the Commissioner of Public Health would report to the General Assembly on the status of the list of priority chemicals. The report would include, but need not be limited to: (1) recommendations to reduce children’s exposure to chemicals on the priority list; (2) a list of products that contain chemicals on the priority list and that may lead to a child’s exposure to a priority chemical; (3) a summary of actions taken in other states to restrict children’s exposure to chemicals on the priority list; (4) an evaluation of the advantages and disadvantages of measures to reduce children’s exposure to chemicals on the priority list, including reporting, product labeling, public advisories, product bans, and steps to phase out the sale of products; and (5) an assessment of the feasibility of phasing out or banning products containing chemicals on the priority list, including an analysis of the feasibility of replacing the use of priority chemicals with safer chemicals in such products. Persons located in the state who manufacture or distribute products intended for children that contain chemicals on the priority list may be required to conduct an assessment of the feasibility of replacing such chemicals with safer alternatives in such products and to report the results of such assessment. The Joint Committee on Children held a hearing on the bill on March 6, 2014. Testimony from the hearing is available at <http://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=HB-05354&doc_year=2014>. Similar legislation (S.B. 126) was introduced in the Senate on February 13, 2014. On March 25, 2014, the Senate Committee on Public Health reported that the bill ought to pass.

**Bill Introduced Concerning Children’s Products And Chemicals Of High Concern**

On March 6, 2014, the Joint Committee on Children held a hearing on an act concerning children’s products and chemicals of high concern (H.B. 5036). The bill would define a priority chemical as a chemical identified by the Commissioner of Public Health that is known to: (a) harm the normal development of a fetus or child or cause other developmental toxicity; (b) cause cancer, genetic damage, or reproductive harm; (c) disrupt the endocrine system; (d) damage the nervous system, immune system, or organs, or cause other systemic toxicity; (e) be PBT; or (f) be vPvB. No later than **January 1, 2015**, the Commissioner of Public Health would create a list of priority chemicals that are of high concern to children. The list may include chemicals that: (1) are listed on MDEP’s Chemicals of High Concern list and the WDOE’s Chemicals of High Concern for Children list; or (2) meet one or more of the following criteria: (a) the chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, breast milk, urine, or other bodily tissues or fluids; (b) the chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or (c) the chemical has been intentionally added to or is present in a consumer product. **Cadmium** is included on MDEP’s list, and **cadmium** and **cadmium compounds** are included on WDOE’s list. No later than **July 1, 2015**, and biennially thereafter, the Commissioner of Public Health would submit a report to the General Assembly that includes: (1) recommendations for reducing the exposure of children to priority chemicals; (2) a list of consumer products containing priority chemicals; (3) a summary of actions taken in other states to assess the risks and alter the uses and releases of priority chemicals; (4) an evaluation of the effects of reporting requirements, product labeling, public advisories, phase-outs, and bans on protecting children from priority chemicals; and (5) an assessment of the feasibility of implementing phase-outs and bans on certain priority chemicals within the state. Testimony from the hearing is available at <http://www.cga.ct.gov/asp/menu/CommDocTmyBillAllComm.asp?bill=HB-05036&doc_year=2014>.

***Florida***

**Act Relating To Chemicals Of High Concern Introduced**

On March 4, 2014, a bill (H.B. 991) was introduced that would reduce the exposure of pregnant women and children to chemicals of high concern by publicly identifying such chemicals and encouraging substitution with safer alternatives whenever feasible. By **January 1, 2015**, FDOH, in consultation with other state agencies, would publish an initial list of at least 50, but not more than 100, chemicals of high concern. If funds are not available to create the list, FDOH may cite chemicals of high concern as identified in other states. A chemical may be designated as a chemical of high concern if FDOH determines that the chemical meets the following criteria:

(a) The chemical is identified by a governmental agency on the basis of credible scientific evidence as being known or likely to:

1. Harm the normal development of a fetus or child or cause other developmental toxicity;

2. Cause cancer, genetic damage, or reproductive harm;

3. Damage the nervous system, immune system, hormone system, or organs or cause other systemic toxicity; or

4. Be PBT.

(b) There is credible scientific evidence that the chemical has been added to or is present in a consumer product used or present in or around a residence, child care facility, or school.

