#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

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

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**FEDERAL ISSUES**

**TSCA ISSUES**

**NGOs Urge Senate To Bring TSCA Reform Bill To Floor, Timing Of Vote Still Uncertain**

On September 16, 2015, a number of NGOs sent a [letter](http://blogs.edf.org/health/files/2015/09/Joint-Letter-to-Senate-Leaders-on-TSCA.pdf) to Senate Majority Leader Mitch McConnell (R-KY) and Minority Leader Harry Reid (D-NV) to ask that they bring the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697) to the Senate floor as soon as possible. The NGOs state that “it is an urgent priority for the Senate to pass this legislation.” The NGOs that signed the letter include the EDF, National Wildlife Federation, and Physicians Committee for Responsible Medicine. Other NGOs, such as NRDC, continue to oppose S. 697. NRDC posted a blog item, “[What They Are Not Telling You: The Senate TSCA Bill Would Weaken EPA’s Ability to Stop Importation of Products with Unsafe Chemicals](http://switchboard.nrdc.org/blogs/drosenberg/what_they_are_not_telling_you_.html).” Senator Tom Udall (D-NM), who introduced S. 697 with Senator David Vitter (R-LA), issued a September 16, 2015, [press release](http://www.tomudall.senate.gov/?p=press_release&id=2095) concerning the NGOs’ September 16, 2015, letter, and stated: “Our bill is ready to go to the floor. We have strong support, and I expect it will pass by a wide margin.” A spokesperson for McConnell’s office stated: “We don’t have any scheduling announcements on that at this point.” According to a spokesperson for Udall, Senator Ed Markey (D-MA) has approached Udall concerning possible amendments to S. 697, and Udall “is open to accommodating any changes that can help grow support for the bill, while retaining the bipartisan support it has.”

**EPA Posts 2016 CDR Reporting Guidance**

EPA posted the following fact sheets that explain reporting requirements for the upcoming **2016** reporting cycle, and how requirements for reporting for **2016** may be affected when chemical substances are the subject of certain TSCA actions:

* [TSCA Chemical Data Reporting Fact Sheet: Chemical Substances which are the Subject of Certain TSCA Actions](http://www2.epa.gov/chemical-data-reporting/tsca-chemical-data-reporting-fact-sheet-chemical-substances-which-are) -- For **2016**, manufacturers must consider the effect of certain TSCA actions on reporting thresholds when determining whether they need to report. And as in 2012, manufacturers of chemicals subject to certain TSCA actions may not be eligible for some of the exemptions which reduce or eliminate reporting requirements;
* [TSCA Chemical Data Reporting Fact Sheet: Reporting Thresholds for 2016](http://www2.epa.gov/chemical-data-reporting/tsca-chemical-data-reporting-fact-sheet-reporting-thresholds-2016) -- For **2016**, manufacturers must consider production volume from 2012-2015, as well as the effect of certain actions under TSCA on certain reporting thresholds when determining whether they need to report; and
* [Fact Sheet: Reporting After Changes to Company Ownership or Legal Identity](http://www2.epa.gov/chemical-data-reporting/fact-sheet-reporting-after-changes-company-ownership-or-legal-identity) -- This fact sheet provides information about issues related to changes to company ownership or legal identity that may affect reporting for the **2016** reporting period.

**MISCELLANEOUS ISSUES**

**House Committee Releases Report On National Strategic And Critical Minerals Production Act**

On September 8, 2015, the House Committee on Natural Resources released [House Report 114-253, Part I](https://www.congress.gov/congressional-report/114th-congress/house-report/253/1), on the [National Strategic and Critical Minerals Production Act of 2015](https://www.congress.gov/bill/114th-congress/house-bill/1937?q=%7B%22search%22%3A%5B%22%5C%22critical+minerals%5C%22%22%5D%7D) (H.R. 1937). The bill would require the Secretary of the Interior and the Secretary of Agriculture to develop more efficiently domestic sources of the minerals and mineral materials of strategic and critical importance to U.S. economic and national security and manufacturing competitiveness.

