#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**January 28, 2015**[[1]](#footnote-1)

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**FEDERAL ISSUES**

**CAA ISSUES**

**EPA Rejects Request For FACA Committee To Provide Advice On RMP Regulations**

In a November 20, 2014, letter to a coalition of industry associations, EPA responded to a request that EPA “utilize an existing federal advisory committee to provide [OEM] with industry stakeholder advice and counsel on scientific and technical aspects” of the RMP regulations. According to Reggie Cheatham, OEM Acting Director, reestablishing a FACA committee “for the high-priority RMP work will take considerable time and will stretch already extremely thin resources.” Cheatham states that, in light of the commitments and schedule set forth in the report for Executive Order 13650, “Improving Chemical Facility Safety and Security,” for quick action intended to protect public health and safety, EPA is unable to grant the request to use a FACA committee. EPA “will continue to examine both formal and informal processes from industry, state and local officials, citizens, and NGOs to seek advice and expertise to advance our shared goal of chemical plant safety.”

**CWA/SDWA ISSUES**

**Copper-Free Brake Initiative Will Reduce Cadmium In Motor Vehicle Brake Pads**

On January 21, 2015, EPA, states, and the automotive industry signed an agreement to reduce the use of copper and other materials in motor vehicle brake pads. The agreement calls for reducing copper in brake pads to less than five percent by weight in **2021** and 0.5 percent by **2025**. In addition to copper, the voluntary initiative reduces mercury, lead, **cadmium**, asbestiform fibers, and chromium-6 salts in motor vehicle brake pads. According to EPA, the Copper-Free Brake Initiative will decrease runoff of these materials from roads into streams, rivers, and lakes. The Initiative includes:

* Education and outreach to bring about the nationwide reduction in brake pads of copper and the other materials, including **cadmium**;
* Testing friction materials and constituents for alternatives;
* Marking and labeling friction material packaging and product;
* Providing reporting registrars’ and agents’ contact information to manufacturers, suppliers, and other industry entities; and
* Working towards achieving the goals in the Copper-Free Brake Initiative within specified timeframes.

More information is available at <http://water.epa.gov/polwaste/npdes/stormwater/copperfreebrakes.cfm>.

**EPCRA ISSUES**

**EPA Releases 2013 TRI National Analysis**

On January 14, 2015, EPA released its 2013 TRI national analysis. EPA states that, similar to previous years, in 2013 most of the toxic chemical waste managed at industrial facilities in the U.S. was not released into the environment. EPA’s analysis shows that approximately 22 billion pounds -- or 84 percent -- of the 26 billion pounds of toxic chemical waste were instead managed through the use of preferred practices such as recycling. Of the four billion pounds that were disposed of or otherwise released to the environment, 66 percent went to land, 19 percent to air, five percent to water, and ten percent was transferred to other facilities. From 2012 to 2013, the amount of toxic chemicals managed as waste increased by four percent. EPA states that this increase includes the amount of chemicals recycled, treated, and burned for energy recovery, as well as the amount disposed of or otherwise released into the environment. Air releases from industrial facilities increased by one percent from 2012 to 2013, mainly due to increases from chemical manufacturing facilities and electric utilities that also experienced an increase in production. From 2012 to 2013, releases to water decreased by two percent, primarily due to decreases from the primary metals sector. More information is available at <http://www2.epa.gov/toxics-release-inventory-tri-program/2013-tri-national-analysis-introduction>.

**RCRA ISSUES**

**EPA Promulgates Final Rule Concerning Definition Of Solid Waste**

EPA promulgated on January 13, 2015, a final rule concerning the definition of solid waste, which modifies EPA’s 2008 rule to protect human health and the environment from the mismanagement of hazardous secondary material, while promoting sustainability through the encouragement of safe and environmentally responsible recycling of such materials. EPA states that it conducted a rigorous environmental justice analysis of the rule that examined the location of recycling facilities and their proximity and potential impact to adjacent residents. The methodology and scope was developed through a broad public engagement and expert peer review process. The analysis identified significant regulatory gaps in the 2008 rule that could negatively impact communities adjacent to third party recyclers, including disproportionately impacting minority and low-income populations. The final rule includes several provisions that EPA states will result in both resource conservation and economic benefits by encouraging certain types of in-process recycling and remanufacturing:

* The rule addresses significant regulatory gaps in the 2008 rule by requiring off-site recycling at a facility with a RCRA permit or verified recycler variance, which will allow EPA and the states to verify that a facility has the equipment and trained personnel to manage the material safely, adequate financial assurance, is prepared to respond in case of an emergency, and can demonstrate that the recycling is not disposal in the guise of recycling. The new verified recycler exclusion also includes a public participation requirement for recyclers seeking variances, so that communities are notified prior to the start of recycling operations.
* The rule affirms the legitimacy of the pre-2008 exclusions, such as the scrap metal exclusion, and does not change the regulatory status of material legitimately recycled under these long-standing exclusions. The final rule includes a revised definition of legitimate recycling that re-affirms the legitimacy of in-process recycling and of commodity-grade recycled products, such as metal commodities. The rule retains the exclusion for recycling under the control of the generator, including recycling onsite, within the same company and through certain types of toll manufacturing agreements, which recognizes those generators who follow good business practices by taking responsibility for their recycling and maintaining control of their hazardous secondary materials.
* The final rule includes a targeted remanufacturing exclusion for certain higher-value hazardous spent solvents that are being remanufactured into commercial-grade products. This allows manufacturers to reduce the use of virgin solvents, resulting in both economic and environmental benefits, including energy conservation and reduced GHG emissions.