In lieu of meeting the above criteria, a chemical may be designated as a chemical of high concern if FDOH determines that: (a) based upon criteria that are substantially equivalent to those cited above, the chemical has been formally identified by another state as a priority chemical or a chemical of high concern; or (b) one or more of the criteria in above paragraph (b) are met and the chemical has been formally identified by another state as being known to cause cancer, birth defects, or other reproductive harm. A similar bill (S.B. 1180) was introduced in the Senate on February 21, 2014. On March 25, 2014, the Senate Committee on Children, Families, and Elder Affairs approved the bill, which is now before the Senate Committee on Health Policy.

***Hawaii***

**Senate Bill Would Prohibit Use Of Packaging Containing Cadmium**

On February 5, 2014, the Senate Committee on Health recommended that S.B. 2573 be passed. The bill 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; and prohibit the use of packages and packaging containing lead, **cadmium**, mercury, and hexavalent chromium beginning **January 1, 2015**. On February 12, 2014, the bill passed its second reading and was referred to the Senate Committee on Commerce and Consumer Protection.

***Idaho***

**Resolution Would Encourage Companies To Use Safer Alternatives In Household Products**

On February 10, 2014, a resolution (S.Con.Res. 135) was introduced in the Senate that would encourage companies to avoid substances likely to be harmful and to substitute safer alternatives whenever feasible in household products, especially those likely to be used by pregnant women and children. The resolution would “commend those Idaho companies voluntarily disclosing, reducing or avoiding entirely substances likely to be harmful.”

***Illinois***

**Bill Would Create Task Force On Chemicals In Commercial Products**

On February 14, 2014, an act (H.B. 5857) on chemicals in commercial products was introduced. The bill would create a Task Force on Chemicals in Commercial Products that would: (1) prepare a report evaluating the risks to human health and safety posed by the presence of chemicals classified as priority chemicals by the federal Safer Chemistry Challenge Program within commercial products sold in Illinois; and (2) provide recommendations to the General Assembly as to whether further legislation is needed to regulate priority chemicals in commercial products in Illinois. The Task Force would submit its report and recommendations to the General Assembly by **January 1, 2017**.

***Maine***

**MDEP Proposes Designating Cadmium As A Priority Chemical**

There is no new publicly available information to report regarding MDEP’s proposed rules that would elevate four chemicals on the list of chemicals of high concern, including **cadmium**, to priority status. More information is available at <http://www.maine.gov/dep/rules/>.

***Massachusetts***

**Bill Would Seek To Reduce Use Of Priority Chemical Substances In Consumer Products**

On March 17, 2014, the Joint Committee on Environment, Natural Resources and Agriculture held a hearing on the Act for Health Families and Businesses (H.B. 235), which would require TURI to publish, no later than 90 days after enactment, a list of chemicals of concern. No later than 180 days after enactment, the Massachusetts DEP would promulgate regulations that: (1) designate priority chemical substances; and (2) require notification by businesses to the institute and the department. The Administrative Council on Toxics Use Reduction would designate at least 50 but no more than 70 chemical substances from the list of chemicals of concern as priority chemical substances. Substances already identified as higher hazard substances would, on the effective date of the bill, be designated as priority chemical substances. **Cadmium** and **cadmium compounds** are currently listed as higher hazard substances. Under the bill, manufacturers of consumer products containing priority chemical substances and users of priority chemical substances would be required to notify TURI and the Massachusetts DEP. Manufacturers of a consumer product containing a priority chemical substance would be required to provide notice to any person who sells, offers to sell, or distributes such product, identifying the priority chemical substance, its purpose in the consumer product, any measures that should be undertaken to reduce a user’s exposure to the priority chemical substance, possible safer alternatives, and proper management for discarding the consumer product safely at the end of its useful life. Any person who sells, offers to sell, or distributes such a consumer product would be required to provide notice to all purchasers of the product. Users of a priority chemical substance would be required to provide notice to workers in their facility or business regarding the use of the priority chemical substance. TURI would identify at least five priority chemical substances per year to be designated as “alternatives assessment substances.” For each of these substances, TURI would prepare a Preliminary Safer Alternatives Assessment, which would identify possible safer alternatives and provide guidance to responsible entities conducting alternatives assessments. The bill would levy a Safer Alternatives in Products Fee on manufacturers of consumer products containing priority chemical substances and on wholesale sellers or distributors of such products to entities in Massachusetts. The fee would initially be set at a level sufficient to raise $2.0 million in the FY following enactment of the law, $4.0 million in the second year after the enactment, $6.0 million the third year, and at least $6.0 million in each subsequent year thereafter.

