#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

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

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**FEDERAL ISSUES**

**CAA ISSUES**

**EPA Considering Modernization Of The Accidental Release Prevention Regulations**

According to an item in EPA’s Fall 2014 Regulatory Agenda, which was posted on September 21, 2014, in response to Executive Order 13650, EPA is considering potential revisions to its RMP regulations and related programs. EPA states that it may consider changes to the list of regulated substances and threshold quantities, addition of new accident prevention or emergency response program elements and/or changes to existing elements, and/or other changes to the existing regulatory provisions. On July 31, 2014, EPA issued an RFI to solicit stakeholder feedback on a number of potential modifications to the RMP regulations. The Regulatory Agenda item states that the NPRM is expected to contain a number of proposed modifications to the RMP regulations based on stakeholder feedback received from the RFI. EPA intends to publish an NPRM in **September 2015**.

**EPCRA ISSUES**

**EPA Announces Availability Of Complete 2013 TRI Dataset**

EPA announced on October 16, 2014, the availability of the complete 2013 TRI dataset. EPA states that users can use the most recent TRI data from calendar year 2013 to find out:

* If the facility has reported to the TRI Program;
* What toxic chemicals the facility is using and releasing into the environment, or otherwise managing as waste; and
* If the facility initiated any P2 activities in the most recent calendar year.

The complete 2013 TRI dataset can be accessed through Envirofacts, TRI Explorer, the TRI P2 Search Tool, and in downloadable files from the TRI website. EPA states that it will use this dataset as the basis for the 2013 TRI National Analysis report, planned for publication in **January 2015**. More information is available at <http://www2.epa.gov/toxics-release-inventory-tri-program/tri-data-uses>.

**RCRA ISSUES**

**Recycling CRT Glass In Ceramic Tiles Is Legitimate Recycling**

According to a September 10, 2014, letter to Sims Recycling Solutions, EPA finds that using funnel glass from CRTs as a substitute for lead oxide in the production of ceramic tiles to be legitimate recycling. EPA found that the four factors set forth in its policy -- (1) the hazardous secondary material provides a useful contribution; (2) the recycling process produces a valuable product or intermediate; (3) the hazardous secondary material is managed as a valuable commodity; and (4) the product of the recycling process is comparable to a legitimate product -- appear to have been met. In its review of the fourth factor, EPA states that “[t]he concentrations of lead and **cadmium** in the ceramic tiles are at levels that meet standards set by the European Union (EU) for ceramics intended to come into contact with food.” The letter notes that, although FDA sets regulatory action levels for lead and **cadmium** released from ceramic ware, the U.S. has not established regulatory levels that are comparable to the EU standards for Category 1 ceramics. EPA states that Sims Recycling Solutions should contact FDA concerning the suitability of the tiles for any intended use in the U.S. that would reasonably be expected to result in the glaze becoming a component of food. The letter is available at <http://epa.gov/epawaste/hazard/recycling/electron/fnl_ltr_sims.pdf>.

**TSCA ISSUES**

**EAB Holds Oral Arguments In Elementis Appeal Of Penalty For Failure To Disclose Public Health Risks Under TSCA**

On October 3, 2014, the EAB issued an order requesting additional information in preparation for the October 30, 2014, oral argument. According to the order, while the EAB expects the parties to be prepared to address questions related to all the issues briefed in their pleadings, it “is particularly interested in the statute of limitations issue” that Elementis has raised. The EAB requests that the parties be prepared to:

1. Explain the relevance, if any, of the continuing violation exception to the statute of limitations in 28 U.S.C. Section 2462 to determine whether a “violation continues” under TSCA Section 16(a)(1);

2. Address Section 16(a)(1)’s designation that each day that a violation continues is a “separate violation.” Specifically, explain whether, to recover penalties in this case, EPA is required to demonstrate that the continuing violation exception to the statute of limitations applies, or whether Section 16(a)(1)’s “separate violations” language on its own authorizes EPA to recover penalties for violations; and

3. Address the following scenario: If the EAB were to conclude that Elementis’ failure to submit to the EPA Administrator the epidemiology study in question constitutes a series of separate violations, for what period would Elementis be liable for per day penalties? For example, would Elementis be liable only for the five-year period immediately preceding the filing of the complaint (as adjusted by the tolling agreement), or would Elementis also be liable for violations that occurred outside this five-year window based on the continuing violation exception to the statute of limitations in 28 U.S.C. Section 2462?

During the October 30, 2014, oral argument, the EAB questioned EPA about how manufacturers are to know when scientific studies or other information they obtain about a chemical they make constitutes substantial risk information that they must immediately report to EPA to comply with TSCA Section 8(e). When asked how TSCA defined information that has to be reported under Section 8(a), Elementis responded that the occupational study that Elementis helped fund confirmed information EPA already had about the carcinogenic risks of hexavalent chromium, and therefore the company concluded it was not reportable. EPA responded that supporting, confirmatory information could be useful.