**Energy Policy Modernization Act Would Address Critical Minerals**

Senator Lisa Murkowski (R-AK), Chair of the Committee on Energy and Natural Resources, introduced the [Energy Policy Modernization Act of 2015](https://www.congress.gov/bill/114th-congress/senate-bill/2012/) (S. 2012) on September 9, 2015. The bill would require the Secretary of the Interior to establish a methodology for the designation of critical minerals based on the potential for supply disruptions and the importance of their use, and require the list of critical minerals to be reviewed and updated at least every three years. The bill outlines a series of performance improvements and reporting requirements intended to reduce delays in the federal permitting process for mines that will produce critical minerals. On September 9, 2015, the Committee on Energy and Natural Resources released [Senate Report No. 114-138](https://www.congress.gov/congressional-report/114th-congress/senate-report/138) on the bill.

**CPSC Withdraws Direct Final Rule Concerning Heavy Elements In Unfinished And Untreated Wood**

On September 10, 2015, CPSC withdrew its July 17, 2015, direct final rule determining that unfinished and untreated trunk wood does not contain heavy elements that would exceed the limits specified in the CPSC’s toy standard, ASTM F963-11. According to CPSC, it received significant adverse public comments to its proposal. With the withdrawal of the direct final rule, manufacturers and importers must continue to test the toys described in Section 4.3.5 of ASTM F963-11 at a CPSC-accepted laboratory to demonstrate compliance. Section 4.3.5 specifies that certain toys must not contain more than the specified limits of eight heavy elements (antimony, arsenic, barium, **cadmium**, chromium, lead, mercury, and selenium) described in the standard.

**DOL Submits ICRs Concerning Cadmium To OMB For Review**

DOL published on August 17, 2017, a notice in the *Federal Register* announcing that it was submitting an OSHA ICR entitled “**Cadmium** in Construction Standard” to OMB for review and approval. The notice states that the major information collection requirements in the standard include: conducting worker exposure monitoring; notifying workers of their **cadmium** exposures; implementing a written compliance program; implementing medical surveillance of workers; providing examining physicians with specific information; ensuring workers receive a copy of their medical surveillance results; maintaining workers’ exposure monitoring and medical surveillance records for specific periods; and providing access to these records by the worker who is the subject of the records, the worker’s representative, and other designated parties. Comments were due September 16, 2015.

On August 18, 2015, DOL published a notice in the *Federal Register* announcing that it was submitting an OSHA ICR entitled “**Cadmium** in General Industry Standard” to OMB for review and approval. The notice states that the major information collection requirements of the standard include: conducting worker exposure monitoring; notifying workers of their **cadmium** exposures; implementing a written compliance program; implementing medical surveillance of workers; providing examining physicians with specific information; ensuring workers receive a copy of their medical surveillance results; maintaining workers’ exposure monitoring and medical surveillance records for specific periods; and providing access to records to workers who are the subject of the records, the workers’ representatives, and other designated parties. Comments on were due September 17, 2015.

**EPA Seeks Comment On National Enforcement Initiatives For FYs 2017-19, Including Reducing Pollution From Mineral Processing Operations**

EPA is soliciting public comment and recommendations on national enforcement initiatives for FYs **2017-19**. EPA states that it selects these initiatives every three years “to focus federal resources on the most important environmental problems where noncompliance is a significant contributing factor and where federal enforcement attention can make a difference.” EPA requests comment on whether the current initiatives should continue into the FYs **2017-19** cycle, or return to the standard enforcement program for completion of remaining work. EPA also invites comment on whether it should add new areas of focus within those initiatives that are recommended for extension. The current initiatives include:

* Reducing air pollution from the largest sources;
* Cutting toxic air pollution;
* Assuring energy extraction and production activities comply with environmental laws;
* Reducing pollution from mineral processing operations: This national enforcement initiative has been focused on the largest and highest risk mineral processing operations, to ensure that they properly manage their wastes and have sufficient financial assurance to properly close facilities. This initiative has resulted in a number of large, high impact cases to ensure proper handling of these hazardous wastes. According to EPA, by the end of FY **2016**, many of the highest risk mineral processing facilities are expected to be under enforceable agreements or orders that will require them to properly address hazardous waste;
* Keeping raw sewage and contaminated storm water out of U.S. waters; and
* Preventing animal waste from contaminating surface and ground water.