***Minnesota***

**Bill Would Require Manufacturers To Report Priority Chemicals**

On March 20, 2014, the Toxic Free Kids Act (H.B. 605) was referred to the House Committee on Environment, Natural Resources and Agricultural Finance. The bill would amend Minnesota’s priority chemical identification criteria and require manufacturers of children’s products that contain priority chemicals to provide information to the MPCA. The bill would authorize the MPCA to prohibit sales of children’s products that contain priority chemicals.

**MDH Selects Cadmium For Review Under Drinking Water Contaminants Of Emerging Concern Program**

There is no new publicly available information to report regarding MDH’s selection of **cadmium** for review under its Drinking Water Contaminants of Emerging Concern Program. More information is available at <http://www.health.state.mn.us/divs/eh/risk/review/> and in our November 28, 2013, Update.

***Mississippi***

**House Bill Banning Cadmium From Children’s Products Dies In Committee**

On February 4, 2014, H.B. 144 died in the Committee. The bill would have banned the manufacture, sale, offer for sale, distribution for sale, or distribution for use of a children’s product or product component containing certain substances, including **cadmium**, at more than .004 percent by weight (40 ppm).

***New Jersey***

**House Bill Would Prohibit Sale Of Children’s Products Containing Cadmium**

There is no new publicly available information to report regarding A.B. 626, which would have prohibited the sale, distribution, import, or manufacture of any children’s product intended for use by a child under the age of six years that contains, is composed of, or is made with lead, mercury, or **cadmium**. The bill was referred to the Assembly Committee on Consumer Affairs.

***New York***

**Assembly Passes Bill Banning Sale Of Cadmium-Added Novelty Consumer Products**

On March 6, 2014, the Assembly passed A.B. 4822, which was then referred to the Senate Committee on Environmental Conservation. The bill would ban the sale and distribution of any **cadmium**-added novelty consumer product. The bill would require a manufacturer that produces or sells **cadmium**-added novelty consumer products to notify retailers about the product ban and inform such retailers how to dispose properly of the remaining inventory. The ban would take effect on **June 1, 2015**. Companion legislation (S.B. 6729) was introduced in the Senate on March 4, 2014.

**Assembly Bill Concerning Standards For Cadmium In Children’s Jewelry Referred To Committee**

There is no new publicly available information to report regarding A.B. 5615, which would direct the Commissioner of Health to establish standards concerning **cadmium** in children’s jewelry.

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

There is no new publicly available information to report regarding A.B. 6283, which would prohibit the sale of a children’s product in which any **cadmium** has been intentionally introduced as an element during manufacturing or distribution.

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

There is no new publicly available information to report regarding S.B. 854, which 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.