After the oral arguments concluded, the EAB asked Elementis and EPA to provide additional briefs by November 17, 2014, on whether the statute of limitations applies to TSCA Section 8(e). In its response, Elementis addressed three points raised at oral argument relating to whether a TSCA Section 8(e) violation occurred and how clear it would have been to Elementis that, in EPA’s view, the final study report was required to be submitted. First, according to Elementis, OSHA concluded that a previously submitted study “was the defining study in the field,” while others, including the study at issue in the case, added nothing new. Second, EPA’s 1991 TSCA Guidance indicates that information need not be reported if “it is contained in an EPA report or study,” suggesting that risk information can be a subset of a study. The 1991 guidance also emphasizes that a “serious toxic effect at a lower dose level” needs to be reported, but makes no mention of the need to report an effect at a higher dose level. Third, Elementis notes that the EAB inquired about the approach to reporting that regulated parties typically take, including whether the whole report or study is submitted. Elementis argues that concluding that a commonly followed practice, such as submitting the whole study, is what the law requires is incorrect. Instead, according to Elementis, what the law requires must be determined through reference to the statute. EPA maintains that Elementis was required to inform the EPA Administrator of its study because it contains new substantial risk information. EPA argues that the EAB has previously ruled that failure to comply with an “immediate” reporting requirement is a continuing violation, and that the Fifth Circuit supports EPA’s position that noncompliance with the ongoing obligation of TSCA Section 8(e) is a continuing violation. More information is available at [http://yosemite.epa.gov/oa/EAB\_Web\_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/23ac48fc6a55aa1885257c2200687473!OpenDocument](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/23ac48fc6a55aa1885257c2200687473%21OpenDocument).

**Udall-Vitter Discussion Draft Full Text Now Available**

Following the release of B&C®’s September 25, 2014, memorandum, B&C received copies of a number of documents relating to what is now described as the “Udall-Vitter Discussion Draft” (U-V DD) of the original CSIA. The documents obtained include:

* A version of the clean, revised text of U-V DD, which is identified as a “[Senate Legislative Counsel Document](http://www.lawbc.com/uploads/docs/U-V_Draft_Revisions_to_S.1009-Senate_Legislative_Counsel_Doc.pdf)”;
* A redline version showing final changes to the text in comparison to CSIA, which is entitled “[Udall-Vitter Draft Revisions to S. 1009 (September 2014)](http://www.lawbc.com/uploads/docs/U-V_Draft_Revisions_to_S.1009-Redline_Doc.pdf)”;
* [A document responding to a February 5, 2014, letter](http://www.lawbc.com/uploads/docs/Response_to_Dem_Letter.pdf) from 11 Democratic Senators to Senator David Vitter (R-LA) identifying key issues and concerns with CSIA;
* A document that summarizes “[10 key enhancements](http://www.lawbc.com/uploads/docs/Revisions_to_S.1009-10_Key_Enhancements_U-V_Draft.pdf)” made to CSIA to respond to issues raised about the bill; and
* What seems to be a draft press statement describing the release of U-V DD. The statement is entitled “[Pragmatic Compromises to Revise the Chemical Safety Improvement Act Yields a Stronger Draft Bill with Growing Support](http://www.lawbc.com/uploads/docs/Revisions_to_S.1009-Fact_Sheet_on_U-V_Draft.pdf).”

B&C’s October 1, 2014, memorandum, available at <http://www.lawbc.com/regulatory-developments/entry/tsca-reform-udall-vitter-discussion-draft-full-text-now-available>, briefly summarizes these documents, and reviews and analyzes the changes made in developing the final version of U-V DD.

**EPA Considering Amending Significant New Use Regulations To Align With HCS**

According to an item in EPA’s Fall 2014 Regulatory Agenda, which was posted on September 21, 2014, EPA is considering proposing changes to the applicable significant new uses of chemical substances regulations at 40 C.F.R. Part 721 to align the EPA regulations, where possible, with the final revisions to the OSHA HCS. OSHA issued a March 26, 2012, final rule that aligns the HCS with the GHS. EPA intends to issue an NPRM in **May 2015**.

**EPA Intends To Require Use Of New Version Of e-PMN Reporting Software**

According to an item in EPA’s Fall 2014 Regulatory Agenda, which was posted on September 21, 2014, EPA is preparing a direct final rule that would amend the TSCA Section 5 PMN, SNUN, and biotechnology regulations by mandating the use of an updated version of the e-PMN reporting software. EPA states that the new version of the software “will operate as a ‘cloud’ software system rather than as a downloadable software system.” The updated version of the software will eliminate certain firewall and file submission size limitations that exist with the current version. In addition, the rule would extend electronic submission requirements to certain other Section 5 notices and address certain regulatory clarifications. EPA intends to promulgate a direct final rule in **January 2015**.

