#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

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

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**FEDERAL ISSUES**

**CWA/SDWA ISSUES**

**EPA Proposes Changes To Pollutant Analysis Methods**

EPA published on February 19, 2015, proposed changes to pollutant analysis methods that are used by industries and municipalities to analyze the chemical, physical, and biological components of wastewater and other environmental samples that are required by CWA regulations. EPA states that it designed the proposed changes to increase flexibility for the regulated community, improve data quality, and update CWA methods to keep current with technology advances and analytical methods science. The proposed changes include revisions to current EPA methods and new and/or revised methods published by voluntary consensus standard bodies; the approval of certain methods reviewed under the alternate test procedures program and clarification of the procedures for EPA approval of nationwide and limited use alternate test procedures; and amendments to the procedure for determination of the method detection limit to address laboratory contamination and to account better for intra-laboratory variability. The list of approved inorganic test procedures parameters includes **cadmium**. Comments are due **April 20, 2015**.

**TSCA ISSUES**

**Competing TSCA Bills Introduced In The Senate**

On March 10, 2015, Senators Tom Udall (D-NM) and David Vitter (R-LA) introduced the [Frank R. Lautenberg Chemical Safety for the 21st Century Act](https://www.congress.gov/bill/114th-congress/senate-bill/697) (S. 697). The bill builds on and strengthens the 2013 bill proposed by the late Senator Frank Lautenberg (D-NJ) by ensuring that cost cannot be considered in determining the safety of a chemical, defining “vulnerable populations” and requiring their protection, strengthening deadlines for the EPA to evaluate existing chemicals, adding new structure and requirements for CBI claims, and mandating that new chemicals cannot be manufactured until EPA has approved them. Fifteen cosponsors joined Udall and Vitter to introduce the bill, including seven Democrats and eight Republicans. More information regarding the bill is available in B&C®’s March 13, 2015, memorandum, “[Detailed Analysis of Frank R. Lautenberg Chemical Safety for the 21st Century Act: Significant Changes Made to Udall-Vitter Bill](http://www.lawbc.com/regulatory-developments/entry/tsca-reform-detailed-analysis-of-frank-r.-lautenberg-chemical-safety-for-th).” The Senate Committee on Environment and Public Works held a hearing on the bill on March 18, 2015. More information regarding the hearing is available in B&C’s March 19, 2015, memorandum, “[Senate Committee Holds Hearing on Frank R. Lautenberg Chemical Safety for the 21st Century Act](http://www.lawbc.com/regulatory-developments/entry/tsca-reform-senate-committee-holds-hearing-on-frank-r.-lautenberg-chemical).”

On March 12, 2015, Senators Barbara Boxer (D-CA), Ranking Member of the Senate Environment and Public Works Committee, and Edward Markey (D-MA), Ranking Member of the Subcommittee on Superfund, Waste Management, and Regulatory Oversight, introduced the [Alan Reinstein and Trevor Schaefer Toxic Chemical Protection Act](https://www.congress.gov/bill/114th-congress/senate-bill/725) (S. 725). The bill is intended to protect children and vulnerable populations from harmful toxins, provide stronger safety standards and quicker safety reviews of chemicals, and ensure exposure from chemical spills and leaks are addressed. The bill also requires EPA to act quickly to consider a ban on asbestos, and it maintains states’ rights to protect people from dangerous toxic chemicals. On March 24, 2015, B&C published a memorandum, [Detailed Analysis of the Alan Reinstein and Trevor Schaefer Toxic Chemical Protection Act](http://www.lawbc.com/regulatory-developments/entry/tsca-reform-detailed-analysis-of-the-alan-reinstein-and-trevor-schaefer-tox), which compares the bills.

**EAB Finds ALJ Erred In Finding Elementis Liable For Failing To Submit Study**

The EAB issued a final decision and order in [Elementis’ appeal](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/f22b4b245fab46c6852570e6004df1bd/23ac48fc6a55aa1885257c2200687473!OpenDocument) 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. The ALJ concluded that Elementis failed to report to EPA information contained in an occupational epidemiology study on hexavalent chromium. Elementis challenged the ALJ’s decision, arguing that EPA was time-barred by the statute of limitations and the ALJ erred on the merits because Elementis was exempt from the TSCA Section 8(e) reporting obligation. The EAB held that while the ALJ correctly concluded that under the continuing violations doctrine EPA timely filed its complaint, the ALJ erred in finding Elementis liable for failing to submit the epidemiology study to EPA. The EAB reversed the ALJ’s judgment and penalty against Elementis.

**MISCELLANEOUS ISSUES**

**ACGIH® 2015 BEI® Under Study List Includes Cadmium And Inorganic Compounds**

As reported in our February 6, 2015, e-mail, on January 30, 2015, ACGIH® recently released the 2015 under study list for its BEI® Committee. The 2015 [BEI® Committee under study list](http://www.acgih.org/tlv/CSTLVStdy.htm) includes **cadmium and inorganic compounds**. Other issues under study include nanoscale primary particle notation. ACGIH® will update the under study list by **July 31, 2015**, into a two-tier list:

* Tier 1 consists of chemical substances and physical agents that may move forward as an NIC or NIE in **2016**, based on their status in the development process; and
* Tier 2 entries are substances that will not move forward, but will either remain on or be removed from the under study list in **2016**.

More information regarding the BEI® development process is available [online](http://www.acgih.org/TLV/DevProcess.htm).

**CDC Issues Updated Tables For *Fourth National Report On Human Exposure To Environmental Chemicals***

In February 2015, CDC issued [*Updated Tables, February 2015*](http://www.cdc.gov/exposurereport/) to the *Fourth National Report on Human Exposure to Environmental Chemicals*. CDC states that the *Updated Tables, February 2015* provide nationally representative biomonitoring data that have become available since the publication of the *Fourth National Report on Human Exposure to Environmental Chemicals* in 2009. The *Updated Tables, February 2015* present recently released data from NHANES 2005-2006, 2007-2008, 2009-2010, and 2011-2012, and also NHANES 2005-2006 and 2007-2008 pooled samples using the corrected NHANES sampling weights. The *Updated Tables, February 2015* present data for a total of 265 chemicals, of which 65 are new and 139 have updated data since the *Updated Tables, August 2014*. **Cadmium** is included in the categories “Metals and Metalloids” and “Metals and Metalloids (Adult Cigarette Smokers and Nonsmokers: Special Sample).”

**Hardrock Mining Reform And Reclamation Act Introduced In House**

Representative Raul Grijalva (D-AZ), Ranking Member of the House Natural Resources Committee, introduced the Hardrock Mining Reform and Reclamation Act of 2015 (H.R. 963) on February 13, 2015. According to Grijalva’s [press release](http://democrats.naturalresources.house.gov/press-release/ranking-member-grijalva-introduces-mining-reform-bill-rep-tonko-rolls-out-gao-report), the bill would:

* Establish an eight percent royalty on new mines and a four percent royalty on existing mines;
* Use those royalties and money raised by newly established pollution fees to clean up abandoned hardrock mine lands;
* End the “antiquated” patenting system that allows companies to purchase mineral-containing public land for as little as $2.50 per acre;
* Establish strong reclamation standards and bonding requirements intended to ensure taxpayers do not pay for cleanups if a company “skips town” or goes bankrupt;
* Provide clear authority to federal land managers to reject a proposed mine if it would unduly degrade public lands or resources;
* Protect wilderness study areas, roadless areas, and wild and scenic rivers from mining; and
* Empower state, local, and tribal governments to petition federal authorities to withdraw certain areas from mining to protect drinking water, wildlife habitat, cultural and historic resources, or other important values.