Under the final rule, generators, verified recyclers, and others may obtain exclusions from solid waste requirements if they meet four mandatory criteria: (1) the hazardous secondary material must provide a useful contribution to the recycling process or product; (2) the recycling process must produce a valuable product or intermediate; (3) the hazardous secondary material must be managed as a valuable commodity; and (4) the recycled product must be comparable to a legitimate product or intermediate. Regarding the fourth factor, EPA states that the examples that it used in the 2008 final rule preamble that explained how EPA envisions this factor working are still appropriate, including the following:

If paint made from reclaimed solvent contains significant amounts of **cadmium**, but the same type of paint made from virgin raw materials does not contain **cadmium**, it could indicate that the **cadmium** serves no useful purpose and is being passed though the recycling process and discarded in the product. Thus, the levels of **cadmium** would not be considered “comparable” and the paint would fail this legitimacy factor, unless the recycler can conduct the necessary analysis and prepare documentation stating why the recycling is still legitimate. In addition, the recycler would need to certify and provide notice to the implementing agency of this activity.

More information is available at <http://www.epa.gov/waste/hazard/dsw/rulemaking.htm>.

**EPA Signs Final Rule Concerning Disposal Of CCRs From Electric Utilities**

On December 19, 2014, EPA Administrator Gina McCarthy signed a final rule that will regulate the disposal of CCRs as solid waste under RCRA Subtitle D. According to the final rule, the available information “demonstrates that the risks posed to human health and the environment by certain CCR management units warrant regulatory controls.” The final rule, which establishes technical requirements for CCR landfills and surface impoundments, includes a number of changes from the proposal intended to provide greater clarity on technical requirements in response to questions received during the comment period. EPA states that the regulations address the risks from coal ash disposal -- leaking of contaminants into ground water, blowing of contaminants into the air as dust, and the catastrophic failure of coal ash surface impoundments. Additionally, the rule sets out recordkeeping and reporting requirements, as well as the requirement for each facility to establish and post specific information to a publicly-accessible website. The final rule also supports the responsible recycling of CCRs by distinguishing safe, beneficial use from disposal. The chemical constituents evaluated in the CCR risk assessment include **cadmium**. According to the final rule, current management practice of placing CCR waste in surface impoundments and landfills poses risks to human health and the environment in the range that OSWER typically regulates. The final rule states that, on a national scale, surface impoundments present higher risks than landfills. EPA identified risks to ecological receptors from exposures to aluminum, arsenic, barium, beryllium, boron, **cadmium**, chloride, chromium, selenium and vanadium through direct exposure to impoundment wastewater. EPA identified risks to residential receptors primarily from exposures to arsenic and molybdenum in ground water used as a source of drinking water, but also identified additional risks from boron, **cadmium**, cobalt, fluoride, mercury and thallium for specific subsets of national disposal practices. **Cadmium** is listed In Appendix IV, constituents for assessment monitoring. The final rule has not yet been published in the *Federal Register*. A pre-publication version and other information are available at <http://www2.epa.gov/coalash/coal-ash-rule>.

**TSCA ISSUES**

**Republicans Intend To Support TSCA Reform Legislation**

On January 13, 2015, Senator James Inhofe (R-OK), Chair of the Senate Environment and Public Works Committee, stated that he plans to push for TSCA reform legislation and that he favors a compromise bill prepared by Senators David Vitter (R-LA) and Tom Udall (D-NM) that was never formally introduced in the Senate. Inhofe stated: “It’s a good bill, and it will pass because we have the votes to do it. Whether it would experience a veto, I don’t know. In deference to [Lautenberg], there should be enough Democrats to join the Republicans.” According to Inhofe, the bill is basically “ready to go” and would take the previous approach with some minor modifications. Inhofe stated that moving the legislation was “right at the top” of his Committee agenda.

Representative John Shimkus (R-IL), Chair of the House Energy and Commerce Subcommittee on Environment and the Economy, stated on January 14, 2015, that he will seek to move his TSCA reform bill before the **August 2015** recess. Shimkus noted that while he would plan to move “maybe not as extensive” a bill as had been proposed previously, the change in leadership of the Senate Environment and Public Works Committee -- where Inhofe succeeded Senator Barbara Boxer (D-CA) -- would help the bill’s chances. Shimkus stated: “I’m not adverse to saying, ‘Here’s ours, here’s yours, and let’s go to conference, and let’s work out the differences.’ My hope is if we move a TSCA bill that’s not close to a Senate TSCA bill, that people shouldn’t just throw up their arms. Then [the way the process should work] you go to conference.”

**Elementis And EPA Provide Additional Briefs In Elementis Appeal Of Penalty For Failure To Disclose Public Health Risks Under TSCA**

There is no new publicly available information to report regarding Elementis’ appeal of EPA’s November 12, 2013, administrative decision ordering it to pay a penalty of $2,571,800 for failing to disclose information about substantial risk of injury to human health from exposure to hexavalent chromium. On October 30, 2014, EAB heard oral arguments. On November 17, 2014, Elementis and EPA provided additional briefs on whether the statute of limitations applies to TSCA Section 8(e). More information is available at <http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/23ac48fc6a55aa1885257c2200687473!OpenDocument> and in our November 28, 2014, Update.