**MISCELLANEOUS ISSUES**

**Jobs For America Act, Which Includes National Strategic and Critical Minerals Production Act, Received In The Senate**

On November 12, 2014, the Jobs for America Act (H.R. 4) was received in the Senate. As reported in our September 28, 2014, Update, on September 15, 2014, the bill was introduced in the House. The bill consists of the text of 15 House passed bills, including the National Strategic and Critical Minerals Production Act of 2013 (H.R. 761), that will make various changes to federal law to improve the conditions necessary for economic growth and job creation. The House passed the bill on September 18, 2014, by a vote of 253 - 163. More information is available in our September 28, 2014, Update.

**GAO Finds Agencies Could Better Coordinate Chemical Assessments**

GAO released on October 29, 2014, a report entitled *Chemical Assessments: Agencies Coordinate Activities, but Additional Action Could Enhance Efforts*. According to GAO, the agencies reviewed -- ATSDR, EPA, NIOSH, NTP, and OSHA -- undertake distinct chemical toxicity assessment activities that differ in type and purpose and are driven in part by statutory requirements. GAO reviewed ten states that largely rely on federal agencies’ assessment activities. GAO states that agency officials from all ten of the selected states told GAO that they have used assessment information produced by these federal agencies in the last five years. Officials from six of the ten states told GAO they rely on federal assessments, and the remaining four stated that they may produce their own assessments in some cases. GAO concluded that while the chemical toxicity assessment activities at these five federal agencies are fragmented and overlapping, there is no evidence that these activities are duplicative. According to GAO, their activities are fragmented because they address the same broad area of national need -- providing information on the toxicity of chemicals. The five agencies’ activities overlap because some of them have similar goals or target similar beneficiaries. GAO did not find evidence of duplication, however, because the agencies did not engage in the same activities or provide the same services to the same beneficiaries. GAO recommends that OSTP encourage the NSTC to support relevant federal agency officials’ efforts to address, as appropriate, the agencies’ cross-cutting coordination challenges. OSTP did not provide official written comments, but instead provided technical comments, which GAO incorporated as appropriate. The GAO report is available at <http://www.gao.gov/products/GAO-14-763>.

**MSHA Will Hold Public Hearings On Criteria And Procedures For Assessment Of Civil Penalties**

MSHA will hold public hearings on **December 4** and **December 9, 2014**, concerning its July 31, 2014, proposed rule for criteria and procedures for assessment of civil penalties. The proposed rule would amend MSHA’s civil penalty regulation to simplify the criteria, which MSHA states will promote consistency, objectivity, and efficiency in the proposed assessment of civil penalties and facilitate the resolution of enforcement issues. According to MSHA, the proposal would place a greater emphasis on the more serious safety and health conditions and provide improved safety and health for miners. MSHA is also proposing alternatives that would address the scope and applicability of its civil penalty regulation. The comment period was scheduled to close on September 29, 2014. MSHA extended the comment period until **December 3, 2014**, in response to commenters. Post-hearing comments are due **January 9, 2015**.

**MSHA Examines Working Places In Metal And Nonmetal Mines**

According to an item in MSHA’s Fall 2014 Regulatory Agenda, which was posted on September 21, 2014, MSHA intends to issue an RFI on the examination of working places in metal and nonmetal mines to determine the adequacy of MSHA’s existing standards. According to the item, “[r]ecent fatalities in metal and nonmetal mines raised concerns that persons who examine workplaces do not always identify conditions that may adversely affect safety or health or that operators do not correct such identified conditions in a timely manner.” MSHA is seeking information, data, and comment on whether the existing standards should be revised. MSHA would seek information relative to: (1) persons conducting the examination; (2) the quality of the examination; and (3) the recordkeeping provision, among other provisions. MSHA also is considering whether issuing guidance or disseminating best practices regarding the existing standards would effectively accomplish its goal of providing miners a safe working place. MSHA intends to issue the RFI in **June 2015**.

**NIOSH Science Blog Item On Occupational Exposures At Electronic Scrap Recycling Facilities Mentions Cadmium**

As reported in our September 30, 2014, e-mail, NIOSH posted a September 30, 2014, Science Blog item entitled “Occupational Exposures at Electronic Scrap Recycling Facilities.” Through the NIOSH Health Hazard Evaluation Program, NIOSH measured employee exposures to lead, **cadmium**, chromium, and noise in e-scrap recycling facilities. NIOSH found that employees in facilities that process CRT glass, including employees in areas away from where the CRT glass is processed, can be overexposed to lead and **cadmium**. At some facilities, NIOSH found lead, **cadmium**, and other toxic metals on surfaces outside of production areas, ineffective engineering controls, and poor employee work practices such as dry sweeping. NIOSH states that, beginning Fall 2014, it will begin a study to evaluate occupational exposures to metals, including **cadmium**, and flame retardants in e-scrap recycling facilities and to recommend controls to reduce employee exposures. The Science Blog item is available at <http://blogs.cdc.gov/niosh-science-blog/2014/09/30/escrap/>.