The potential national enforcement initiatives under consideration for FYs **2017-19** include:

* Protecting communities from exposure to toxic air emissions:
* Organic Liquid Storage Tanks; and
* Hazardous Waste Air Emissions;
* Keeping industrial pollutants out of U.S. waters; and
* Reducing the risks and impacts of industrial accidents and releases.

Comments are due **October 14, 2015**.

**Gold King Mine Release In Colorado**

***EPA Monitoring Metals, Including Cadmium, Following Gold King Mine Release***

EPA [announced](http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/b836977b64d122c385257ea00049c4e3!OpenDocument) on August 12, 2015, that to assess the impacts of the release at the Gold King Mine near Silverton, Colorado, water quality samples were collected at numerous intervals beginning on August 5, 2015. Samples were taken prior to the plume’s arrival to establish a baseline for water quality comparisons. Each surface water sample was analyzed for 24 metals, including **cadmium**. EPA states that it plans to continue to monitor, analyze, and [share data](http://www2.epa.gov/goldkingmine/press-releases-and-updates-gold-king-mine-response) for downstream river segments as it becomes available. On August 12, 2015, EPA Administrator Gina McCarthy directed Regional Administrators “to immediately cease any field investigation work at mines including tailings facilities, unless there is imminent risk in a specific case.” The [press release](http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/39628595fb96668f85257e9f00738489!OpenDocument) states:

We are in the process of initiating an independent assessment by a sister federal agency or another external entity to examine the factors that led to last week’s incident. Based on the outcome from that assessment, we will determine what actions may be necessary to avoid similar incidents at other sites. While we stand down on existing field investigations and assessments at these mining sites, we also are instructing our Regions to identify existing sites with similarities to the Gold King Mine site and to identify any immediate threats and consider appropriate response actions.”

On August 26, 2015, EPA [released](http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/823d4ce691b8f1cf85257eae0056a580!OpenDocument) the findings of an [internal review](http://www2.epa.gov/goldkingmine/internal-investigation-documents) of its response to the Gold King Mine incident. According to EPA, the report provides observations, conclusions, and recommendations that regions may apply to ongoing and planned site assessments, investigations, and construction or removal projects at similar types of sites across the country. EPA states that it will implement all the recommendations from the report and has shared its findings with external reviewers. DOI has begun an independent assessment of the factors that led to the Gold King Mine incident. The assessment began on August 18, 2015, and EPA anticipates that DOI will provide the assessment report to EPA and the public within 60 days.

***Petition Seeks Changes In Mining Law Following Release Of Mining Waste***

On August 25, 2015, local governments, Native American tribes, and environmental NGOs filed a petition with the BLM and USFS seeking changes to the regulations governing mining on federal public lands. According to the petitioners, by allowing inoperative mines to re-start without a new approval process or updated environmental or historic resource review, the agencies’ permitting regime “fails to avoid, minimize, and mitigate the deleterious effects of uranium mining on human health and the environment, consistent with the Agencies’ legal mandates.” The petitioners state that the agencies have the opportunity to understand better and reduce the adverse effects of all mining operations by amending their existing rules in four ways:

* Limit the duration of plans of operations;
* Require new approvals and updated environmental and historic resource reviews after long periods of inactivity;
* During such periods, conduct regular inspections and require operators to gather and disclose information regularly about the status and conditions of their mines; and
* Improve the reclamation process for closed or abandoned mines.