***Oregon***

**Senate Bill Would Require List Of High Priority Chemicals Of Concern For Children’s Health**

On February 12, 2014, the bill (S.B. 1569) was amended. The bill would require OHA to establish and maintain a list of designated high priority chemicals of concern for children’s health used in children’s products. The amended bill would define a high priority chemical as a chemical that has been identified by a state or federal agency or an accredited research university, or by scientific evidence deemed credible and authoritative by the OHA, as known to do one or more of the following: (a) harm the normal development of a fetus or child or cause other developmental toxicity; (b) cause cancer, genetic damage or reproductive harm; (c) disrupt the endocrine system; (d) damage the nervous system, immune system or organs or cause other systemic toxicity; (e) be PBT; or (f) be vPvB. OHA would establish and maintain a list of high priority chemicals of concern for children’s health when used in children’s products. The list would include chemicals that are listed on WDOE’s List of Chemicals of High Concern to Children. **Cadmium** and **cadmium compounds** are included on WDOE’s List. A manufacturer of a children’s product sold or offered for sale in Oregon that contains a chemical included on the list would be required to provide notice to OHA that the manufacturer’s product contains a high priority chemical.

***Vermont***

**Bill Would Establish Toxic Chemical Identification And Reduction Program**

On January 28, 2014, a bill (H.B. 744) was introduced that would require the Secretary of Natural Resources to establish a toxic chemical identification and reduction program. By **January 1, 2015**, the Secretary of Natural Resources would be required to publish a list of chemicals of high concern to public health or the environment. A chemical or other substance may be included on the list of chemicals of high concern if the Secretary determines that it has been identified by an authoritative governmental entity on the basis of credible scientific evidence as being known as: (1) a carcinogen; (2) a mutagen; (3) a reproductive or developmental toxin; (4) an endocrine disruptor; or (5) a persistent or bioaccumulative toxin. The Secretary would designate as a priority chemical any chemical classified as “known to be a human carcinogen” in the most recent NTP *RoC*. The Secretary may designate a chemical of high concern as a priority chemical if the Secretary finds that:

(1) The chemical has been found through biomonitoring to be present in human blood, umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;

(2) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment;

(3) The chemical has been found through monitoring to be present in fish, wildlife, or the natural environment;

(4) The chemical has been found to be present in a consumer product used or present in the home;

(5) The chemical has been identified as a high production volume chemical by EPA; or

(6) The sale or use of the chemical or a product containing the chemical has been banned in another country or in a state within the U.S.

Beginning **January 1, 2015**, the Secretary shall report annually to the legislature with a summary of the chemicals reviewed for designation, a description of such review, and the number of chemicals designated as priority chemicals under this section. No later than 180 days after the Secretary designates a priority chemical, a manufacturer or distributor of a children’s product that is distributed, sold, or offered for sale in Vermont and that contains the priority chemical designated by the Secretary shall notify the Secretary in writing of the presence of the priority chemical in the children’s product. Children’s products containing a priority chemical would be prohibited from sale or distribution in Vermont.

**Senate Passes Bill Requiring VDOH To Create List Of Chemicals Of High Concern**

On March 27, 2014, the Senate passed S.B. 239, which would require VDOH to identify and publish a list of chemicals of high concern. VDOH would designate a chemical as one of high concern if certain conditions are met. In creating the list of chemicals of high concern, VDOH may also consider designations made by other states, the federal government, other countries, or other governmental agencies. The bill would require a manufacturer of a consumer product containing a chemical of high concern to notify the Commissioner of Health of the use of the chemical in the product and to replace the chemical with a safer alternative. If a manufacturer fails to replace the chemical of high concern in the consumer product or fails to obtain a waiver, the bill would prohibit the sale of that consumer product.

**INTERNATIONAL ISSUES**

**AUSTRALIA**

**Australia Seeks Comment On Seventh Tranche Of IMAP Assessments**

As reported in our February 11, 2014, e-mail, NICNAS published for public comment the seventh tranche of human health and environmental assessments for chemicals identified as part of the Stage One implementation of the IMAP Framework. Tier II of the human health assessments includes **cadmium oxide** and several substances within the category “**soluble cadmium salts**.” The assessment outcome for **cadmium oxide** and substances within the category **soluble cadmium salts** is “[a]mendment of the existing classifications for worker health and safety on the HSIS.” NICNAS assessed chemicals at Tier II (individual chemical evaluation) because the Tier I assessment indicated the need for further investigation. More information is available at <http://www.nicnas.gov.au/chemical-information/imap-assessments/imap-assessments/public-comment>.