**NRC Publishes Framework To Guide Selection Of Chemical Alternatives**

On October 10, 2014, NRC published a report entitled *A Framework to Guide Selection of Chemical Alternatives*, which describes a decision framework for comparing chemicals in terms of human health and ecological risks that NRC states is more uniformly applicable for a diverse set of users while remaining flexible enough to be tailored to the specific decision being made. According to NRC, the framework draws on the strengths and common characteristics of existing assessment approaches, but also includes several advancements: problem formulation and scoping, comparative exposure assessment, and evaluation of physicochemical properties. In addition to hazard assessments, the framework incorporates steps for lifecycle thinking -- which consider possible impacts of a chemical at all stages including production, use, and disposal -- as well as steps for performance and economic assessments. The report also highlights how modern information sources such as computational modeling can supplement traditional toxicology data in the assessment process. The report states that many decisions involved in selecting a viable chemical alternative will be value-driven and context-dependent. Defining and documenting the goals, principles, and decision rules guiding the assessment is important, to make explicit how uncertainty and trade-offs are resolved. The report is available at <http://www.nap.edu/catalog.php?record_id=18872>.

**OSHA Publishes RFI Concerning Chemical Management And PELs**

According to a notice in the October 9, 2014, *Federal Register*, OSHA is reviewing its overall approach to managing chemical exposures in the workplace and seeks stakeholder input about more effective and efficient approaches that address challenges found with the current regulatory approach. According to the notice, this review involves considering issues related to updating PELs, as well as examining other strategies that could be implemented to address workplace conditions where workers are exposed to chemicals. The notice states that although OSHA has attempted to update its PELs, it has not been successful, “except through the promulgation of a relatively few substance-specific health standard rulemakings (*e.g*., benzene, **cadmium**, lead, and asbestos).” The notice details the role of past court decisions on OSHA’s current approach to chemical management for the purpose of informing stakeholders of the legal framework in which it must operate. It then describes possible modifications of existing processes, along with potential new sources of data and alternative approaches OSHA may consider. OSHA states that it is particularly interested in information about how it may take advantage of newer approaches, given its legal requirements. The RFI is concerned primarily with chemicals that cause adverse health effects from long-term occupational exposure, and, according to the notice, “is not related to activities being conducted under Executive Order 13650, Improving Chemical Facility Safety and Security.” Comments are due **April 8, 2015**.

**OSHA Intends To Initiate SBREFA Process For PSM Rulemaking**

According to an item in OSHA’s Fall 2014 Regulatory Agenda, which was posted on September 21, 2014, OSHA intends to initiate the SBREFA process in **June 2015**. In accordance with Executive Order 13650, Improving Chemical Facility Safety and Security, OSHA issued an RFI on December 9, 2013, to identify issues related to modernization of the PSM standard and related standards necessary to meet the goal of preventing major chemical accidents.

**SEC Preparing NPRM Concerning Disclosure Of Payments By Resource Extraction Issuers**

According to an item in SEC’s Fall 2014 Regulatory Agenda, which was posted on September 21, 2014, the Division of Corporation Finance is considering recommending that the SEC propose rules to implement Section 1504 of the Dodd Frank Act, which added Section 13(q) to the Exchange Act. The item states that Section 13(q) requires the SEC to adopt rules requiring resource extraction issuers to disclose in an annual report payments made to foreign governments or the federal government for the purpose of commercial development of oil, natural gas, or minerals. The SEC had previously adopted a rule implementing Section 1504 of the Dodd Frank Act, which was vacated and remanded to the SEC by the U.S. District Court for the District of Columbia in July 2013. According to the item, the SEC intends to publish an NPRM in **October 2015**.

**NGO Sues SEC Over Delay In Issuing Resource Extraction Disclosure Rule**

There is no new publicly available information to report regarding Oxfam America Inc.’s suit in the U.S. District Court for the District of Massachusetts to compel the SEC to issue a resource extraction disclosure rule. *Oxfam Am. Inc. v. SEC*, No. 14-cv-13648. More information is available in our September 28, 2014, Update.

**STATE ISSUES**

***California***

**CDTSC Updates Candidate Chemicals Database**

CDTSC announced on October 9, 2014, that it has updated the informational Candidate Chemicals database and posted a download of the Candidate Chemicals list on the Candidate Chemicals web page at <http://www.dtsc.ca.gov/SCP/ChemList.cfm>. CDTSC states that several authoritative lists, such as Prop 65 and IARC, have updated their lists, and those changes are reflected in CDTSC’s informational materials. The Candidate Chemicals list includes **cadmium**; **cadmium (pyrophoric)**; **cadmium and cadmium compounds**; **cadmium chloride**; **cadmium compounds**; **cadmium fluoride**; **cadmium oxide, (non-pyrophoric)**; **cadmium sulphate**; and **cadmium sulphide**.