According to the petitioners, to be most effective, especially as to already-existing mining operations, the agencies should make these changes retroactive.

***Congressional Committees Hold Hearings Concerning Gold King Mine Release***

The House Committee on Science, Space, and Technology held a hearing on September 9, 2015, on “[Holding EPA Accountable for Polluting Western Waters](https://science.house.gov/legislation/hearings/full-committee-hearing-holding-epa-accountable-polluting-western-waters).” Witnesses included:

* The Honorable Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA;
* Mr. Dennis Greaney, President, Environmental Restoration LLC;
* The Honorable Donald Benn, Executive Director, Navajo Nation Environmental Protection Agency;
* Mr. Dean Brookie, Mayor, Durango, Colorado; and
* Dr. Mark Williamson, Geochemist, Geochemical Solutions LLC.

The Senate Environment and Public Works Committee held a [hearing](http://www.epw.senate.gov/public/index.cfm/hearings?ID=F29C26AA-F10E-494B-B455-52B87AD8515B) on September 16, 2015, to conduct oversight of EPA following the Gold King mine release. The hearing was at the request of Senators Cory Gardner (R-CO), Michael Bennet (D-CO), Tom Udall (D-NM), and Martin Heinrich (D-NM). The hearing examined EPA’s response and the subsequent impact on the environment and economies of local states, communities, and Indian tribes. The only witness was EPA Administrator Gina McCarthy.

On September 17, 2015, the House Committee on Natural Resources and Committee on Oversight and Government Reform held a joint oversight hearing on “[EPA’s Animas Spill](http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399212).” Witnesses included:

* The Honorable Sally Jewell, Secretary, DOI;
* The Honorable Gina McCarthy, Administrator, EPA;
* The Honorable Ruan Flynn, Secretary of Environment and Natural Resources Trustee, State of New Mexico, Environment Department;
* The Honorable Russell Begaye, President, Navajo Nation; and
* The Honorable Clement Frost, Chairman, Southern Ute Indian Tribe.

On August 31, 2015, the House Committees sent a [letter](http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=399223) to EPA and Environmental Restoration, LLC, the private contractor involved in the accident, requesting information and e-mails pertaining to the Gold King Mine project and subsequent spill. On September 3, 2015, the Committees sent a [letter](http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=399238) to DOI requesting data and documents about the events leading up to the spill and the corresponding response effort in August 2015.

***Gold King Mine Spill Recovery Act Introduced In Congress***

On September 22, 2015, Senators Tom Udall (D-NM), Martin Heinrich (D-NM), and Michael Bennet (D-CO), and Representative Ben Ray Luján (D-NM) introduced the Gold King Mine Spill Recovery Act of 2015. According to Udall’s September 22, 2015, [press release](http://www.tomudall.senate.gov/?p=press_release&id=2100), the legislation is intended “to help the Navajo Nation and communities in Northwestern New Mexico and Southwestern Colorado recover from the Gold King Mine blowout that spilled toxic wastewater into the Animas and San Juan rivers.” The bill would ensure that EPA continues to work with affected communities by requiring it to compensate those who were impacted. It also requires EPA to work with the states and tribes to fund and implement long-term monitoring of water quality from the mine, and to identify the risks of future spills by assessing other abandoned mines for cleanup.

**Court Grants NGO’s Motion For Summary Judgment, Orders SEC To File Expedited Schedule For Issuing Resource Extraction Disclosure Rule**

On September 2, 2015, the U.S. District Court for the District of Massachusetts granted Oxfam’s motion for summary judgment, and ordered the SEC to file in 30 days an expedited schedule for promulgating a final rule. *Oxfam Am. Inc. v. SEC*, No. 14-cv-13648. Oxfam filed suit to compel the SEC to promulgate a final extraction payments disclosure rule implementing Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The court concluded that the SEC’s delay in promulgating the final extraction payments disclosure rule can be considered “unlawfully withheld” as the duty to promulgate a final rule “remains unfulfilled more than four years past Congress’s deadline.” The court adopted the Tenth Circuit’s analysis in Forest Guardians, and “[a]ccordingly, the Court must compel the SEC to act. ‘To hold otherwise would be an affront to our tradition of legislative supremacy and constitutionally separated powers.’” The court states that it will make further orders as necessary and will retain jurisdiction to monitor the schedule and “to ensure compliance” with its order.