**BANGLADESH**

**Report Examines Content Of Heavy Metals In Toys Sold In Bangladesh**

On December 9, 2013, ESDO published a report entitled *Toxic Toys: Heavy Metal Content & Public Perception in Bangladesh*. From October 2012 to August 2013, ESDO collected toys from different stores of Dhaka city markets. The selection was based on the country of origin, composition, and color. According to ESDO, levels of toxic metals in 97 percent of the toys tested were significantly above the EU and U.S. recommended ceiling of lead, **cadmium**, bromine, and chromium. The study found very low levels of awareness and understanding of “toxic toys” among businesses, consumers, and parents in Bangladesh. The report states: “Unfortunately no regulation and policy on toy safety yet taken by the government.” The report is available at <http://ipen.org/sites/default/files/documents/ESDO%20Study%20Report%20on%20Toxic%20Toys%20in%20Bangladesh.pdf>.

**CANADA**

**Canada Proposes To Extend Tax Credits For Mineral Exploration**

Under the 2014 federal budget plan released on February 11, 2014, Canada would extend a 15 percent mineral exploration tax credit for flow-through share investors for an additional year. The credit is currently scheduled to expire on **March 31, 2014**. The budget plan states:

Promoting the exploration of Canada’s mineral resources by junior exploration companies helps create jobs and economic development across the country. The 15-per-cent Mineral Exploration Tax Credit helps these companies raise capital by providing an incentive to investors in flow-through shares issued to finance mineral exploration. This credit is in addition to the deduction provided to the investor for the exploration expenses “flowed through” by the company that issues the shares. Since 2006, the Mineral Exploration Tax Credit has helped junior mining companies raise over $5 billion for exploration. In 2012, over 350 companies issued flow-through shares with the benefit of the credit to more than 30,000 individual investors.

The 2014 budget plan is available at <http://www.budget.gc.ca/2014/docs/plan/toc-tdm-eng.html>.

**Canada Posts New Water Quality Guidelines For Cadmium**

CCME has posted new water quality guidelines for the protection of aquatic life for **cadmium**. The new guidelines are available at <http://ceqg-rcqe.ccme.ca/download/en/148/>. The scientific supporting document is available at <http://www.ccme.ca/assets/pdf/pn_1515_cwqg_cadmium_scd.pdf>.

**CHINA**

**Environment Official Receives Prison Sentence For Role In River Pollution**

On March 18, 2014, Huang Qiang, former Director of Environmental Monitoring at the municipal environment bureau of Hezhou, was sentenced to six years in prison for his role in the pollution of a river in July 2013. Huang accepted bribes from Huiwei, an ore processor who polluted the Hejiang River, according to Babu District People’s Court. Huang took 50,000 yuan in cash and gifts of tobacco and alcohol from the owner of Huiwei in May 2013, in exchange for helping the company obtain a pollutant discharge permit to which they were not entitled. After learning that the company had been involved in poisoning the Hejiang, Huang returned the 50,000 yuan. The pollution of the river was discovered in early July 2013 when dead fish were spotted. Investigation suggested that the pollutants were thallium and **cadmium**.

**MEP Prepares Final Plan To Address Soil Pollution**

According to a March 19, 2014, statement on the MEP website, the MEP has prepared a final plan to address widespread soil pollution. The final plan will be forwarded to the state Council before final approval, which is expected later in **2014**. The final plan is intended to ensure the safety of farmlands and agricultural products and will target pollution at its source and clean up certain areas by **2020**. During the March 2014 National People’s Congress meetings in Beijing, He Xinxing, Mayor of Hechi city in the Guangxi-Zhuang autonomous region in southern China, stated that large portions of arable land around the city were “seriously contaminated” by heavy metals, including **cadmium**. He appealed to the central government for funding, particularly to remedy polluted farmland. Han Changfu, Head of the MOA, stated on March 6, 2014, that heavy metal pollution is a serious problem in certain local areas and that the MOA is working with other government departments to address contaminated farmland, promote cleaner production techniques, and control toxic substances. According to Han, MOA has conducted surveys of soil pollution and will designate lands by the severity of the pollution, using different measures to treat the pollution based on its severity. The MEP statement is available, in Chinese, at <http://www.mep.gov.cn/zhxx/hjyw/201403/t20140319_269358.htm>.