**MISCELLANEOUS ISSUES**

**NYCDCA Petitions CPSC To Investigate 66 Chemicals, Including Cadmium And Cadmium Compounds**

NYCDCA issued a December 15, 2014, press release announcing that it petitioned the CPSC to investigate 66 chemicals of “high concern” and ban those chemicals in children’s products if evidence exists that the hazards of the chemicals lead to adverse health effects. **Cadmium** and **cadmium compounds** are listed in the petition. NYCDCA states that its petition “identifies chemicals that have been shown by numerous scientific studies to pose a significant risk to children.” According to NYCDCA’s press release, NYCDCA used the list developed by Washington State under its Children’s Safe Products Act, and that list “has been fully vetted by scientists in numerous peer-reviewed studies.” The press release and petition are available at <http://www.nyc.gov/html/dca/html/pr2014/pr_121514.shtml>.

**CSB Identifies Modernization Of PSM Regulations As Second “Most Wanted Safety Improvement”**

CSB announced on December 1, 2014, that to “Modernize U.S. Process Safety Management Regulations” is its newest “Most Wanted Safety Improvement,” concluding that implementation of key federal and state CSB safety recommendations will result in significant improvement of PSM regulations in the U.S. According to the CSB, despite some positive improvements in PSM regulations in the U.S., regulations have undergone little reform since their inception in the 1990s. CSB notes that President Obama’s August 1, 2013, Executive Order 13650, Improving Chemical Facility Safety and Security, resulted in both OSHA and EPA issuing RFIs. The CSB submitted a “comprehensive response” to each RFI, detailing needed improvements to the existing regulations, which are supported by a number of CSB ongoing and completed investigations. For PSM, the CSB recommended that OSHA:

* Expand the rule’s coverage to include the oil and gas exploration and production sector;
* Cover reactive chemical hazards;
* Add additional management system elements to include the use of leading and lagging indicators to drive process safety performance and provide stop work authority to employees;
* Update existing Process Hazard Analysis requirements to include the documented use of inherently safer systems, hierarchy of controls, damage mechanism hazard reviews, and sufficient and adequate safeguards; and
* Develop more explicit requirements for facility/process siting and human factors, including fatigue.

For RMP, in addition to PSM program-related enhancements mentioned above, the CSB recommended that EPA:

* Expand the rule’s coverage to include reactive chemicals, high and/or low explosives, and ammonium nitrate as regulated substances and to change enforcement policies for retail facilities;
* Enhance development and reporting of worst case and alternate release scenarios; and
* Add new prevention program requirements, including automated detection and monitoring, contractor selection and oversight, public disclosure of information, and, for petroleum refineries, attributes of goal-setting regulatory approaches.

More information is available at <http://www.csb.gov/csb-board-members-identify-modernization-of-process-safety-management-regulations-as-the-agencys-second-most-wanted-safety-improvement-/>.

**NIH Will Discontinue National Children’s Study**

On December 12, 2014, Francis S. Collins, M.D., Ph.D., NIH Director, issued a statement concerning the National Children’s Study. According to the statement, a working group of the Advisory Committee to the Director, which was charged with evaluating whether the National Children’s Study as currently outlined is feasible, concluded that while the overall goals of examining how environmental factors influence child health and development are meritorious and should continue to be a priority for future scientific support, the National Children’s Study as currently designed is not feasible. The National Children’s Study was envisioned as a longitudinal, observational study examining the effects of a broad range of environmental and biological factors on children’s health and development by following 100,000 children from the womb to age 21. Collins stated that, based on the working group’s findings and internal deliberation, he is accepting the findings that the National Children’s Study is not feasible. NIH will work with the Obama Administration and Congress to discontinue it. Collins concurs with the report’s conclusions that research addressing the links between the environment and child health and development is much needed, and that the specific research in this area should be initiated within the scientific community, use mechanisms that can evolve with the science, employ the use of a growing number of clinical research networks, and capitalize on research and technology advances that have developed since the inception of the study. NIH will consider the alternative approaches defined in the report in consultation with the broader scientific community. Collins’ statement is available at <http://nih.gov/about/director/12122014_statement_ACD.htm>.

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

On December 5, 2014, the SEC filed its answer to 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. According to the SEC, the court lacks jurisdiction over the claims raised in the complaint; the complaint fails to state a claim upon which relief can be granted; the SEC has exercised due diligence in working to issue a final rule implementing Section 1504 while balancing its other statutory obligations, and thus has not unlawfully withheld or unreasonably delayed the promulgation of a final rule; and the SEC has not failed to perform a nondiscretionary duty. The SEC asked the court to deny Oxfam’s requests for relief, dismiss the complaint with prejudice, and grant the SEC such other relief as the court may deem appropriate.

On December 29, 2014, the parties filed a joint motion for the following stipulated briefing schedule on motions for summary judgment:

* Oxfam shall file its motion for summary judgment no later than January 23, 2015;
* The SEC shall file its opposition to Oxfam’s motion for summary judgment and cross-motion for summary judgment no later than **February 20, 2015**, unless Oxfam’s motion for summary judgment relies on matters beyond the administrative record or public records, on which limited discovery by the SEC may be appropriate, in which case:
* The SEC must request such discovery within seven days of Oxfam’s filing of its motion for summary judgment;
* Oxfam must respond to such discovery request within the time allowed under the FRCP;
* If any dispute arises with respect to the discovery requested, the parties agree to confer in a good faith effort to resolve the dispute within five business days of the objection being made to the discovery request;
* If the dispute is not resolved, the SEC may file a motion to compel with the court; and
* The deadline for the SEC filing its opposition/cross-motion for summary judgment shall be extended until 21 days after the later of (i) completion of any discovery, or (ii) the date of the court’s order regarding any motion to compel discovery.
* Oxfam shall file its reply brief on its motion for summary judgment and opposition to the SEC’s cross-motion for summary judgment no later than 14 days after the SEC files its opposition/cross-motion for summary judgment, unless the SEC’s opposition/cross-motion for summary judgment relies on matters beyond the administrative record or public records, on which limited discovery by Oxfam may be appropriate, in which case:
* Oxfam must request such discovery within seven days of the SEC’s filing of its opposition/cross-motion for summary judgment;
* The SEC must respond to such discovery request within the time allowed under the FRCP;
* If any dispute arises with respect to the discovery requested, the parties agree to confer in a good faith effort to resolve the dispute within five business days of the objection being made to the discovery request;
* If the dispute is not resolved, Oxfam may file a motion to compel with the Court; and
* The deadline for Oxfam filing its reply brief/opposition to the SEC’s cross- motion shall be extended until 21 days after the later of (i) completion of any discovery sought, or (ii) the date of the court’s order regarding any motion to compel discovery.
* The SEC shall file any reply brief on its cross-motion for summary judgment no later than 14 days after Oxfam files its reply/opposition to the SEC’s cross-motion for summary judgment.