**STATE ISSUES**

***California***

**NGO Files Notice Of Legal Action Against Soylent For Failure To Warn Consumers Of Lead And Cadmium**

As You Sow announced on August 13, 2015, that it filed a notice of intent to bring legal action against Soylent 1.5, a “meal replacement” powder. As You Sow [claims](http://www.asyousow.org/our-work/environmental-health/toxic-enforcement/soylent/) Soylent violated Proposition 65 by failing to provide sufficient warning to consumers of lead and **cadmium** levels in the Soylent 1.5 product. In response, Soylent has posted a [web page](http://blog.soylent.com/post/126888496882/soylent-is-compliant-with-california-proposition) stating that it is compliant with Proposition 65. Soylent states that FDA “does not set **cadmium** limits for food, but even the highest **cadmium** levels we have seen in testing, 21 µg per serving, is thousands of times lower than the level of any observed effect in Proposition 65 toxicology data.”

**OEHHA Modifies Text Of Proposed Proposition 65 Website**

On September 4, 2015, OEHHA [provided notice](http://www.oehha.ca.gov/prop65/CRNR_notices/WarningWeb/WebTextModificationSept.html) of additional changes to the proposed Section 25205 regulation that would require OEHHA to develop and maintain a website to provide information to the public concerning exposures to listed chemicals for which warnings are being provided pursuant to Section 25249.6. OEHHA states that, in addition to minor non-substantive corrections to the text, it made the following changes:

* Subsection (a) was modified to reflect more accurately the anticipated functions of the website;
* Subsection (a) was revised to clarify further the scope of the OEHHA disclaimer to include all information received from third parties;
* Subsection (b) was modified to respond to public comments indicating that the timeframe for a business to provide requested information is unclear and should be limited; this proposed modification would establish a 90-day period for a business to respond to a request for information;
* Subsection (b)(4) was modified to include the source of exposure to a chemical for which an environmental warning is being provided;
* Subsection (b)(10) was revised in response to comments that the scope of information requested under this section was overbroad;
* Subsection (c) was modified by striking “sole” and “solely” in response to comments that the terms were vague;
* A new subsection (d) was added in response to comments that businesses should be able to respond to lead agency requests via trade groups; and
* A new subsection (f) was added in response to comments that the regulation should explicitly state that a business is not required to provide information to OEHHA that is subject to legal privileges under California law.

**CDTSC Releases Draft Stage 1 AA Guide**

CDTSC announced on September 24, 2015, the release of the [draft Stage 1 AA Guide](https://calsafer.dtsc.ca.gov/Comments/PackageDetail.aspx?PID=11741) for comments and questions. According to CDTSC, the draft Guide “provides useful approaches, methods, resources, tools and examples of how to fulfill SCP’s regulatory requirements.” The draft Stage 1 AA Guide covers only the first stage AA required by the SCP regulations. A draft including the second stage AA is scheduled to be released in the **first quarter of 2016**. The two stages of the AA process are:

* First Stage AA: The first stage involves an initial screening of alternatives with a preliminary analysis to identify the legal, functional, and performance requirements of the Priority Product and Chemical of Concern; and
* Second Stage AA: The second stage is an in-depth analysis of the relevant factors, life cycle, and economic impacts.

CDTSC will hold webinars on **October 7, 2015**, and **October 21, 2015**, for stakeholders to learn about and discuss the draft Stage 1 AA Guide. Comments are due **October 23, 2015**. More information will be available in B&C®’s forthcoming memorandum, which will be posted [online](http://www.lawbc.com/regulatory-developments/safer-consumer-products-regulations).