**GRSP Discusses Draft PP Work Plan**

The GRSP met October 20-21, 2014, in Sacramento, California. The purpose of the meeting was to provide the GRSP a forum to discuss and advise CDTSC on evaluating Product Categories identified in the three-year PP Work Plan, which is currently in draft and undergoing public comments. The GRSP discussed and advised CDTSC on alternative analysis topics as described in the Alternatives Analyses Guidance Synopsis. The meeting was open to the public. More information is available at <http://www.dtsc.ca.gov/SCP/GRSPUpcomingMeetings.cfm>.

***Connecticut***

**Task Force On Cadmium In Children’s Jewelry Held Meetings In October**

The Task Force on **Cadmium** in Children’s Jewelry, created by an Act Concerning **Cadmium** Levels in Children’s Jewelry (Public Act No. 14-140), met on October 2 and October 9, 2014. The agenda for the October 2, 2014, meeting lists presentations by Dr. Eric Rosenblum, Toxicologist/Risk Assessor at Rosenblum Environmental; Judith Haber, Senior Laboratory Operations Manager, Analytical Chemistry at UL Verification Services, Inc.; and Dr. Christian Brueckner, Department of Chemistry, University of Connecticut. Dr. Brueckner’s presentation is available at [http://www.cga.ct.gov/gl/Cadmium/Docs/Cadmium-2014(presentation).pdf](http://www.cga.ct.gov/gl/Cadmium/Docs/Cadmium-2014%28presentation%29.pdf). The agenda for the October 9, 2014, meeting lists a presentation by Dr. John W. Birk, Associate Professor of Medicine, Division of Gastroenterology; Director, Gastroenterology-Hepatology Fellowship Program. Dr. Birk’s presentation is available at [http://www.cga.ct.gov/gl/Cadmium/Docs/Dr.%20John%20Birk's%20Presentation.pdf](http://www.cga.ct.gov/gl/Cadmium/Docs/Dr.%20John%20Birk%27s%20Presentation.pdf). Under the Act Concerning **Cadmium** Levels in Children’s Jewelry, the Task Force’s report is due **January 15, 2015**, to the joint standing committees of the General Assembly. Representative Diana Urban (D), Co-Chair of the Task Force and Chair of the Committee on Children, stated that the Committee “will be putting a bill out. We will take the Task Force’s recommendation [into] consideration, but everything I have heard so far has only firmed up my commitment to protecting children.” More information is available at <http://www.cga.ct.gov/gl/Cadmium/default.asp>. More information regarding the Act Concerning **Cadmium** Levels in Children’s Jewelry is available in our July 28, 2014, Update.

***Maine***

**Maine Sets Reporting Deadline For Cadmium In Children’s Products**

As reported in our October 2, 2014, e-mail, manufacturers of certain children’s products have until **November 28, 2014**, to report the intentional inclusion of **cadmium**, arsenic, and mercury to MDEP. More information is available at <http://www.maine.gov/dep/safechem/index.html>.

***New York***

**Toxic Toys Report Claims Heavy Metals, Including Cadmium, Found In Children’s Toys And Products**

On November 17, 2014, Clean & Healthy New York and the New York League of Conservation Voters Education Fund released a report entitled *Toxic Toys in Albany County*. The report identified 12 children’s toys and products that were purchased from stores in Albany County in October and November. Antimony was detected in three products; arsenic in three products; **cadmium** in two products; cobalt in six products; lead in five products; and mercury in three products. The Executive Summary states that **cadmium** was found in metal charms in a jewelry kit, and rhinestones in another jewelry kit. The report describes **cadmium** as “[a] heavy metal used in children’s car seats, sleeping bags, toys, arts & crafts supplies, tobacco smoke, plant fertilizers, and industrial paints.” According to the report, health effects include “[b]reast or uterine cancer, early onset puberty, kidney and lung damage, loss of motor skills and behavior dysfunction.” More information is available at <http://www.cleanhealthyny.org/#!toxictoysalbany/c7c3>.

***North Carolina***

**NCEMC Approves Revised Water Quality Standards, Including Updated Aquatic Life Protective Concentration For Cadmium**

NCEMC announced on November 14, 2014, that it approved proposed revisions to state surface water quality standards, including the numbers the state uses to evaluate metals, in response to the federally-required Triennial Review of Surface Water Quality Standards. NCEMC states that the new standards are in line with nationally recommended water quality guidance and change how the state measures environmental impacts of certain metals. It includes changing some standards from total recoverable metal concentrations to dissolved metal concentrations where measuring dissolved metal concentrations more accurately describes the portion of the metal that is toxic to aquatic life. Additionally, the state will take into account the effect that water hardness has on the toxicity of metals. The revisions include updated aquatic life protective concentrations for arsenic, beryllium, **cadmium**, chromium III, chromium VI, copper, lead, nickel, silver, and zinc. The changes will not take effect until after EPA does a final review and approval of the state’s standards. More information is available at <http://portal.ncdenr.org/c/journal/view_article_content?groupId=4711509&articleId=23401483>.