On January 5, 2015, the court issued an order adopting the proposed schedule.

Oxfam filed its motion for summary judgment on January 23, 2015. Oxfam argues that APA Section 706(1) requires the reviewing court to “compel agency action unlawfully withheld or unreasonably delayed.” According to Oxfam, the vacatur and remand of the SEC’s promulgated rule reinstates the status quo ante before the rule took effect and therefore the SEC’s violation of the April 2011 rulemaking deadline. The SEC’s failure to meet that deadline constitutes agency action “unlawfully withheld,” and the SEC’s prolonged failure to meet that deadline also presents an unequivocal case of agency action “unreasonably delayed,” similarly requiring an order compelling the SEC to act. Oxfam maintains that the SEC “has no administrative authority to reorder the rulemaking priorities established by Congress,” and “[i]t does have ample experience and a developed record from the original rulemaking to promulgate a new rule promptly and efficiently.” Oxfam requested oral argument on the motion.

**Meeting In Advance Of Ninth Session Of Codex Committee On Contaminants In Food Will Discuss Draft Maximum Levels For Cadmium In Chocolate**

On January 14, 2015, USDA published a *Federal Register* notice announcing that the USDA, FDA, and DHHS are sponsoring a public meeting on **February 23, 2015**. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions that will be discussed at the Ninth Session of the Codex Committee on Contaminants in Food of the Codex Alimentarius Commission, which will be held **March 16-20, 2015**, in New Delhi, India. The notice lists items on the agenda for the Ninth Session that will be discussed during the public meeting, including “Proposed draft maximum levels for **cadmium** in chocolate and Cocoa-derived products.” Call-in information for the meeting is available at <http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings/public-meetings>.

**STATE ISSUES**

***California***

**Cadmium Included In Proposed Proposition 65 Warning Requirement Regulations**

As reported in our January 16, 2015, e-mail, OEHHA proposed to repeal the current Article 6 regulations and adopt new regulations in Article 6 in Title 27 of the California Code of Regulations. According to OEHHA, the new regulations would further the “right-to-know” purposes of Proposition 65 and provide more specific guidance on the content of safe harbor warnings for a variety of exposure situations, and corresponding methods for providing those warnings. The new regulations would also add a specific section addressing the relative responsibilities for providing warnings for businesses in the chain of commerce versus retail sellers of a given product. Section 25602 of the proposed regulations states that a warning meets the clean and reasonable warnings requirements if the name or names of the chemicals listed are included in the text of the warning, to the extent that an exposure to that chemical is reasonably calculated to occur at a level that requires a warning. The listed chemicals include **cadmium**. OEHHA will hold a public hearing on **March 25, 2015**. Written comments are due **April 8, 2015**. More information is available at <http://www.oehha.ca.gov/prop65/CRNR_notices/WarningWeb/NPR_Article6.html>.

***Connecticut***

**Task Force On Cadmium In Children’s Jewelry Held Meetings In December And January**

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 December 8, 2014, and January 5, 2015. Under the Act Concerning **Cadmium** Levels in Children’s Jewelry, the Task Force’s report was due January 15, 2015, to the joint standing committees of the General Assembly. More information is available at [http://www.cga.ct.gov/gl/taskforce.asp?TF=20140701\_Task Force on Cadmium in Children’s Jewelry](http://www.cga.ct.gov/gl/taskforce.asp?TF=20140701_Task%20Force%20on%20Cadmium%20in%20Children's%20Jewelry). More information regarding the Act Concerning **Cadmium** Levels in Children’s Jewelry is available in our July 28, 2014, Update.

**Act Concerning Chemicals Of High Concern For Children Introduced In The House**

H.B. 5653 would require the Commissioner of Public Health, in consultation with the Commissioners of Energy and Environmental Protection and Consumer Protection, to create and maintain not later than **January 1, 2016**, a list of priority chemicals that are of high concern for children after considering a child’s or developing fetus’s potential for exposure to each chemical. The Commissioner of Public Health may include on the list priority chemicals that meet one or more of the following criteria: (1) credible biomonitoring studies have demonstrated the presence of the priority chemical in human umbilical cord blood, breast milk, urine or other bodily tissues or fluids; (2) the priority 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 priority chemical has been added to or is present in a consumer product used or present in the home. The bill was referred to the Joint Committee on Children on January 21, 2015.

***Florida***

**Senate Bill Would Require Department Of Health To Publish List Of Chemicals Of High Concern**

S.B. 374, which was introduced in the Senate on January 16, 2015, provides a statement of public policy regarding the identification of chemicals of high concern and the presence of such chemicals in consumer products intended for use by pregnant women and children. The bill would require the Florida Department of Health to publish on its website, by **January 1, 2016**, an initial list of at least 50 chemicals of high concern. A chemical may be designated as a chemical of high concern if the Department determines that the chemical meets the following criteria:

* Based on credible scientific evidence, the chemical is identified by a governmental agency 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 persistent, bioaccumulative, and toxic.