The bill was referred to the Committees on Natural Resources and Transportation and Infrastructure.

**House Passes Secret Science Reform Act**

The House passed the [Secret Science Reform Act of 2015](https://www.congress.gov/bill/114th-congress/house-bill/1030/) (H.R. 1030) on March 18, 2015, by a vote of 241 to 175. The bill would amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to prohibit EPA from proposing, issuing in final, or disseminating a covered action unless all scientific and technical information relied on to support such action is the best available science, specifically identified, and publicly available online in a manner sufficient for independent analysis and substantial reproduction of research results. A covered action includes a risk, exposure, or hazard assessment, criteria document, standard, limitation, regulation, regulatory impact analysis, or guidance. Scientific and technical information includes: (1) materials, data, and associated protocols necessary to understand, assess, and extend conclusions; (2) computer codes and models involved in the creation and analysis of the information; (3) recorded factual materials; and (4) detailed descriptions of how to access and use the information. The bill was referred to the Senate Committee on Environment and Public Works.

**Federal Agencies Publish ANPR Concerning Updating The List Of Domestically Nonavailable Articles**

The March 24, 2015, *Federal Register* includes an ANPR published by the DOD, GSA, and NASA concerning amending FAR to update the list of domestically nonavailable articles under the Buy American Act. The ANPR states that DOD, GSA, and NASA are seeking information that will assist in identifying domestic capabilities and for evaluating whether some articles on the list of domestically nonavailable articles are now mined, produced, or manufactured in the U.S. “in sufficient and reasonably available commercial quantities and of a satisfactory quality.” The current list of domestically nonavailable articles includes **cadmium, ores and flue dust**. Comments are due **May 26, 2015**.

**EPA Expects To Release Updated IRIS Agenda In Several Months**

During a February 25-26, 2015, IRIS bimonthly public meeting, Vincent Cogliano, Director of the IRIS Division, stated that EPA will release in several months a list of chemicals it will evaluate for human health hazards and for dose levels that would cause the hazards to manifest. According to Cogliano, it is taking longer than anticipated to complete the IRIS Agenda. Previous IRIS Agendas included a number of chemicals that were never examined. EPA intends to issue a much smaller list of chemicals that it will evaluate and that represent the highest priorities of its regulatory and regional offices. Cogliano stated that selecting the top priority chemicals is taking time as regulatory and regional officials provide more input than in previous years. The most recent IRIS Agenda, [published May 7, 2012](http://www.gpo.gov/fdsys/pkg/FR-2012-05-07/html/2012-10935.htm), includes **cadmium** on the list of assessments in progress. Dr. Kenneth Olden, NCEA Director, acknowledged that implementing improvements to the IRIS Program is taking much longer than he anticipated when he joined EPA in July 2012. As a result, Olden declined from announcing any additional improvements he hopes to make.

**NGOs Urge Obama Administration To Investigate Threats Posted By Mine Waste Dams And Impoundments**

Earthworks [announced](http://www.earthworksaction.org/media/detail/obama_administration_must_act_to_avoid_mine_waste_disasters#.VRHGRdTD9p8) on March 19, 2015, that a coalition of more than 40 NGOs sent letters to EPA, BLM, and USFS urging them to take immediate action to investigate threats posed by mine waste dams and impoundments in the U.S. The NGOs cite the August 2014 Mount Polley mine waste spill in Canada, and note that “a government-commissioned independent investigative panel determined that current global standard practice for mine waste disposal is fundamentally flawed and that future failures at other mines are simply a matter of time.” The NGOs state that, to date, U.S. regulators have taken no action to assess the risks posed by mines in the U.S. According to the NGOs, there are 839 tailings dams in the U.S., and mining companies worldwide use Knight-Piésold, the engineering firm that designed and built the tailings dam that failed at Mount Polley.

**OSHA Extends Comment Period On RFI Concerning Chemical Management And PELs**

OSHA published a notice in the March 25, 2015, *Federal Register* extending the comment period on the October 9, 2014, RFI concerning OSHA’s overall approach to managing chemical exposures in the workplace and seeking stakeholder input about more effective and efficient approaches that address challenges found with the current regulatory approach. According to the RFI, 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).” OSHA states in the March 25, 2015, notice that it received multiple requests from stakeholders to extend the comment period to allow more time “to better research, consider, and formulate responses to the over 50 questions OSHA included in the RFI.” Comments are due **October 9, 2015**. More information is available in our November 28, 2014, Update.

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

On February 27, 2015, the SEC filed a cross-motion motion for summary judgment in the U.S. District Court for the District of Massachusetts. *Oxfam Am. Inc. v. SEC*, No. 14-cv-13648. The SEC maintains that Oxfam has not demonstrated that it is entitled to an order compelling agency action under the test set forth in *Telecommunications Research & Action Center v. FCC*. Instead, the SEC argues, its approach to the resource extraction rule mandate “has been and continues to be reasonable.” The SEC notes that its adopted rule was struck down by a court that identified several particular defects and withheld judgment on other asserted problems with the rule. Any revised rulemaking necessarily requires work to address the issues identified by the court and will have to be considered by the SEC Commissioners, a majority of whom were not at the SEC during the first rulemaking. Because Oxfam has identified no supportable basis for interfering with the SEC’s ongoing efforts to comply with its “considerable rulemaking” and other obligations, the SEC requests that the court grant its motion for summary judgment and deny Oxfam’s motion. Alternatively, the SEC requests that the court not adopt the timeframe requested by Oxfam and instead allow the Commission to report on its progress in promulgating the proposed rule no later than **October 31, 2015**, the time by which the SEC expects to consider a revised proposed rule.

**STATE ISSUES**

**Safer States Issues Toxics Policies Predictions For 2015**

Safer States issued on February 9, 2015, a press release entitled “[Toxics Policies Prediction for 2015](http://www.saferstates.com/news/2015map/).” According to Safer States, 28 states are expected to introduce toxics legislation in 2015. The highlights include:

* Identification and disclosure of chemicals harmful to children: At least twelve states will consider policy to identify chemicals of concern and/or require makers of consumer products to disclose their use of chemicals and in some instances phase those out. States considering these policies include California, Connecticut, Delaware, Florida, Massachusetts, Maine, Michigan, Minnesota, New York, Oregon, Vermont, and Washington;
* Bans on toxic flame retardants;
* Policies keeping phthalates out of jewelry, childcare products, cosmetics, and more;
* Bans on lead: policies addressing lead in everything from paint to kids’ products to electronics;
* Restrictions on bisphenol A;
* Policies addressing **cadmium**, from restricting it from jewelry to kids’ products; and
* Additional approaches.

***California***

**CDPH Issues Health Advisory And New E-Cigarette Report**

On January 28, 2015, CDPH issued a [press release](http://www.cdph.ca.gov/Pages/NR15-12.aspx) announcing a [health advisory](http://cdph.ca.gov/Documents/EcigHealthAdvisory01282015.pdf) and [e-cigarette report](http://cdph.ca.gov/programs/tobacco/Documents/Media/State%20Health-e-cig%20report.pdf) that warns Californians of the toxicity of e-cigarettes. The health advisory states: “While several studies found lower levels of carcinogens in the e‐cigarette aerosol compared to smoke emitted by traditional cigarettes, both the mainstream and secondhand e-cigarette aerosol have been found to contain at least ten chemicals that are on California’s Proposition 65 list of chemicals known to cause cancer, birth defects or other reproductive harm, including acetaldehyde, benzene, **cadmium**, formaldehyde, isoprene, lead, nickel, nicotine, n‐nitrosonornicotine, and toluene.” According to the press release, CDPH intends to partner with health, medical, child care, and education communities to educate consumers about the dangers of e-cigarettes, and initiate an advertising campaign.