**INTERNATIONAL ISSUES**

**CHINA**

**Mine Fined For Discharging Wastewater Containing Excessive Levels Of Cadmium And Zinc**

On September 29, 2014, the environmental department for Hechi city announced that the Lame Zinc Mine, under Guangxi Jinhe Mining Co Ltd, discharged wastewater containing excessive levels of **cadmium** and zinc in July 2014. The mine was fined 300,000 Yuan and was ordered to stop production earlier in September 2014. In 2012, Guangxi Jinhe Mining Co Ltd was involved in a similar river contamination case. The Longjiang River, located in Yizhou, Hechi city, was found to have been contaminated by **cadmium**, threatening the drinking water source of the downstream Liuzhou City. Guangxi Jinhe Mining Co Ltd was found to be a polluter and was fined one million Yuan. Its three managers were each sentenced to three years in jail.

**MEP Releases Draft Interim Measures Related To The Environmental Protection Law For Public Comment**

On October 17, 2014, MEP released for public comment four interim measures related to amendments to the Environmental Protection Law that will take effect on **January 1, 2015**. The amended Environmental Protection Law sets environmental protection as China’s basic policy. Under the amended Law, economic and social development should be coordinated with environmental protection. It encourages studies on the impact environmental quality has on public health, urging prevention and control of pollution-related diseases. The amended Law also increases punishments for environmental wrongdoing. The draft interim measures include:

* Interim Measures of Consecutive Daily Fines for Violating Environmental Protection Regulations (draft): The Measures define the criteria for the consecutive daily fines and their duration, number, amount, implementation procedures, and the related terminology;
* Interim Measures of Seizure and Detention for Violating Environmental Protection Regulations (draft): The Measures define the criteria for seizure and detention for severe environmental pollution and contamination and their duration, implementation procedures, and the related terminology;
* Interim Measures for Restrictions and Suspension of Production for Violating Environmental Protection Regulations (draft): The Measures provide implementation procedures on investigation, approval, implementation of corrective actions, reinstatement, and inspection related to the restrictions and suspension of production for severe environmental pollution and contamination; and
* Interim Measures for Disclosure of Compliance Information of Environmental Protection Regulations of Enterprises and Institutions (draft): The Measures give prescriptive guidance on disclosure scope, content, manner, and supervision of the compliance information of environmental protection regulations of enterprises and institutions.

Comments on the four draft interim measures were due October 26, 2014. The four interim measures are expected to be issued in final by the **end of 2014**. More information is available, in Chinese, in MEP’s October 17, 2014, notice, which is available at <http://www.mep.gov.cn/gkml/hbb/qt/201410/t20141017_290273.htm>.

**CCCMC Releases Guidelines For Social Responsibility In Outbound Mining Investments, Signs MOU With OECD**

On October 24-25, 2014, CCCMC hosted Exploration Exchange China 2014, which was endorsed by China’s MOC. During the conference, CCCMC presented the *Guidelines for Social Responsibility in Outbound Mining Investments*, which are intended to regulate Chinese mining investments and operations, and to guide Chinese companies in improving corporate social responsibility and sustainability strategies, as well as management systems. The Guidelines are divided into three chapters:

* Chapter One outlines the scope of the Guidelines and defines the guiding principles of social responsibility;
* Chapter Two, which is the main chapter of these Guidelines, specifically outlines the requirements of social responsibility for outbound mining investments. The requirements are organized in three tiers, and include explanatory footnotes; and
* Chapter Three contains an explanation of how these Guidelines will be implemented and how CCCMC will support and monitor the implementation of these Guidelines.

The Guidelines are available at <https://www.emm-network.org/wp-content/uploads/2014/10/Guidelines-for-Social-Responsibility-in-Outbound-Mining-Investments.pdf>. During the conference, CCCMC and OECD signed an MOU setting out the conditions for cooperation to promote the implementation by Chinese companies of responsible business conduct in global mineral supply chains. The MOU is available at <http://www.oecd.org/daf/inv/mne/MoU-CCCMC-OECD.pdf>.

**HONG KONG**

**Hong Kong Begins Consultation On Proposal To Update Toy Standards**

The CEDB released for public consultation a proposal to update Hong Kong’s Toys and Children’s Products Safety Ordinance, in line with the latest international standards. The proposals cover eight classes in Schedule 2: babies’ dummies; bunk beds for domestic use; child safety barriers for domestic use; children’s cots for domestic use; children’s high chairs and multi-purpose high chairs for domestic use; children’s paints; playpens for domestic use; and wheeled child conveyances. The major changes to the updated standard for babies’ dummies include revising the migration limits for several metals, including **cadmium**. Comments are due **December 2, 2014**. More information is available at <http://www.cedb.gov.hk/citb/doc/en/Information_Note_on_2014_Standards_Update_for_Consultation_Eng.pdf>.