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

On January 23, 2015, the bill was referred to the Senate Committees on Health Policy, Appropriations Subcommittee on Health and Human Services, and Fiscal Policy.

***Mississippi***

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

Beginning July 1, 2014, under H.B. 175, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use a children’s product or product component containing certain metals, including **cadmium** at more than .004 percent by weight (40 ppm).

***Missouri***

**House Resolution Calls For Study Of Operation Large Coverage**

House C.R. 13 calls for the U.S. Army to hold town hall sessions in the St. Louis region to explain the testing that occurred as a result of Operation Large Area Coverage in the 1950s and 1960s in St. Louis. The resolution also calls for EPA and DHHS to conduct a study to track the health effects on populations exposed to Operation Large Area Coverage testing. The resolution states that, during the 1950s and 1960s, as part of a series of Cold War experiments, the U.S. Army dusted chosen American cities from coast to coast with a fine powder of a fluorescent, potentially toxic chemical. The powder scattering was part of Operation Large Area Coverage, a series of tests intended to assess the threat of biological attacks by simulating the airborne dispersion of germs. According to the resolution, the experiments exposed large portions of the U.S., and parts of Mexico and Canada, “to flurries of a synthesized chemical called **zinc cadmium sulfide**.”

***New York***

**Children’s Product Safety Act Introduced In Westchester County**

In December 2014, the Westchester County Board of Legislators’ Majority Leader Catherine Borgia (D-Ossining) introduced legislation requiring retailers to test toys for certain chemicals, including **cadmium**, to prevent contaminated toys from reaching county residents. Borgia also announced a study entitled Toxic Toys in Westchester County, which details the presence of chemicals, including **cadmium**, in children’s products. According to the Board of Legislators’ December 10, 2014, press release, **cadmium** was found in eight products -- a keychain, jewelry, clothing, toy cars, a toy train, and a penlight. The December 10, 2014, press release is available at <http://westchesterlegislators.com/newsroom/2582-bol-majority-leader-borgia-introduces-children-s-product-safety-act.html>.

**State Senator Releases Report On Chemicals Of Concern In Children’s Products**

State Senator Jeff Klein (D-Bronx/Westchester) released on December 18, 2014, an investigative report entitled *Toxic Tidings: Chemicals of Concern in Children’s Products*. Klein warned families “of toxins discovered in nearly two dozen children’s toys and products sold in stores across New York City,” and called for passage of the Child Safe Products Act to ensure the safety of children’s products. The report examined gifts found in Claire’s, Icing, 99-cent stores, and discount toy retailers across New York City. Klein’s press release states that the findings include:

* A Hello Kitty charm necklace contained cobalt; a Hello Kitty ring set contained **cadmium** and cobalt; and a Hello Kitty charm bracelet contained antimony and cobalt;
* A Dora the Explorer pencil case contained **cadmium** and lead;
* Spongebob Squarepants briefs contained cobalt and a Spongebob Squarepants pencil case contained **cadmium** and lead; and
* A set of Gerber onesies, purchased at Burlington Coat Factory, contained **cadmium** and cobalt.

Klein’s press release is available at <http://www.nysenate.gov/press-release/tis-season-toxic-toys-state-senator-klein-investigates-harmful-holiday-gifts>.

**Albany County Passes Toxic-Free Toys Act**

On January 7, 2015, Albany County Executive Daniel McCoy signed the Toxic-Free Toys Act, which prohibits the sales of children’s products or apparel that contain benzene, lead, mercury, antimony, arsenic, **cadmium**, and cobalt within Albany County. The prohibition does not apply to used products sold or distributed for free at secondhand stores, yard sales, on the internet or donated to charities, or to protective sporting equipment designed to prevent injury. The ban will take effect **September 2016**.

**Bills Would Amend Regulations Concerning Hazardous Toys**

A.B. 494 and S.B. 1235 would amend the general business law regulations in relation to hazardous toys and other articles intended for use by children. Under the amendments, a toy would be contaminated with a toxic substance if it meets certain conditions, including if it is coated with paints and lacquers containing soluble compounds of several heavy metals, including **cadmium**. Compounds would be considered soluble if quantities in excess of 0.1 percent are dissolved by five percent hydrochloric acid after stirring for ten minutes at room temperature.

**Senate Bill Would Prohibit Use Of Cadmium In Brake Friction Material**

S.B. 996 would limit the use of certain substances, including **cadmium**, in brake friction material and sets certain deadlines for compliance with such limits. Beginning **January 1, 2018**, the bill would prohibit the sale of brake friction material containing **cadmium and its compounds** in excess of 0.01 percent by weight.

**Senate Bill Would Regulate Cadmium-Added Novelty Consumer Products**

S.B. 1126 would amend the environmental conservation law, in relation to **cadmium**-added novelty consumer products. A **cadmium**-added novelty consumer product would be defined as a product intended mainly for personal use or adornment that contains **cadmium** in an amount equal to or in excess of .0075 percent by weight. **Cadmium**-added novelty consumer products would include but not be limited to jewelry, toys, and ornaments. Beginning **June 1, 2017**, no person would be allowed to sell, offer for sale, or distribute free of charge in the state any **cadmium**-added novelty consumer product.