***Minnesota***

**MDH Proposes Amendments To HRLs, Including Cadmium**

As reported in our August 31, 2015, e-mail, MDH proposed amendments to the current HRLs. The amendments include replacements for several “outdated” HRL values, including that for **cadmium**. According to the August 31, 2015, [*Minnesota State Register* notice](http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTIwMTUwODMxLjQ4NTgzMzExJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE1MDgzMS40ODU4MzMxMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3NTQyNTAzJmVtYWlsaWQ9Y2h1dHRvbkBsYXdiYy5jb20mdXNlcmlkPWNodXR0b25AbGF3YmMuY29tJmZsPSZleHRyYT1NdWx0aXZhcmlhdGVJZD0mJiY=&&&102&&&http://www.comm.media.state.mn.us/bookstore/stateregister/40_09.pdf#page=6), MDH intends to adopt rules without a public hearing unless 25 or more persons submit a written request for a hearing by **October 1, 2015**. The proposed rule includes the following values for **cadmium**:

|  | **Acute** | **Short-term** | **Subchronic** | **Chronic** | **Cancer** |
| --- | --- | --- | --- | --- | --- |
| HRL (µg/L) | 5 | 1 | 1 | 0.5 | NA |
| RfD (mg/kg-day) | 0.0077 | 0.0016 | 0.00044 | .00011 | -- |
| RSC | 0.2 | 0.2 | 0.2 | 0.2 | -- |
| SF (per mg/kg-day) | -- | -- | -- | -- | -- |
| ADAF or AFLifetime | -- | -- | -- | -- | -- |
| Intake Rate (L/kg-day) | 0.289 | 0.289 | 0.077 | 0.043 | -- |
| Endpoints | developmental | developmental, nervous system, renal (kidney) system | developmental, skeletal | renal (kidney) system, skeletal | -- |

**HRL** -- Health Risk Limit

**RfD** -- Reference Dose

**RSC** -- Relative Source Contribution

**SF** -- Slope Factor

**ADAF** -- Age-Dependent Adjustment Factor

Comments are due **October 1, 2015**. The [Statement of Need and Reasonableness](http://www.health.state.mn.us/divs/eh/risk/rules/water/rules2015/sonar.pdf) contains information about the proposed rule amendments.

***Oregon***

**NGO Sues EPA For Failing To Promulgate Water Quality Criteria For Pollutants, Including Cadmium**

EPA filed its answer on July 28, 2015, to NWEA’s July 24, 2015, amended complaint in the U.S. District Court for the District of Oregon. *NWEA v. EPA*, No. 3:15-cv-0663. NWEA claims EPA failed to promulgate replacement aquatic life toxics criteria for Oregon. EPA stated that on January 31, 2013, it disapproved Oregon’s revised acute freshwater aquatic life criterion for **cadmium**, notified ODEQ of its decision, and specified the changes needed to meet the CWA requirements. The parties filed a joint statement of agreed material facts on August 7, 2015, which include the following:

24. **Cadmium** is a known carcinogen and can affect respiration, immune response, growth, and reproduction in freshwater organisms. Sources of **cadmium** in Oregon’s surface waters can include mining and ore smelting, discharges from industrial processes including electroplating and the manufacture of batteries and electronic components, and stormwater runoff.

25. The **cadmium** RPA states that EPA shall disapprove Oregon’s 2004 acute **cadmium** criterion and derive a replacement criterion for the State of Oregon, using the “Process for Deriving Criteria” set forth in the RPA. The RPA further states that EPA shall recommend that Oregon adopt the derived criterion and that EPA will promulgate it if necessary. Further, the RPA states that EPA will ensure that the derived criterion will be effective within 24 months of EPA’s disapproval of Oregon’s 2004 acute **cadmium** criterion.