**As You Sow Claims Companies Violated Proposition 65 By Failing To Warn Consumers Of Cadmium In Their Products**

As You Sow [announced](http://www.asyousow.org/wp-content/uploads/2015/02/release-toxic-chocolate-valentine-surprise.pdf) on February 11, 2015, that it filed notices of legal action against Hershey’s, See’s Candies, and Mars, alleging violation of Proposition 65 for failure to warn consumers of **cadmium** in the companies’ chocolate products. As You Sow states that it previously initiated legal action against an additional 13 chocolate manufacturers, including Godiva, Ghirardelli, Lindt, Green and Black’s, Kroger, Whole Foods, Trader Joe’s, Earth Circle Organics, Moonstruck, Theo, and Vosges, for failure to warn of lead and/or **cadmium** in their chocolate products. As You Sow’s press release states:

Chronic exposure to **cadmium** has been linked to kidney, liver, and bone damage in humans. Children are more susceptible to exposure effects from low doses of **cadmium** over time. Animal studies have associated **cadmium** exposure with decreased birth weight, neurobehavioral problems, and male reproductive harm.

**CDTSC Claims Wine Bottle Maker Used Hazardous Waste In Glass**

CDTSC has alleged that Gallo Glass Co. used hazardous waste in the manufacturing process for its wine bottles. The California State Attorney General filed a civil complaint against Gallo on behalf of CDTSC in Alameda County Superior Court on February 27, 2015. According to the complaint, Gallo’s plant in Modesto illegally introduced dust containing lead, arsenic, **cadmium**, and selenium into the manufacture of the bottles. Gallo agreed to stop using the dust as an ingredient in their wine bottles in May 2014, but the complaint alleges that the dust is hazardous waste that Gallo has failed to handle appropriately under state law.

**OEHHA Holds Public Hearing On Proposed Proposition 65 Warning Requirement Regulations**

On March 25, 2015, OEHHA held a public hearing on its proposal to adopt new regulations intended to 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 12 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**. According to OEHHA’s [presentation materials](http://www.oehha.ca.gov/prop65/CRNR_notices/WarningWeb/pdf/ClearWarningsPresentation.pdf), it selected the 12 chemicals based on:

* Prevalence/potential for exposure;
* Recent Proposition 65 enforcement activity;
* Chemical name recognizable to public; and
* Public information on toxicity, exposure, doses of concern, and ways to reduce exposure.

During the public hearing, business and industry representatives stated that the proposed warning requirements would create new opportunities for private enforcement actions, rather than limiting them. Carol Monahan-Cummings, OEHHA Chief Counsel, stated that OEHHA anticipates one more round of changes and comments before adopting the regulation. Written comments are due **April 8, 2015**. OEHHA intends to adopt a final regulation in **January 2016**. More information is available at <http://www.oehha.ca.gov/prop65/CRNR_notices/WarningWeb/NPR_Article6.html>.

***Connecticut***

**House Bills Would Implement Recommendations Of The Task Force On Cadmium In Children’s Jewelry**

H.B. 6741, which would implement certain recommendations of the Task Force on **Cadmium** in Children’s Jewelry, was introduced on February 6, 2015, and reissued on March 12, 2015. Effective **October 1, 2015**, each person who manufactures children’s jewelry for sale or distribution in Connecticut and each person who distributes children’s jewelry in Connecticut would be required to register with the Department of Consumer Protection and pay a reasonable registration fee to offset the costs of administering the provisions of this bill. Manufacturers and distributors would be required to certify in writing that all children’s jewelry manufactured for distribution in Connecticut or for sale in Connecticut has been tested for **cadmium** using a total content test. The passing standard for such total content test shall be not more than .01 percent by weight. The Commissioner may require written verification from manufacturers and distributors of a surface coating test for **cadmium** in children’s jewelry that contains paint or any other surface coating. The passing standard for such surface coating test shall be not more than .0075 percent by weight. The Commissioner, after consultation with the Commissioner of Public Health, shall develop and provide information to the public on the Department of Consumer Protection’s website regarding safety issues related to **cadmium** in children’s jewelry and recommended precautions parents may take to reduce or eliminate such safety issues. H.B. 6743, which was also introduced on February 6, 2015, would enact similar provisions, but the passing standard for the total content test would be not more than .03 percent by weight.

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

On March 5, 2015, the Joint Committee on Children reported H.B. 5653 with a substitute, and the bill was reissued on March 23, 2015. The bill 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. Not later than **January 1, 2017**, and biennially thereafter, the Commissioner of Public Health would report to the General Assembly on the status of the list of priority chemicals. The report would include: (1) recommendations to reduce children’s exposure to priority chemicals on the list; (2) a list of products that contain priority chemicals on the list and that may lead to a child’s exposure to a priority chemical; (3) a summary of actions taken in other states to restrict children’s exposure to priority chemicals on the list; (4) an evaluation of the advantages and disadvantages of measures to reduce children’s exposure to priority chemicals on the list, including reporting, product labeling, public advisories, product bans, and steps to phase out the sale of products; and (5) an assessment of the feasibility of phasing out or banning products containing priority chemicals on the list, including an analysis of the feasibility of replacing the use of priority chemicals with safer chemicals in such products.

***Florida***

**House Bill Would Require FDOH To Publish List Of Chemicals Of High Concern**

H.B. 607 was prefiled on February 5, 2015, and introduced in the House on March 3, 2015. H.B. 607 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 FDOH 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.

The bill is similar to S.B. 374, which was prefiled in the Senate on January 16, 2015.

***Maine***

**House Bill Would Harmonize Maine’s Laws Concerning Toxic Chemicals In Children’s Products With Those Of Other States**

H.B. 651, which was introduced on March 13, 2015, would amend the laws governing toxic chemicals in children’s products to ensure consistency with similar laws enacted in other states. The bill would require annual reporting of the use of chemicals of high concern in children’s products sold in Maine, phased in over a five-year period, with implementing rules adopted by **January 1, 2016**. The Commissioner of Environmental Protection would designate three priority products that contain a chemical of high concern or a priority chemical by **January 1, 2017**. Such a designation would trigger an assessment of the availability of safer alternatives by the manufacturer or distributor of a priority product, as authorized by existing law.