**OECD**

**OECD Releases Proposal For Harmonized List Of PRTR Pollutants**

On November 14, 2014, OECD released a report entitled *Global Pollutant Release and Transfer Register, Proposal for a Harmonised List of Pollutants*. In 2009, during the 12th meeting of the OECD Task Force on PRTRs, the Task Force noted that while there are about 1,200 chemicals in the PRTR Data Centre, only 14 of them are common to all PRTRs. The Task Force agreed to eliminate mistakes and aggregate the existing chemicals to produce a more harmonized list of chemicals than is available at present and thereby improve the comparability of PRTR data on a global scale. This report outlines the results of this work. It identifies all chemicals covered by five PRTRs and the Kiev Protocol, categorizes these chemicals into general pollutant classes, proposes unique identifiers for pollutants, and identifies common substances across different national/regional PRTRs. According to the report, the chemical lists developed in this work could form the basis for the future development of guidance or recommendations for core elements of PRTRs. The harmonized list of pollutants (Long Chemical List) includes **cadmium** and **cadmium compounds**. From the Long Chemical List, a common list of pollutants (Short Chemical List) was developed, and it includes **cadmium and compounds (as Cd)** (includes **cadmium** and any unique chemical substance that contains **cadmium** as part of that chemical’s infrastructure). The report states that the Short Chemical List is meant to be comprised of chemicals that most countries would agree represent the most toxic or environmentally relevant chemicals in commerce and, therefore, may be considered to be included in any PRTR system. The report is available at <http://www.oecd.org/officialdocuments/displaydocument/?cote=env/jm/mono(2014)32&doclanguage=en>.

**PHILIPPINES**

**Philippines Simplifies Notification Process For Toys And Childcare Articles**

On September 26, 2014, the Philippines Food and Drug Administration published guidelines on the manual notification of toys and childcare articles, which place the primary responsibility for ensuring the safety and quality of products on companies. The guidelines state that the Food and Drug Administration will “strengthen post-marketing surveillance (PMS) to ensure continuous compliance of the companies to FDA safety and quality standards.” Toys that fall under the simplified notification system include:

* Toys intended for children below 14 years of age;
* Swings, slides, and similar activity toys for indoor and outdoor family domestic use; and
* Childcare articles such as, but not limited to, feeding bottles, sippy cups, pacifiers/soothers, teething aids, bottle teats/nipples, toothbrushes for babies, and baby feeding sets.

Childcare articles must have laboratory reports for the migration of certain elements, including **cadmium**. The simplified notification will be valid for one year. According to the Philippines, all applications will be processed and completed within 22 working days, provided the application complies with all the requirements. The guidelines are available at <http://www.fda.gov.ph/industry-corner/downloadables/334-manual-notification-of-toys-and-childcare-articles-cca>.

**SOUTH KOREA**

**MOE Releases Draft List Of Existing Chemicals Selected For Registration Under K-REACH**

MOE published a draft list of the first batch of existing chemicals selected for registration under K-REACH. The 518 chemicals on the list, which has also been made available by KCMA, were selected based on a number of criteria, including their designation as carcinogenic, mutagenic, or reprotoxic, and toxic to the aquatic environment in the EU. The list includes **cadmium sulfide**; **cad[]mium selenide**; **cadmium octanoate**/**cadmium di(octanoate)**; **octadecanoic acid cadmium salt**/**cadmium stearate**; **cadmium 2-ethylhexanoate; benzoic acid cadmium salt**; **p-tert-butylbenzoic acid cadmium salt**; **cad[]mium**; **cadmium dioleate**; **antimony compound with cadmium (2:3)**; **cadmium zinc sulfide ((Cd,Zn)S)**; **cadmium sulfoselenide orange**/**C.I. Pigment Orange 20**; **neodecanoic acid cadmium salt**/**cadmium neodecanoate**; **fatty acids, (C=8-18) and (C=18)-unsatd., cadmium salts**; and **cadmium nonyl-phenylate**. The final list is expected to be published in **June 2015**. Once the list is officially published, listed substances must be registered within three years. The next batches of existing chemicals selected for registration are expected to be announced in **2018** and **2021**. More information is available, in Korean, in MOE’s announcement at <http://www.me.go.kr/home/web/board/read.do?pagerOffset=0&maxPageItems=10&maxIndexPages=10&searchKey=&searchValue=&menuId=286&orgCd=&boardMasterId=1&boardCategoryId=39&boardId=442880> and in KCMA’s announcement at <http://www.kcma.or.kr/bbs/view.asp?bbs_code=1&bbs_class=&bbs_search_type=1&bbs_search_word=&page=1&bbs_idx=3846>.

**South Korea Publishes Official English Translation Of K-REACH**

The Korea Legislation Research Institute has published an official English translation of K-REACH. The English text is available at <http://elaw.klri.re.kr/kor_service/lawView.do?hseq=31605&lang=ENG>.

**TAIWAN**

**MOHW Issues Revised Test Methods For Food Containers**

MOHW issued on November 11, 2014, revised test methods for a range of food utensils, containers, and packages. It contains revised procedures for testing for lead; **cadmium**; heavy metal elements; steam residues; absorption; methacrylate; polymethylmethacrylates (acrylic); and revised ceiling quotas for lead, **cadmium**, and methacrylate. The test methods will take effect **February 1, 2015**.