**INDIA**

**UN Petitioned Regarding Delay In 2011 Plachimada Coca Cola Victims Compensations Claims Tribunal Bill**

A petition has been filed before the UN High Commissioner for Human Rights, protesting the delay in granting Presidential assent for the Plachimada Coca Cola Victims Compensations Claims Tribunal Bill 2011 passed by the Kerala Assembly. The petition was filed by an environment expert member in the Plachimada high-power committee appointed by the state government. The petition argues that the inordinate delay in granting Presidential assent to the bill, which the Kerala Assembly passed unanimously on February 24, 2011, amounts to subversion of the Constitutional process in India by the government itself. According to the petition, the bottling unit set up by Hindustan Coca Cola Beverages Private Limited at Plachimada caused massive depletion of ground water in the area. The petition alleges that the company’s sludge containing high levels of **cadmium**, arsenic, and lead, caused extensive pollution in the ground water of the area. The expert committee estimated in 2010 that the minimum financial loss of damages caused by the Coca Cola company was Rs. 2,162.6 million ($39.32 million) and determined that the company breached nine different laws in force in the state.

**India Delays Adoption Of Final National Chemical Policy**

Although India was expected to publish the final National Chemical Policy before the general election, which will run from **April 7-May 12, 2014**, publication has been postponed. Although the 2012 draft stated that there “is a need to create REACH like legislation in India for safe use of chemicals for protection of human health & environment,” a final draft circulated to industry in January 2014 calls for the National Chemical Center, which would be created under the National Chemical Policy, to make recommendations for a chemical management framework. Under the final draft of the Policy, India would create a chemical inventory that would include data on production, consumption, imports, exports, and toxicological properties. The inventory would also include classifications based on criteria similar to those of the GHS. With the dissolution of the Parliament as part of the election process, no policy decisions will be made until a new government takes office. The current coalition government, which developed the National Chemical Policy, may not win the election, in which case the new government will determine how the National Chemical Policy fits into its priorities and whether to move forward with it.

**JAPAN**

**METI Research Project Would Address Cooperation On Chemicals Across Asia**

METI opened a tender for a research project that would address cooperation on chemicals management across Asia, focusing on Thailand and Vietnam. Under the research project, METI would:

* Draft up plans to introduce risk assessment systems and create chemical inventory databases in Thailand and Vietnam;
* Outline policy and implementation topics to be discussed in Thailand and Vietnam; and
* Create the GHS in the languages used in ASEAN nations.

The tender closed on March 14, 2015. METI expects it to be completed by **March 31, 2015**.

**SOUTH KOREA**

**Draft K-REACH Decrees Available For Comment**

On February 18, 2014, MOE issued for comment a draft Presidential Decree and Ministerial Decree. Under the draft Presidential Decree, manufacturers and importers of existing substances would have three years to compile and submit their registrations for a particular substance from the date that a particular batch of substances subject to registration is announced. R&D substances and polymers of low concern would be exempt from registration. Simplified registration would be available for substances deemed to be non-hazardous, and new substances produced or imported in annual quantities below one tonne. Existing and new substances over one tonne would be fully registered, while existing substances below one tonne would not have to be registered. The draft Ministerial Decree would require annual reporting of substance tonnages and use by April 30 of the following year. The reporting requirement would apply to new and existing substances produced or imported in annual quantities of one tonne or more. The reporting data will be used, together with information on substance hazards and risks, to designate substances subject to registration. Every three years a list of designated existing substances subject to registration would be announced. More information is available, in Korean, at <http://me.go.kr/home/web/index.do?menuId=68>. Comments are due **March 31, 2014**.