***Massachusetts***

**Act For Healthy Families And Businesses Would Promote Safer Alternatives And Create List Of Chemicals Of Concern**

H.B. 696, which was introduced on March 11, 2015, would ensure the substitution of priority chemical substances used in the workplace, and in consumer products sold or distributed in the Commonwealth, with the safest feasible alternatives. TURI would establish a technical assistance grant program to assist organizations of consumers or workers focused on the impact of substitutions of safer alternatives in specific products, sectors, or uses. The grants would provide assistance for activities that may include but are not limited to securing information on chemical substances and their impact on workers, consumers, and the environment; hiring independent technical support regarding chemical substances, production processes, and work organization; and paying for training programs to assist affected groups in analyzing the changes. No later than 90 days after the passage of the bill, in consultation with the Science Advisory Board, TURI would publish a list of chemicals of concern. In preparing the list, TURI “shall rely on published authoritative lists of chemical categorizations such as, but not limited to,” the Canadian DSL categorization, the European Commission’s list of substances of very high concern, WDOE’s list of chemicals of concern, which includes **cadmium** and **cadmium compounds**, the California Safer Consumer Products list of chemicals of concern, Maine’s list of chemicals of high concern, and IARC’s list of carcinogens. Criteria for listing such chemicals of concern shall include chemicals recognized as carcinogens, mutagens, and reproductive toxins; chemicals recognized as persistent, bioaccumulative, and toxic chemicals; chemicals recognized as very persistent and very bioaccumulative chemicals; chemicals recognized as endocrine disruptors; and other chemicals of equivalent concern as determined by TURI in consultation with the Science Advisory Board. TURI may create subcategories within the chemicals of concern list to take account of current chemical lists and additional information, including information on emerging materials. At least every four years, TURI, in consultation with the Science Advisory Board, would refine the list to incorporate new scientific information and data, and publish a revised version of the list, as needed.

**House Bill Would Require TURA Advisory Council To Create Toxic Chemicals In Children’s Consumer Products List**

Under H.B. 697, within 180 days after the effective date of the bill, in consultation with the Science Advisory Board and TURI, the TURA Advisory Council would publish the toxic chemicals in children’s consumer products list. Criteria for listing would include chemicals recognized as carcinogens, mutagens, and reproductive toxins; chemicals recognized as persistent, bioaccumulative, and toxic chemicals; chemicals recognized as endocrine disruptors; and other chemicals of equivalent concern as determined by TURI in consultation with the Science Advisory Board. At a minimum, the list would include the chemicals listed in the WDOE’s list of chemicals of concern, which includes **cadmium** and **cadmium compounds**, and the Maine list of chemicals of high concern, excluding mercury. At least every four years, the TURA Advisory Council, in consultation with the Science Advisory Board would refine the list to incorporate new scientific information and data. In preparing the list, TURI may also rely on additional published authoritative lists of chemical categorizations such as, but not limited to, the Canadian DSL categorization, the European Commission list of substances of very high concern, the California Safer Consumer Products list of chemicals of concerns, and the IARC list of carcinogens. No later than **July 31, 2016**, MDEP would promulgate regulations that require a person who is a manufacturer or distributor of a children’s product or a formulated product for sale in the Commonwealth that contains a chemical that is included on the list in an amount greater than a *de minimis* level to notify the department in writing on an annual basis. By **July 1, 2017**, and every two years after that, MDEP would submit a report on the toxic chemicals in consumer products and the children’s products or product categories and formulated products or product categories they identify to the appropriate standing committees of the legislature. The report would include policy options for addressing children’s products that contain chemicals included on the toxic chemicals in consumer products list, including recommendations for additional ways to inform consumers about toxic chemicals in products, policies to protect consumers from hazardous chemical exposures, and chemicals for which it would be beneficial to conduct alternative assessments.

***Minnesota***

**Bill Would Provide Funding To Enhance Awareness And Reduce Priority Chemicals In Consumer Products**

Appropriations bill H.B. 846 would provide $543,000 the first year and $826,000 the second year from the general fund to enhance awareness of and reduce priority chemicals in consumer products. Of this amount, $104,000 the first year and $124,000 the second year are for transfer to MDOC, and $104,000 the first year and $104,000 the second year are for transfer to MDOH. This would be a onetime appropriation from the general fund.

**House Bill Would Require Reporting On Priority Chemicals**

Under H.B. 1276, a manufacturer or distributor of a children’s product offered for sale in Minnesota that contains one or more priority chemicals would be required, unless the children’s product is exempt, to provide information to MPCA for each priority chemical that is intentionally added to the children’s product and present at or above the practical quantification limit or that is a contaminant present in a component of the children’s product at a concentration above 100 ppm. The information provided must include any assessment conducted by the manufacturer or the distributor of the children’s product or others regarding the use of safer alternatives to the priority chemical contained in the children’s product. Two years after submitting an initial report, a manufacturer or distributor of a children’s product that continues to contain one or more priority chemicals would be required to submit an updated report. If a manufacturer or distributor removes a priority chemical from a children’s product, MPCA must be notified at the earliest possible date. If the priority chemical removed is replaced by a safer alternative, the manufacturer or distributor must provide the name of the safer alternative or, if not replaced by a chemical alternative, a description of the techniques or design changes implemented. The safer alternative or nonchemical techniques or design changes may be designated as trade secrets. Similar bills (S.B. 1099 and S.B. 1305) were introduced in the Senate.

**Bills Would Require Labeling Of Children’s Products Containing Priority Chemicals**

Effective **July 1, 2016**, H.B. 1553 and S.B. 1656 would require labeling of children’s products containing priority chemicals. The label would be required to include the following language:

Warning: This product contains [name of priority chemical], a chemical known or suspected with a high degree of probability by the Minnesota Department of Health to be potentially hazardous to human health.

***Missouri***

**Second House Resolution Introduced Calling For Study Of Operation Large Coverage**

On February 28, 2015, House C.R. 565 was introduced. Like House C.R. 13, which we reported in our January 28, 2015, Update, House C.R. 565 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 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***

**Bill Would Regulate Toxic Chemicals In Pet Products**

A.B. 3585, which was introduced on January 26, 2015, would regulate toxic chemicals in pet products. The bill would designate a number of chemicals, including **cadmium**, as priority chemicals. Within 180 days of the effective date, NYSDEC would post lists of priority chemicals and chemicals of high concern on its website. No later than 12 months after a priority chemical is listed, every manufacturer who offers a pet product for sale or distribution in New York that contains an intentionally added priority chemical must report the use to NYSDEC. A manufacturer of a pet product containing a priority chemical must notify persons that offer the pet products for sale or distribution in New York of the presence of the priority chemical and provide information regarding the toxicity of the priority chemical. Effective **January 1, 2019**, no person would be allowed to distribute, sell, or offer for sale pet products containing a priority chemical that has been listed for at least one year.

**Bills Would Regulate Toxic Chemicals, Including Cadmium, In Children’s Products**

S.B. 4102, which was introduced on February 27, 2015, would designate a number of chemicals, including **cadmium**, as priority chemicals. Within 180 days of the effective date of the bill, NYSDEC would post lists of priority chemicals and chemicals of high concern on its website. No later than 12 months after a priority chemical appears on the published list, every manufacturer who offers a children’s product for sale or distribution in New York that contains a priority chemical would be required to report such chemical use. The report must at a minimum identify the children’s product category, the priority chemical or chemicals contained in the children’s product category, and the intended purpose of the chemicals in the children’s product category. A manufacturer of a children’s product containing a priority chemical would be required to notify persons that offer the children’s product for sale or distribution in New York of the presence of such priority chemical, and provide information regarding the chemical’s toxicity. Effective **January 1, 2018**, no person would be allowed to distribute, sell, or offer for sale in New York a children’s product containing **cadmium**. A similar bill (A.B. 5612) was introduced in the Assembly on March 2, 2015.