**Bills Would Fund Public Health Study On Installation Of Crumb Rubber In Synthetic Turf**

A.B. 1634 and S.B. 1735 state that hazardous components in crumb rubber, which is being used as a component of synthetic turf and mulch, include **cadmium**. The bills state that a comprehensive public health study on the potential threats associated with the use of synthetic turf is warranted, and that it is consistent with public policy to require such a study to be undertaken immediately.

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

S.B. 1890 would regulate **cadmium** in certain substrate components of children’s jewelry. Under the bill, no children’s jewelry would be sold or distributed that contains **cadmium** in accessible metal or plastic substrate components exceeding the levels prescribed in the bill. Children’s jewelry would be defined as jewelry designed and intended primarily for use by children 12 years of age or younger to be worn as an item of personal ornamentation, and does not include toys, accessories, apparel, footwear, or any other product whose purpose is primarily functional and not ornamental.

***Oregon***

**Senate Bill Would Require Oregon Health Authority To Establish List Of Designated High Priority Chemicals Of Concern**

S.B. 478 would require the Oregon Health Authority to establish and maintain a list of designated high priority chemicals of concern for children’s health used in children’s products, and to review and revise the list periodically. The list would include chemicals that are listed on the Washington State Department of Ecology’s Reporting List of Chemicals of High Concern to Children, which includes **cadmium** and **cadmium compounds**. The bill would also require the Oregon Health Authority to post certain information on its website; require manufacturers of certain children’s products to provide notice regarding listed chemicals; and require certain manufacturers to take additional actions after certain dates to comply with notice requirement.

***Vermont***

**Attorney General Settles Consumer Protection Lawsuit Against Dollar Tree**

The Vermont Attorney General announced on January 6, 2015, a settlement with Dollar Tree Stores, Inc., that “will permanently keep all jewelry off its shelves in Vermont” and require Dollar Tree to pay $42,500. The lawsuit alleged that Dollar Tree failed to comply with a 2010 settlement under the Vermont Consumer Protection Act that resolved claims that Dollar Tree had sold products containing high amounts of lead and **cadmium**. According to the 2014 complaint, Dollar Tree violated a provision in the earlier settlement barring it from selling any items “commonly understood to be jewelry” by selling jewelry, including rings, earrings, bracelets, and necklaces, in its stores in Barre, Bennington, Burlington, Derby/Newport, and Rutland. Under the new settlement, “jewelry” is defined to include necklaces, bracelets, rings, earrings, brooches, and anklets principally designed and intended as an ornament to be worn on the human body, regardless of the material from which they are made. The Attorney General’s press release is available at <http://ago.vermont.gov/focus/news/vermont-attorney-general-settles-consumer-protection-lawsuit-against-dollar-tree.php>.

***Washington***

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

H.B. 1049 and S.B. 5021 would amend the regulations concerning **cadmium** in children’s jewelry to allow the manufacture, sale, and distribution of children’s jewelry that meets ASTM F2923-14, as approved October 1, 2014. The Senate Committee on Energy and Environment and Telecommunications held a public hearing on January 14, 2015. The House Committee on Environment held a public hearing on January 15, 2015.

**INTERNATIONAL ISSUES**

**AUSTRALIA**

**MP Calls For Retesting Of Parks After Study Found Potentially Toxic Levels Of Metals, Including Cadmium**

Mundingburra MP David Crisafulli asked Environment and Heritage Protection Minister Andrew Powell to retest Townsville parks after a NQCC-commissioned study found potentially toxic levels of contaminants at the sites. Macquarie University Professor of Environmental Science Mark Taylor, who was commissioned by NQCC to conduct a five-day study of Townsville parks, reported that he found potentially toxic levels of lead, arsenic, nickel, and **cadmium** on playground equipment at numerous sites. Playground equipment at four playgrounds was tested for contaminated dust, with testing showing that the levels of lead, arsenic, nickel, and **cadmium** collected in the dust exceeded “trigger levels” for mining locations in Queensland. Taylor’s recommendations included identifying the cause of contamination so it could be reduced and preferably eliminated, covering trains transporting ore, enclosing loading and unloading operations, and washing playgrounds more regularly to reduce the risk. In addition to the state government review of the findings, the Port of Townsville is conducting its own review, which it stated it will release once completed.

**CANADA**

**Canada Announces Enhanced CSR Strategy Intended To Strengthen Canada’s Extractive Sector Abroad**

The Honorable Ed Fast, Minister of International Trade, announced on November 14, 2014, the enhanced CSR strategy entitled *Doing Business the Canadian Way: A Strategy to Advance CSR in Canada’s Extractive Sector Abroad*. According to the press release, the enhanced CSR strategy “demonstrates the Government of Canada’s commitment to ensuring Canadian companies continue to exhibit the highest CSR standards and best practices while operating abroad.” Key elements of the enhanced CSR strategy include:

* Making, for the first time, the Government of Canada’s “economic diplomacy” conditional on a Canadian company’s alignment with the enhanced CSR strategy;
* Withdrawing Government of Canada support in foreign markets as a result of a company’s non-participation in the dispute resolution mechanisms of the Office of the CSR Counsellor or Canada’s National Contact Point for the OECD Guidelines for Multinational Enterprises;
* Increasing support and training for CSR initiatives and services at Canada’s diplomatic network and missions abroad to ensure a consistently high level of CSR-related services for Canadian businesses and local networks and communities;
* Enhancing the CSR counsellor’s mandate to work with Canadian companies to ensure CSR guidelines and best practices are reflected and incorporated in their operating approach abroad;
* Re-focusing the role and efforts of the Office of the CSR Counsellor on working to prevent, identify, and resolve disputes in their early stages;
* Referring disputes requiring formal mediation to the Canadian National Contact Point, the robust and proven dialogue facilitation function guided by the OECD Guidelines for Multinational Enterprises active in 46 countries; and
* Including benchmark CSR guidelines released by international organizations since 2009 and keeping flexibility to build awareness of CSR guidelines developed in Canada.