**BSMI Will Begin Inspecting Children’s Raincoats For Heavy Metals, Including Cadmium**

Beginning **June 1, 2015**, BSMI will implement an inspection regime for children’s raincoats to check for phthalates and heavy metals, including **cadmium**. According to BSMI’s WTO notification, BSMI will inspect both domestically produced and imported raincoats. Under the new procedure, manufacturers must have their products type-tested by BSMI or designated testing laboratories before applying for registration of their products. Manufacturers or importers will be required to ensure, by declaration, that all products made at their manufacturing facilities conform with the prototypes submitted for type testing. The notification is available at [https://docs.wto.org/dol2fe/Pages/FE\_Search/FE\_S\_S006.aspx?MetaCollection=WTO&SymbolList=%22G/TBT/N/TPKM/182%22+OR+%22G/TBT/N/TPKM/182/\*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&Au](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?MetaCollection=WTO&SymbolList=%22G/TBT/N/TPKM/182%22+OR+%22G/TBT/N/TPKM/182/*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&Au).

**THAILAND**

**Court Orders Padaeng Industry and Tak Mining To Compensate Plaintiffs For Cadmium Contamination**

On September 29, 2014, the Bangkok South Civil Court ruled against Padaeng Industry and Tak Mining in a case filed by a group of villagers in the Mae Tao basin, Mae Sot District, Tak Province. The plaintiffs claimed that the mining operations of both companies caused **cadmium** contamination in the area and sought over 836 million Baht in damages. The court ordered the companies to pay compensation to 82 plaintiffs who hold the **Cadmium** patient’s card issued by the Mae Sod Hospital, from the total 218 plaintiffs, for a total of 4.1 million Baht. On October 7, 2014, Padaeng Industry stated that it intends to appeal the court’s decision.

**Draft Environmental Protected Area Regulations Will Restrict Mining Activities**

According to an ONEP spokesperson, a draft of new environmental protected area regulations should be ready by the **end of 2014**. The regulations will restrict activities that pose a risk to the environment in Tambons Phra That Pha Daeng, Mae Tao, and Mae Ku. Villagers in Tak’s Mae Sot district claim contamination caused by zinc mining operations has harmed their health and farmland for 40 years. The ONEP spokesperson stated that the regulations will be enforced after receiving Cabinet approval in **2015**. In August 2013, the Phitsanulok Administrative Court ordered the Natural Resources and Environment Ministry to issue environmental protected area regulations for the area, but the Ministry failed to meet its deadline to do so. Tests conducted by Mae Sot Hospital in 2004 showed that almost half of the 7,679 villagers had unsafe levels of **cadmium** in their urine.

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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, or Carla N. Hutton at (202) 557-3809 or chutton@lawbc.com.

## ACRONYMS

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

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

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

**CAA** -- Clean Air Act

**CCCMC** -- China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters

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

**CEDB** -- Commerce and Economic Development Bureau

**C.F.R**. -- Code of Federal Regulations

**CRT** -- Cathode Ray Tube

**CSIA** -- Chemical Safety Improvement Act

**EAB** -- Environmental Appeals Board

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

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

**e-PMN** -- Electronic Premanufacture Notice

**EU** -- European Union

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

**GAO** -- United States Government Accountability Office

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

**GRSP** -- Green Ribbon Science Panel

**HCS** -- Hazard Communication Standard

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

**ICdA** -- International Cadmium Association

**KCMA** -- Korea Chemical Management Association

**K-REACH** -- Act for the Registration and Evaluation of Chemicals

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

**MEP** -- Ministry of Environmental Protection

**MOC** -- Ministry of Commerce

**MOE** -- Ministry of Environment

**MOHW** -- Ministry of Health and Welfare

**MOU** -- Memorandum of Understanding

**MSHA** -- Mine Safety and Health Administration

**NCEMC** -- North Carolina Environmental Management Commission

**NGO** -- Non-Governmental Organization

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

**NPRM** -- Notice of Proposed Rulemaking

**NRC** -- National Research Council

**NSTC** -- National Science and Technology Council

**NTP** -- National Toxicology Program

**OECD** -- Organization for Economic Cooperation and Development

**ONEP** -- Office of Natural Resources and Environmental Policy and Planning

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

**OSTP** -- Office of Science and Technology Policy

**P2** -- Pollution Prevention

**PEL** -- Permissible Exposure Limit

**PMN** -- Premanufacture Notice

**PP** -- Priority Product

**PRTR** -- Pollutant Release and Transfer Register

**PSM** -- Process Safety Management

**RCRA** -- Resource Conservation and Recovery Act

**RFI** -- Request for Information

**RMP** -- Risk Management Program

**SEC** -- United States Securities and Exchange Commission

**SNUN** -- Significant New Use Notice

**TRI** -- Toxics Release Inventory

**TSCA** -- Toxic Substances Control Act

**WTO** -- World Trade 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)