***Oregon***

**NGO Files Notice Of Intent To Sue EPA For Failing To Promulgate Water Quality Criteria For Pollutants, Including Cadmium**

Earthrise Law Center, on behalf of NWEA, filed on February 11, 2015, a notice of intent to sue EPA for failing to promulgate replacement aquatic life toxics criteria for Oregon. In a January 31, 2013, letter, EPA approved 38 criteria values associated with 14 toxic pollutants while disapproving 45 criteria values associated with 16 toxic pollutants. On December 12, 2013, ODEQ adopted revisions addressing 38 criteria values associated with 12 toxic pollutants. According to NWEA, those revisions “failed to address seven disapproved criteria values associated with four toxic pollutants all of which pertain to jeopardy finding by NMFS under the ESA.” The unaddressed toxic criteria values include freshwater acute criterion for **cadmium**. While “Oregon has acknowledged this deficiency” and “expects to address the more substantive issues for these pollutants in a future rulemaking,” to the best of NWEA’s knowledge, with the exception of ammonia, Oregon has no specific plan or timeline for doing so.

**Senate Committee Holds Hearing On Bill Concerning List Of Designated High Priority Chemicals Of Concern**

The Senate Environment and Natural Resources Committee held a [hearing](https://olis.leg.state.or.us/liz/2015R1/Committees/SENR/2015-03-02-15-00/SB478/Details) on March 2, 2015, concerning S.B. 478, which would require OHA to establish and maintain a list of designated high priority chemicals of concern for children’s health used in children’s products, and to review and revise the list periodically. The list would include chemicals that are listed on WDOE’s list of chemicals of high concern to children, which includes **cadmium** and **cadmium compounds**. During the hearing, industry representatives testified that the bill would require manufacturers to disclose the presence of priority chemicals in their products and, in some cases, substitute chemicals with alternatives. According to the industry representatives, the bill is unnecessary and would place a major burden on manufacturers.

**Bill Would Require Establishment Of High Priority Chemicals Of Concern And Create High Priority Chemicals Of Concern For Children’s Health Fund**

H.B. 3473 would require OHA to establish and maintain a list of high priority chemicals of concern for children’s health when used in children’s products. Chemicals listed on WDOE’s list of chemicals of high concern to children, which includes **cadmium** and **cadmium compounds**, would be included. A manufacturer of a children’s product sold or offered for sale in Oregon that contains a listed chemical would be required to provide a biennial notice to OHA. The notice would include the product category of the children’s product that contains the chemical, and a description of the function of the chemical in the children’s product. On or before the due date of the third biennial notice, the manufacturer would be required to remove or make a substitution for the chemical, or seek a waiver, if the chemical is present in a children’s product that is: mouthable; a children’s cosmetic; or made for, marketed for use by, or marketed to children under three years of age. Under the bill, when a manufacturer removes a high priority chemical of concern for children’s health used in children’s products from a children’s product sold or offered for sale and substitutes another chemical, the manufacturer must submit a hazard assessment to OHA that explains how the children’s product, and any substitute chemical the children’s product contains, is inherently less hazardous than before the substitution was made. The High Priority Chemicals of Concern for Children’s Health Fund would be established, separate and distinct from the general fund.

***Vermont***

**VDOH Proposed Rule Would Require Disclosure Of Certain Substances, Including Cadmium, In Children’s Products**

As reported in our March 2, 2015, e-mail, VDOH issued a proposed rule concerning [chemicals of high concern in children’s products](http://healthvermont.gov/regs/documents/chemicals_high_concern_childrens_products_proposed_rule.pdf). Under the rule, manufacturers would have to submit disclosure notices concerning the presence of any chemicals of high concern to children intentionally added to, or present as a contaminant in, each unit of the children’s product or product component. **Cadmium** and **cadmium compounds** would be designated as chemicals of high concern to children. Reporting would begin **July 1, 2016**. A public hearing was held March 20, 2015. Comments were due March 27, 2015. More information is available on the VDOH [website](http://healthvermont.gov/admin/public_comment.aspx).

***Washington***

**House Passes Bill That Would Use Chemical Action Plans To Require Safer Chemicals**

On February 2, 2015, the House Committee on Environment held a public hearing on H.B. 1472. After being passed as substituted by the House Committee on Environment on February 17, 2015, and the House Committee on Appropriations on February 27, 2015, the bill was withdrawn from consideration by the House Committee on Rules on March 5, 2015. On March 11, 2015, the Committee substitute was amended and adopted on the House floor. The House sent the bill to the Senate Committee on Energy, Environment and Telecommunications, which was scheduled to hold public hearings on [March 24](https://app.leg.wa.gov/CMD/agenda.aspx?mid=22162) and [March 25, 2015](https://app.leg.wa.gov/CMD/agenda.aspx?mid=22164). The current version of H.B. 1472 includes the following provisions:

* Beginning **January 1, 2016**, and every two years thereafter, WDOE, in consultation with WDOH, would select up to four chemicals for the development of chemical action plans. The chemicals will be selected from:
* Chemicals identified by EPA in CWA Section 304(a)(1) that impact Washington water bodies; or
* Chemicals that meet the criteria of a high priority chemical as applied to humans, plants, or wildlife, and:
* Meet the criteria for a high priority chemical of high concern for children or;
* Have been shown through environmental monitoring studies to be present in fish, wildlife, air, water, soil, or sediment.
* WDOE may require information from manufacturers of products that contain a chemical selected for a chemical action plan. Prior to requesting information, WDOE must consult the Chemical Safety Committee established under the bill, as well as with a chemical action plan external advisory committee, if one has been formed.
* Within six months of a request from WDOE, manufacturers must report certain information, including a description of the function of the chemical in the product and the amount of the chemical used in each unit of the product or product component.
* A chemical action plan must include an evaluation of the regulatory and nonregulatory approaches that influence production, uses, releases, and management of the chemical; identify actions needed to eliminate or reduce threats to human health and the environment and include recommendations for managing, reducing, and phasing out the different uses and releases of the chemical to minimize exposure.
* Consistent with a recommendation by the Chemical Safety Committee, WDOE is authorized to require manufacturers, by order, to conduct alternatives assessments.
* WDOE, in consultation with WDOH, shall prepare a summary report of all reviewed alternatives assessments and other relevant information. The summary report must include a determination of whether a safer alternative exists and identify unsuitable alternatives.
* If the Chemical Safety Committee determines that a safer alternative exists, the Committee must recommend that WDOE prohibit, by rule, specific uses of the chemical.

The bill is scheduled for consideration on [**March 31, 2015**](https://app.leg.wa.gov/CMD/agenda.aspx?mid=22242), during an executive session in the Senate Committee on Energy, Environment and Telecommunications.

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

S.B. 5021, which 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, passed the Senate Committee on Energy, Environment, and Telecommunications on February 19, 2015. The Senate Committee on Rules indefinitely postponed the bill on March 23, 2015.

On February 18, 2015, S.B. 6042 was introduced. The bill 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.

**INTERNATIONAL ISSUES**

**AUSTRALIA**

**NQCC Welcomes Support For Contaminated Dust Report**

On March 6, 2015, NQCC issued a [press release](http://nqcc.org.au/wp-content/uploads/2013/04/Support-for-Contaminated-Dust-Report-Welcomed.docx) welcoming the statement by State Minister for the Environment Steven Miles that the report on contaminated dust in Townsville, commissioned in 2014 by NQCC, is based on scientifically valid methodology, and that his Department would work with the Department of Science and Queensland Health to identify what needs to be done. As reported in our January 28, 2015, Update, Macquarie University Professor of Environmental Science Mark Taylor conducted a five-day study of Townsville parks. Taylor tested playground equipment at four playgrounds for contaminated dust, with testing showing that the levels of lead, arsenic, nickel, and **cadmium** in the dust exceeded “trigger levels” for mining locations in Queensland.