The press release is available at <http://www.international.gc.ca/media/aff/news-communiques/2014/11/14a.aspx?lang=eng>.

**CHINA**

**NGO Report Claims Xiangjiang River Is Polluted With Heavy Metals**

On November 15, 2014, the Changsha Shuguang Environmental Protection Charity Center issued a report claiming that the arsenic level is 715 times higher and the **cadmium** level 206 times higher in many parts of the Xiangjiang than recommended levels. Gao Liang, the main investigator for the NGO, stated: “My team spent more than 500 days investigating the pollution in 10 cities along the river from September 2013 and compiled the report using 164 samples of soil, rice, water and other substances.” The goals of the NGO’s investigation were to collect first-hand data, establish a third-party database, and publicly issue information on the heavy metal pollution to raise public awareness of environmental protection. Gao stated that he and his colleagues hope the government will issue more accurate and detailed data on the heavy metal pollution to let the public know the real situation. Xie Li, Deputy Director of the Hunan Environmental Protection Department, stated that the NGO did not take standardized samples and the data it published were inaccurate. According to Xie, the NGO “was irresponsible to issue such data, which should be officially issued by the provincial Environmental Protection Department.”

***Economic Information Daily* Reports That Experts Claim Excess Heavy Metals Endanger Agriculture**

The *Economic Information Daily*, citing experts at the 4th China Forum on Environmental Remediation Development Strategy, states that severe soil contamination threatens agricultural safety in some parts of China. During the October 28-29, 2014, Forum, Wei Fusheng, an academic from the Chinese Academy of Engineering, stated that the main pollutants are **cadmium**, arsenic, lead, mercury, chromium, and copper. The China National Environmental Monitoring Centre recently sampled 4,910 point locations in vegetable cultivation areas, 1,188 of which were polluted, accounting for 24.3 percent of the sampled locations. Of all pollutants, heavy metal pollution accounted for 17.5 percent. According to experts, soil remediation should be achieved through tougher laws and higher environmental standards.

**Five Industrial Areas Failing To Control Heavy Metals Emissions, Including Cadmium**

According to MEP’s review of annual emissions data, in 2013 heavy metals emissions rose in Hunan, Guizhou, Shaanxi, and Yunnan provinces, as well as the Inner Mongolia autonomous region. Xinhua, the state-run news agency, reported on December 22, 2014, that due to a failure to control emissions of lead, mercury, **cadmium**, chromium, arsenic, and other heavy metals in those areas, MEP is considering withholding special central government funding for managing heavy metals pollution. MEP noted that heavy metals emissions overall have decreased by 10.5 percent compared to 2007 across the entire country. In a December 17, 2014, statement regarding the issue of controlling heavy metals emissions, MEP stated that although progress has been made, China may not be able to meet 12th Five-Year Plan (2010-**2015**) targets on heavy metals emissions reductions by the end of **2015**. According to MEP, funds to treat heavy metals pollution primarily come from the central government, while local governments generally have not taken the initiative to pay for more treatment. MEP’s December 17, 2014, statement is available, in Chinese, at <http://www.mep.gov.cn/gkml/hbb/qt/201412/t20141217_293091.htm>.

**MEP Releases Draft National Standards For Soil Quality For Public Comment**

MEP announced on January 14, 2015, the release of two revised draft national standards for soil quality (GB 15618-1995) for public comment. The draft agricultural soil quality standard would apply to arable lands, orchards, tea plantations, and grazing land. Responsibility for monitoring and enforcing quality would primarily fall to local governments. The draft standard would limit **cadmium** allowed in arable soil due to possible human health risks. The draft standard would set different allowable levels, depending on what the land is used for, ranging from 0.3 milligrams per kilogram of soil to twice that amount. The draft standard for assessing soil at development sites would depend on the type of construction, with more stringent standards where homes would be built. Landowners and developers would be responsible for testing soil quality when conducting environmental impact assessments, with local governments in a supervisory role. Comments on the draft standards are due **February 10, 2015**.

**HONG KONG**

**CFS Finds Raw Oyster Sample To Contain Cadmium**

CFS announced on December 22, 2014, that a sample of raw oyster taken at a food factory was found to be contaminated with **cadmium**. CFS ordered the food factory concerned to stop selling the affected product. According to a CFS spokesperson, test results showed that **cadmium** was present at a level of 3.2 ppm, exceeding the legal limit of 2.0 ppm. Under the Food Adulteration (Metallic Contamination) Regulations (Cap 132V), any person who sells food with metallic contamination above the legal limit of the food will be prosecuted and is liable upon conviction to a fine of $50,000 and imprisonment for six months. CFS will continue to closely monitor the situation and take appropriate follow-up action, including suspending import of, and stepping up surveillance on, raw oysters from the same harvest area at import and retail levels.

**INDIA**

**Public Interest Litigation Seeks Ban On Production And Sale Of Vegetables Grown Along Railway Tracks**

The Bombay high court has issued notices to the Union Government and the Indian Railways on a public interest litigation that alleges high toxic levels in vegetables grown on farms along railway tracks in Mumbai. The litigation, which also names the Maharashtra Pollution Control Board as a party, was filed by Maza Bharat Samajik Sanstha. The petitioner seeks a ban on the production and sale of vegetables grown along the tracks on Central Railway, Western Railway, and the Harbor Line. Railway authorities allowed the farms as a way to prevent encroachments. The vegetables are sold in makeshift vegetable markets outside stations including Dadar, Parel, Byculla, Kanjurmarg, Borivli, Malad, Andheri, Mira Road, Dombivli, Kalyan, and Panvel. The petitioner cites a private study that found the presence of heavy metals such as zinc, **cadmium**, lead, cobalt, chromium, and arsenic in samples of vegetables grown along railway tracks in Panvel and Juinagar. The case has been scheduled for further hearing on **February 20, 2015**.