**TAIWAN**

**BSMI Amends CNS 15331**

On February 15, 2014, BSMI published an amended CNS 15331, which includes migration limits for **cadmium**. The revised standard took effect immediately. More information is available, in Chinese, at <http://www.bsmi.gov.tw/wSite/ct?xItem=50975&ctNode=1510&mp=1>.

**Taiwan Will Hold Second Nomination Period For Existing Substances Inventory**

According to a spokesperson for Taiwan’s Safety and Health Technology Center, Taiwan will hold a second “supplementary nomination and correction” period in **2014**, possibly as early as **May** or **June**. The spokesperson stated that the process and tools will be almost identical to those used in 2012. As in the earlier nomination period, substances eligible will be those imported to Taiwan, or manufactured, handled, used, or sold domestically between January 1, 1993, and December 31, 2011. Substances included on the inventory are defined as “existing chemicals substances” under the amended TCSCA. Existing chemical substances will be subject to registration, but grace periods will be stipulated. Substances not included on the inventory will qualify as new chemical substances, and must be registered 90 days before being placed on the market.

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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

**ACGIH** -- American Conference of Governmental Industrial Hygienists

**ASEAN** -- Association of Southeast Asian Nations

**B&C** -- Bergeson & Campbell, P.C.

**BEI** -- Biological Exposure Index

**BPA** -- Bisphenol-A

**BSMI** -- Bureau of Standards, Methodology and Inspection

**CAER** -- Coalition for American Electronics Recycling

**CCME** -- Canadian Council of Ministers for the Environment

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

**CDX** -- Central Data Exchange

**CICA** -- Chemicals in Commerce Act

**CNS** -- Chinese National Standard

**CPSC** -- Consumer Product Safety Commission

**DEP** -- Department of Environmental Protection

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

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

**ESDO** -- Environment and Social Development Organization

**EU** -- European Union

**FDOH** -- Florida Department of Health

**FY** -- Fiscal Year

**FYI** -- For Your Information

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

**IARC** -- International Agency for Research on Cancer

**ICdA** -- International Cadmium Association

**IMAP** -- Inventory Multi-tiered Assessment and Prioritization

**IRIS** -- Integrated Risk Information System

**ISRI** -- Institute for Scrap Recycling Industries

**MDEP** -- Maine Department of Environmental Protection

**MDH** -- Minnesota Department of Health

**MEP** -- Ministry of Environmental Protection

**METI** -- Ministry of Economy, Trade, and Industry

**MOA** -- Ministry of Agriculture

**MOE** -- Ministry of Environment

**MPCA** -- Minnesota Pollution Control Agency

**NGO** -- Non-Governmental Organization

**NIC** -- Notice of Intended Changes

**NICNAS** -- National Industrial Chemicals Notification and Assessment Scheme

**NTP** -- National Toxicology Program

**OEHHA** -- Office of Environmental Health Hazard Assessment

**OHA** -- Oregon Health Authority

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

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

**PBT** -- Persistent, Bioaccumulative, and Toxic

**POP** -- Persistent Organic Pollutant

**ppm** -- Part Per Million

**PSM** -- Process Safety Management

**R&D** -- Research and Development

**REACH** -- Registration, Evaluation, Authorization and Restriction of Chemicals

**RFI** -- Request for Information

***RoC*** -- *Report on Carcinogens*

**SVHC** -- Substance of Very High Concern

**TCSCA** -- Toxic Chemical Substances Control Act

**TLV** -- Threshold Limit Value

**TRI** -- Toxics Release Inventory

**TSCA** -- Toxic Substances Control Act

**TURI** -- Toxics Use Reduction Institute

**UN** -- United Nations

**UNEP** -- United Nations Environment Program

**vPvB** -- Very Persistent, Very Bioaccumulative

**WDOE** -- 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)