**CANADA**

**Canada States No Further Risk Assessment Necessary For Ten Inorganic Cadmium Substances**

On February 7, 2015, Environment Canada posted a document entitled [*Approach for a Subset of Substances Prioritized during Categorization That Have Already Been Addressed*](http://www.chemicalsubstanceschimiques.gc.ca/plan/approach-approche/substances-prioritized_jugees-eng.php). The document outlines 248 substances on the DSL that Canada identified as priorities through categorization that, upon further analysis, can be associated with other risk assessment or risk management initiatives under CEPA. Canada states that, as a result, “it is concluded that these substances do not require further risk assessment at this time. This does not preclude further data collection, risk assessment or risk management activities triggered through other initiatives.” The document states that the following ten inorganic **cadmium compounds** are considered to be within the scope of the PSL 1 assessment of **cadmium and its compounds**. As such, these ten inorganic **cadmium compounds** do not require further risk assessment at this time.

| **Inorganic cadmium compounds for which no further assessment is proposed at this time** | |
| --- | --- |
| **CAS No.** | **Name** |
| 513-78-0 | Carbonic acid, cadmium salt (1:1) |
| 1306-19-0 | Cadmium oxide (CdO) |
| 1306-23-6 | Cadmium sulfide (CdS) |
| 1345-09-1 | Cadmium mercury sulfide |
| 7789-42-6 | Cadmium bromide (CdBr2) |
| 10108-64-2 | Cadmium chloride (CdCl2) |
| 10124-36-4 | Sulfuric acid, cadmium salt (1:1) |
| 10325-94-7 | Nitric acid, cadmium salt |
| 14017-36-8 | Sulfamic acid, cadmium salt (2:1) |
| 14486-19-2 | Borate(1-), tetrafluoro-, cadmium (2:1) |

**Canada Promulgates Regulations Related To GHS Implementation For Workplace Hazardous Chemicals**

On February 11, 2015, Canada promulgated regulations amending its Hazardous Products Regulations to adopt the GHS and more closely align Canada’s Regulations with the U.S. Hazard Communications Standard. To give suppliers, employers, and workers time to adjust to the new system, implementation of the GHS will take place over a [three-stage transition period](http://www.hc-sc.gc.ca/ewh-semt/occup-travail/whmis-simdut/transition/index-eng.php) that is synchronized nationally across federal, provincial, and territorial jurisdictions. Canada states that the purpose of the transition period is to enable:

* Time for partners and stakeholders to make the necessary legislative, regulatory, and system adjustments;
* Old labels and MSDSs to be moved out of the supply chain and workplaces in a predictable manner;
* Increased employer and worker awareness and understanding of changes to hazard classification and communication in WHMIS 2015; and
* Consistency across Canada through coordination and alignment between federal, provincial and territorial jurisdictions.

The transition period allows manufacturers and importers the flexibility to use either system of classification and labeling until **June 1, 2017**. More information is available in B&C’s February 23, 2015, memorandum, “[Canada Publishes Hazardous Products Regulation](http://www.lawbc.com/regulatory-developments/entry/canada-publishes-hazardous-products-regulation).”

**Draft Screening Assessment Of Substances from Phase Two of the DSL Inventory Update Includes Certain Cadmium Compounds**

In a February 28, 2015, *Canada Gazette* notice, Environment Canada and Health Canada announced the availability of the [*Draft Screening Assessment of Substances from Phase Two of the Domestic Substances List Inventory Update*](http://www.chemicalsubstanceschimiques.gc.ca/plan/approach-approche/rapid-eng.php#t1). The draft screening assessment proposes to conclude that 612 of the 869 substances do not meet any of the criteria set out under CEPA Section 64. These substances include **cadmium cyanide** (Cd(CN)2) (CAS No. 542-83-6); **cadmium iodide** (CdI2) (CAS No. 7790-80-9); **cadmium titanium oxide** (CdTiO3) (CAS No. 12014-14-1); **flue dust, cadmium-refining** (CAS No. 69012-57-3); **calcines, cadmium residue** (CAS No. 69029-63-6); and **slimes and sludges, cadmium sump tank** (CAS No. 69029-91-0). The remaining 257 substances were identified as needing further assessment, including **cadmium zinc sulfide** ((Cd,Zn)S) (CAS No. 12442-27-2). Comments are due **April 29, 2015**.

**Canada Proposes Extension Of Mineral Exploration Tax Credit**

In a March 1, 2015, speech to the Prospectors and Developers Association of Canada, Finance Minister Joe Oliver and Natural Resources Minister Greg Rickford [announced](http://www.fin.gc.ca/n15/15-021-eng.asp) that Canada proposes to extend its 15 percent mineral exploration tax credit until **March 31, 2016**. The credit would apply to investors of junior mining companies that raise equity through flow-through shares. The government also announced proposed changes intended to ensure that the costs associated with undertaking environmental studies and community consultations that are required to obtain an exploration permit will now be eligible for treatment as Canadian Exploration Expenses. As such, the costs would be immediately deductible for tax purposes and also be eligible for flow-through share treatment. In the case of eligible projects, they could qualify as well for the mineral exploration tax credit.

**Canada Seeks Comment On Proposed Approach To Address Nanoscale Substances On The DSL, List Of Existing Nanomaterials Includes Certain Cadmium Compounds**

Environment Canada and Health Canada seek comment on a consultation document entitled [*Proposed Approach to Address Nanoscale Forms of Substances on the Domestic Substances List*](http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=1D804F45-1). Environment Canada and Health Canada propose a stepwise approach to address nanoscale forms of substances on the DSL:

1. Establishment of a list of existing nanomaterials in Canada;

2. Prioritization of existing nanomaterials for action; and

3. Action on substances identified for further work.

The proposed criteria for defining existing nanomaterials include, but are not limited to:

* The substance has a chemical composition that is identical to that of a bulk substance already listed on the DSL; AND
* The substance is in commerce in Canada at quantities above 100 kilograms/year; AND
* The substance is at or within the nanoscale in at least one external dimension, or has internal or surface structure at the nanoscale; OR
* The substance is smaller or larger than the nanoscale in all dimensions and exhibits one or more nanoscale properties/phenomena.

The consultation document includes, in Appendix A, a preliminary reference list of existing nanomaterials in Canada, which includes the following **cadmium compounds**:

|  |  |
| --- | --- |
| **CAS No.** | **Substance Name** |
| 1306-24-7 | Cadmium selenide (CdSe) |
| 12626-36-7 | Cadmium selenide sulfide (Cd(Se,S)) |
| 12214-12-9 | Cadmium selenide sulfide (Cd2SeS) |
| 1306-23-6 | Cadmium sulfide (CdS) |
| 1306-25-8 | Cadmium telluride |
| 12014-14-1 | Cadmium titanium oxide (CdTiO3) |
| 12442-27-2 | Cadmium zinc sulfide ((Cd,Zn)S) |
| 68512-49-2 | Cadmium zinc sulfide ((Cd,Zn)S), copper chloride-doped |

The consultation document notes that this list has not been validated and may not be a comprehensive list of all nanomaterials. Canada intends to conduct a mandatory survey under CEPA Section 71 to obtain the essential data needs to support the development of the list of the existing nanomaterials in Canada and subsequent prioritization activities for those substances. According to the consultation document, the survey “will be designed in consultation with key stakeholders to ensure the scope and objectives are appropriate and achievable.” Wherever possible, the survey would be aligned with similar mandatory information-gathering initiatives taking place in Canada and other jurisdictions. In parallel, Canada will consider other approaches for collecting data, such as sectoral submission of information or obtaining information prepared by industry for submission to other jurisdictions. Information submitted voluntarily would be excluded from any mandatory survey that is issued. In **June 2015**, Environment Canada and Health Canada intend to conduct an information gathering survey and hold a stakeholder workshop to discuss the proposed approach and the information gathering survey. Comments are due **May 17, 2015**.