**SOUTH KOREA**

**K-REACH Presidential And Ministerial Decrees Published**

The Presidential Decree implementing K-REACH was published in the December 9, 2014, *Official Gazette*. The Presidential Decree addresses the obligations of manufacturers and importers of existing substances subject to registration; substances exempt from registration; substances that qualify for simplified registration; and the criteria for the designation of substances that can be made subject to authorization. In addition, the Presidential Decree addresses the appointment and responsibilities of members of the newly created Chemical Substance Evaluation Committee; operation of the chemical substance information processing system; and the role of a green chemical center. The Presidential Decree is available, in Korean, at <http://gwanbo.korea.go.kr/dailyGazetteView.gz?ebookSeq=00000000000000001417997517867000&searchDate=&currPage=&linePerPage>.

The Ministerial Decree concerning the implementation of K-REACH and the CCA, which will replace the TCCA, was published in the December 24, 2014, *Official Gazette*. The Ministerial Decree addresses the following key points:

* Annual reporting of substance tonnages. The reporting obligation applies to new and existing substances produced or imported in annual quantities of one tonne or more;
* A list of designated existing substances subject to registration, which will be announced every three years;
* The assessment of registration dossiers and requirements for updating registration dossiers;
* Information requirements for applications for exemptions from registration;
* Joint submission and use of data;
* Hazard assessments of registered substances to be conducted by MOE;
* Templates for registration, annual reporting, notifications, exemptions, and CBI are appended to the decree;
* Details on the notification of products containing hazardous substances; and
* The qualification and requirements for only representatives.

The Ministerial Decree is available, in Korean, at <http://gwanbo.korea.go.kr/dailyGazetteView.gz?ebookSeq=00000000000000001419236525042000&searchDate=&currPage=&linePerPage>.

**UNEP**

**UNEP States Report Makes Strong Business Case For Using Safer Chemicals In Products And Supply Chains**

UNEP released on December 15, 2014, a report entitled *The Business Case for Knowing Chemicals in Products and Supply Chains*, which highlights the benefits to companies when they invest in an “Active Strategy” for chemicals management, proactively managing the chemicals in their products and supply chains to stay ahead of regulatory and market demands. UNEP prepared the report in collaboration with the environmental NGO Clean Production Action. UNEP released the report at the SAICM Open-Ended Working Group meeting in Geneva, Switzerland. UNEP states that the report compares companies with differing chemical management strategies, concluding that those with Active Strategies reduce their risk to damaging chemicals “surprises” and generate long-term value through increased sales, enhanced brand reputation, and well-managed supply chains. According to UNEP, the report demonstrates how companies with “Passive Strategies” can face big fines, loss of market share and value, and tarnished reputations if an unknown hidden liability of hazardous chemicals in their products comes to public light. Conversely, the report states, proactive businesses that adopt an Active Strategy reap the rewards of their efforts: they avoid fines and product recalls, are well-prepared for new government regulations, and respond quickly to ever-growing market demands to know and control the chemicals in their products. Many sectors -- apparel, footwear, outdoor industry, automotive, electronics, cleaning, personal care, building, and retail -- have leaders advocating and building active chemicals management strategies, and the necessary complementing information systems. The report notes that progress is not uniform, however, and many sectors do not have sufficient systems in place to enable reliable exchange of the chemical content information that is needed to meet current and future regulatory and customer demands. The report is available at <http://www.unep.org/chemicalsandwaste/Portals/9/CiP/Documents/CiPBusinessCase_Advance.pdf>.

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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

**APA** -- Administrative Procedure Act

**CAA** -- Clean Air Act

**CBI** -- Confidential Business Information

**CCA** -- Chemicals Control Act

**CCR** -- Coal Combustion Residual

**CFS** -- Center for Food Safety

**CPSC** -- Consumer Product Safety Commission

**CSB** -- United States Chemical Safety Board

**CSR** -- Corporate Social Responsibility

**CWA** -- Clean Water Act

**DHHS** -- United States Department of Health and Human Services

**EAB** -- Environmental Appeals Board

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

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

**FACA** -- Federal Advisory Committee Act

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

**FRCP** -- Federal Rules of Civil Procedure

**GHG** -- Greenhouse Gas

**ICdA** -- International Cadmium Association

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

**MEP** -- Ministry of Environmental Protection

**MOE** -- Ministry of Environment

**MP** -- Member of Parliament

**NGO** -- Non-Governmental Organization

**NIH** -- National Institutes of Health

**NQCC** -- North Queensland Conservation Council

**NYCDCA** -- New York City Department of Consumer Affairs

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

**OEM** -- Office of Emergency Management

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

**ppm** -- Part Per Million

**PSM** -- Process Safety Management

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

**RFI** -- Request for Information

**RMP** -- Risk Management Program

**SAICM** -- Strategic Approach to International Chemicals Management

**SDWA** -- Safe Drinking Water Act

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

**TCCA** -- Toxic Chemical Control Act

**TRI** -- Toxics Release Inventory

**TSCA** -- Toxic Substances Control Act

**UNEP** -- United Nations Environment Program

**USDA** -- United States Department of Agriculture

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)