**British Columbia Implements Post-Mount Polley Requirements In Environmental Assessment**

On March 19, 2015, British Columbia [announced](http://www.newsroom.gov.bc.ca/2015/03/province-implements-post-mount-polley-requirements-in-environmental-assessment.html) that its Environmental Assessment Office is taking steps to ensure the safety of tailings management facilities at proposed mines in British Columbia. Following the recommendations in the Mount Polley Independent Expert Engineering Investigation and Review Report, additional information requirements have been established for mines undergoing environmental assessments. Developed in collaboration with the Ministry of Energy and Mines and the Ministry of Environment, the additional information requirements will apply to mines in all stages of environmental assessment, and have been outlined in writing for each company and posted on the Environmental Assessment Office’s website. The press release states that companies will need to provide the following information:

* A description and assessment of alternative means of undertaking the proposed project with respect to options for tailings management that consider technology, siting, and water-balance management;
* Presenting and comparing best practices and best-available technologies for tailings management;
* Options for managing water balance to enhance safety and reduce the risk of a tailings dam failure;
* A comparison of technically and economically viable engineering solutions to address site conditions; and
* A clear and transparent evaluation of the factors that supported the selection of the most-suitable option.

The Environmental Assessment Office will use this information to evaluate tailings management options and to determine whether the plans and strategies presented by mining companies adequately address any potential risks or implications.

**Tsilhqot’in Nation Announces Enactment Of Law To Protect Aboriginal Land**

Tsilhqot’in Nation [announced](http://www.tsilhqotin.ca/PDFs/Press%20Releases/2015%2003%2020_XeniDeclaration.pdf) on March 20, 2015, that it has enacted its first Tsilhqot’in law. On June 26, 2014, the Supreme Court of Canada granted Aboriginal title to the Tsilhqot’in Nation, in the caretaker area of the Xeni Gwet’in community. Aboriginal title includes the right to exclusive use and occupation of the land, as well as the right to the economic benefit of the land, and the ability to determine the uses to which the land will be put. Exercising their newly recognized right to manage these lands proactively, the Tsilhqot’in Nation and Xeni Gwet’in have enacted the Nemiah Declaration as the law governing the Aboriginal title lands and the broader territory over which the courts declared Aboriginal hunting, trapping, and trading rights. The Nemiah Declaration outlines specific uses of the land that will not be authorized, along with how future laws, regulations, and policies may be developed. Exceptions may be made to the Nemiah Declaration only with the prior informed consent of Xeni Gwet’in and the Tsilhqot’in Nation.

**CHINA**

**Updated Catalog Of Hazardous Chemicals Includes Cadmium**

On March 9, 2015, SAWS [announced](http://www.chinasafety.gov.cn/newpage/Contents/Channel_21111/2015/0309/247028/content_247028.htm) the updated Catalog of Hazardous Chemicals. The updated version includes almost 3,000 substances, including **cadmium**. In general, the substances listed are subject to Decree 591 and its subordinate regulations addressing their safe management throughout the supply chain. Listed substances would need a license to be produced, used, or imported. According to SAWS, a chemical should be classified as hazardous and included in the Catalog if it falls into the hazard classes and categories set out by the national classification and labeling standards.

**HONG KONG**

**CFS Releases Food Safety Report For December 2014**

CFS released on January 30, 2015, the findings of its food safety report for December 2014. According to the report, out of some 10,900 food samples tested, the overall satisfactory rate was 99.7 percent. The samples included vegetables and fruits and their products; meat and poultry and their products; aquatic and related products; milk, milk products, and frozen confections; and cereals, grains, and their products. CFS took approximately 1,700 samples of fish, shellfish, shrimp, prawn, crab, and squid and their products for analysis. Three imported raw oyster samples were found to contain **cadmium** over the legal limit.

**OECD**

**OECD Announces Launch Of Substitution And Alternatives Assessment Toolbox**

OECD announced on January 30, 2015, the availability of its [Substitution and Alternatives Assessment Toolbox](http://www.oecdsaatoolbox.org/). The Toolbox is a compilation of resources relevant to chemical substitution and alternatives assessments. It includes the following resource areas:

* Alternatives Assessment Tool Selector: A filterable inventory of chemical hazard assessment tools and data sources to help identify tools most relevant to substitution and alternatives assessment goals. A listing of non-hazard assessment tools is also available;
* Alternatives Assessment Frameworks: A summary of the current frameworks that can be used to assess alternatives. Guides and other resources for conducting a chemical substitution or alternatives assessment are included;
* Case Studies and Other Resources: Links to case studies, toolkits, and product rating systems that provide examples, insights, and lessons learned on substitution and alternatives assessment approaches; and
* Regulations and Restrictions: A list of regulations and restrictions throughout OECD member countries that are driving the increased need for chemical substitution and alternatives assessment approaches.

**OECD Releases New Strategy To Facilitate Ecological Risk Assessment Of Organometallic And Organic Metal Salts**

On February 16, 2015, OECD published a document entitled [*Guidance on Selecting a Strategy for Assessing the Ecological Risk of Organometallic and Organic Metal Salt Substances Based on Their Environmental Fate*](http://www.oecd.org/officialdocuments/displaydocument/?cote=ENV/JM/MONO(2015)2&doclanguage=en). The Guidance presents a strategy intended to facilitate the ecological risk assessment of organometallic compounds and organic metal salts, outlining key steps that are based on elucidation of the fate of these substances in the environment. OECD notes that other guidance documents have referred to the importance of considering fate, however, this Guidance puts forth the recommendation that the initial determination of their fate in the environment is a primary factor for deciding how these substances should be assessed. OECD notes that readers should be aware that the Guidance is not intended to provide full ecological assessment guidance for organometallic compounds or organic metal salts, and that regulatory and program requirements will vary with each jurisdiction. In addition, the proposed strategy encompasses the ecological component of a risk assessment only.

**PHILIPPINES**

**EcoWaste Coalition Claims Heart-Shaped Pendants Could Bring “Toxic Harm”**

In a February 1, 2015, blog item entitled “[Beware: Some Heart-Shaped Pendants May Bring Not Romance, But Toxic Harm](http://ecowastecoalition.blogspot.com/2015/02/beware-some-heart-shaped-pendants-may.html),” EcoWaste Coalition states that bracelet charms and pendants in the shape of a heart “may spell serious trouble for the people you care for.” According to EcoWaste Coalition, it detected “huge quantities of **cadmium** and lead in some low-cost bracelets for adolescents and adults with heart-fashioned metal pendants.” Out of 12 types of bracelets obtained from fashion jewelry vendors in Divisoria and Quiapo, eight were found to contain **cadmium** in the range of 15-32 percent, and lead from 3.5-36 percent. EcoWaste Coalition urged authorities to regulate toxic metals in jewelry as they do in the EU and U.S. and impose a labeling requirement to help consumers identify which products are compliant and safe.

**EcoWaste Coalition Warns Of Chinese New Year Lucky Charms Containing Heavy Metals**

On February 15, 2015, EcoWaste Coalition posted a blog item entitled “[Be Wary of Chinese New Year Lucky Charms with Toxic Chemicals](http://ecowastecoalition.blogspot.com/2015/02/be-wary-of-chinese-new-year-lucky.html).” The NGO states that to promote consumer awareness on hazardous chemicals in products, it purchased 20 Chinese New Year good luck charms and ornaments and had them screened for toxic metals. The samples were obtained from specialty stores and sidewalk vendors in Binondo and Quiapo, Manila. According to EcoWaste Coalition, 13 of the 20 samples were found to contain elevated quantities of lead, arsenic, and chromium, three had high levels of antimony, and one had an excessive amount of **cadmium**.

**SOUTH KOREA**

**MOTIE Announces Draft Regulations Concerning Safety Of Children’s Products**

MOTIE announced a series of draft regulations, known as the Children’s Products Safety Special Act, which would set limits for certain hazard substances, including a limit of less than 75 mg/kg for **cadmium**. The proposals include:

* Draft Presidential and Ministerial decrees;
* A common safety standard for children’s products from the Korean Agency for Technology and Standards;
* Safety certification for children’s products;
* A draft version of a safety confirmation for children’s products; and
* A draft version of verification of compliance targets.

According to the notice, comments can be submitted on the proposals. South Korea has also notified the WTO.

**Public Consultation Begins On Priority Existing Substances**

The March 25, 2015, *Official Gazette* includes a notice announcing a public consultation on priority existing substances proposed for registration under K-REACH. The October 2014 draft list of priority existing substances included **cadmium** and certain **cadmium compounds**. South Korea intends to publish the final list of priority existing substances in **June 2015**. Once the final list is published, companies manufacturing or importing listed substances will have three years to prepare their registration dossiers, for submission by **June 30, 2018**. Comments are due **April 30, 2015**.

**TAIWAN**

**Mercury And Cadmium Levels In Batteries Will Be Restricted**

The Taiwan EPA announced on March 2, 2015, that restrictions will be tightened on the permissible content of mercury and **cadmium** in dry cell batteries to bring them in line with international standards under the principle of extended producer responsibility. The Restriction on the Manufacture, Import, and Sale of Dry Cell Batteries will be amended to reflect a 20 ppm ceiling for **cadmium** effective **January 1, 2016**. Beginning **January 1, 2017**, a 20 ppm limit for **cadmium** will apply to alkaline, mercury, and lead-acid button batteries.

**MOE Issues Tender To Assess Exposure To Hazardous Substances In Toys**

MOE has issued a tender to assess hazardous substances in 1,500 children’s products in the following product families:

* Six types of toy for toddlers;
* Eight types of play toy;
* Five types of water toy; and
* Nine types of accessory.

MOE seeks information on hazardous chemical content and estimated exposure rates. The bidding ended on March 16, 2015, and the project is expected to be completed in **December 2015**.

**News Network Reports That Pollution From China Poses Increasing Health Threat**

According to news network KBS, airborne dust from China containing lead, **cadmium**, and arsenic is affecting the quality of air in Seoul. Yellow dust, which travels hundreds of miles from the deserts of southern Mongolia and China, is the most toxic form of pollution, and contributes up to 50 percent of pollution in Seoul according to 2013 statistics. KBS reported that, according to NIER, the desert dust collects industrial pollution when it blows in from Beijing into the Korean peninsula and lead, **cadmium**, and arsenic are some of the chemicals that are incorporated into the atmosphere.

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

Beginning **September 1, 2015**, BSMI will begin an inspection regime to check the safety of children’s raincoats, including the presence of certain phthalates and heavy metals, including **cadmium**. The inspections will assess whether the raincoats meet the requirements of the regulations on children’s raincoat commodities, as well as CNS 15503 on general requirements for safety of children’s products and the Commodities Labeling Act. The inspection regime will apply to both domestically produced and imported raincoats and use a two-track system of monitoring and inspection, and registration of product certification.

**UN**

**UNEP Releases Guide To Mediate Natural Resource Conflicts**

On February 19, 2015, UNEP announced that, with the UN Department of Political Affairs, it jointly produced a publication entitled [*Natural Resources and Conflict: A Guide for Mediation Practitioners*](http://www.unep.org/newscentre/Default.aspx?DocumentID=2818&ArticleID=11142&l=en). According to UNEP, the Guide provides best practices and strategies for mediating different types of resource conflicts. UNEP states that, by focusing on a broad range of benefits tied to natural resources, including employment opportunities, revenue, services, access, and infrastructure, mediators have been able to get past zero-sum positions to options that yield mutual gain. Moving discussions away from political and ideological topics towards more technical aspects of resource disputes can progress negotiations. Technical aspects may include resource quality, quantity, or consumption and demand trends.

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Unless otherwise noted, if you have questions about any item summarized above, please call or e-mail Lynn L. Bergeson at (202) 557-3801 or [lbergeson@lawbc.com](mailto:lbergeson@lawbc.com), or Carla N. Hutton at (202) 557-3809 or [chutton@lawbc.com](mailto:chutton@lawbc.com).

## ACRONYMS

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

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

**BEI®** -- Biological Exposure Index

**BLM** -- Bureau of Land Management

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

**CBI** -- Confidential Business Information

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

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

**CEPA** -- Canadian Environmental Protection Act, 1999

**CFS** -- Center for Food Safety

**CWA** -- Clean Water Act

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

**DOD** -- Department of Defense

**DSL** -- Domestic Substances List

**EAB** -- Environmental Appeals Board

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

**FAR** -- Federal Acquisition Regulation

**FDOH** -- Florida Department of Health

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

**GSA** -- General Services Administration

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

**ICdA** -- International Cadmium Association

**IRIS** -- Integrated Risk Information System

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

**MDEP** -- Massachusetts Department of Environmental Protection

**MDOC** -- Minnesota Department of Commerce

**MDOH** -- Minnesota Department of Health

**mg/kg** -- Milligram Per Kilogram

**MOE** -- Ministry of Environment

**MOTIE** -- Ministry of Trade, Industry, and Energy

**MPCA** -- Minnesota Pollution Control Agency

**MSDS** -- Material Safety Data Sheet

**NASA** -- National Aeronautics and Space Administration

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

**NGO** -- Non-Governmental Organization

**NHANES** -- National Health and Nutrition Examination Survey

**NIC** -- Notice of Intended Changes

**NIE** -- Notice of Intent to Establish

**NIER** -- National Institute of Environmental Research

**NQCC** -- North Queensland Conservation Council

**NWEA** -- Northwest Environmental Advocates

**NYSDEC** -- New York State Department of Environmental Conservation

**ODEQ** -- Oregon Department of Environmental Quality

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

**OHA** -- Oregon Health Authority

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

**PEL** -- Permissible Exposure Limit

**ppm** -- Part Per Million

**PSL 1** -- First Priority Substances List

**RFI** -- Request for Information

**SAWS** -- State Administration of Work Safety

**SDWA** -- Safe Drinking Water Act

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

**Taiwan EPA** -- Taiwan Environmental Protection Administration

**TSCA** -- Toxic Substances Control Act

**TURA** -- Toxics Use Reduction Ac

**TURI** -- Toxics Use Reduction Institute

**UN** -- United Nations

**UNEP** -- United Nations Environment Program

**USFS** -- United States Forest Service

**VDOH** -- Vermont Department of Health

**WDOE** -- Washington Department of Ecology

**WDOH** -- Washington Department of Health

**WHMIS 2015** -- Workplace Hazardous Materials Information System 2015

**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)