On August 14, 2015, NWEA filed a motion for summary judgment and requested oral argument. NWEA argues that EPA violated the CWA by failing to perform its nondiscretionary duty to prepare and publish “promptly” replacement aquatic life toxic criteria under CWA Section 303(c)(4). NWEA asks the court to order EPA and the EPA Administrator to propose and then promulgate aluminum, **cadmium**, and copper water quality criteria for the protection of aquatic life in Oregon on a schedule consistent with the CWA’s timelines. On September 23, 2015, the court granted the parties’ motion to extend, by one week, the deadlines for briefing dispositive motions. According to the motion, the parties have been engaged in settlement discussions, and a one-week extension would “allow the parties to devote their efforts to further exploring settlement possibilities.” EPA’s response and cross-motion to NWEA’s motion for summary judgment are due no later than **October 7, 2015**. NWEA’s reply and opposition to any cross-motion are due no later than **November 20, 2015**. EPA’s reply to its cross-motion is due no later than **December 11, 2015**. Oral argument remains scheduled for **January 8, 2016**.

**INTERNATIONAL ISSUES**

**CANADA**

**BC Ministry Announces Proposed Reconciliation Work Plan With First Nations**

On September 15, 2015, the BC Ministry of Aboriginal Relations and Reconciliation issued a [press release](https://news.gov.bc.ca/releases/2015ARR0038-001516) announcing that BC “has reaffirmed its commitment to advancing reconciliation with First Nations through a proposed joint work plan with the First Nations Leadership Council.” According to the press release, the proposed work plan sets out a draft agenda that, through working in partnership with First Nations, will seek to close economic and social gaps, provide for collaboration on land and resource decisions, and support First Nations being full partners in the BC economy. The press release states that the proposed plan highlights the importance of working collaboratively with First Nation communities throughout BC, as well as seeking input from business, industry, and advocacy groups. BC and the First Nations Leadership Council will review the proposed work plan, and report in accordance with an agreed engagement and reporting structure, including reporting on progress made at the **2016** BC Cabinet-First Nations Leaders’ Gathering.

**CHINA**

**China Notifies WTO Of Plan To Revise Wooden Furniture Standards**

On July 22, 2015, China [notified](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S008.aspx?NotifyingCountryList=&ShortNameMatchList=&CrnSubjectList=&IssuingDateFrom=&IssuingDateTo=&FullText=heavy+metals&FullTextForm=heavy+metals&IsFullTextFull=True&SymbolList=&HasAttachement=&MeasureList=&AffectedCountryList=&ReceptionDateListFrom=01/07/2015&ReceptionDateListTo=01/09/2015&HSClassificationList=&ServicesClassificationList=&EnvironmentClassificationList=&ICSClassificationList=&ICSClassificationDescList:EnvironmentClassificationDescList:ServicesClassificationDescList:HSClassificationDescList=&Language=ENGLISH&AttachmentSelection=BOTH&SearchPage=FE_S_S003&ActiveTabIndex=1&&languageUIChanged=true) the WTO of its intent to amend the National Standard of the People’s Republic of China: Limit of VOCs and Migration of Heavy Metal of Wood-Based Furniture. The amendments include limiting the migration of **cadmium** to 75 mg/kg, and adding an Annex A concerning the test method for the migration of heavy metals. The Standard would replace GB 18584-2001: Indoor Decorating and Refurbishing Materials -- Limit of Harmful Substances of Wood-Based Furniture.

**State Council Announces Creation Of Nationwide Environmental Monitoring Network**

The State Council [announced](http://www.gov.cn/zhengce/content/2015-08/12/content_10078.htm) on August 12, 2015, that China will create a nationwide monitoring network by **2020** to track more accurately air, water, and soil pollution. According to the State Council, current monitoring is “incomplete” and “not uniform.” Information sharing and supervision have been “chaotic” and not conducted in a systematic manner. The State Council designated MEP as the lead body to develop a network for integrating data. Environmental monitoring institutions will have to ensure the authenticity and accuracy of data. According to MEP, establishing a national-level monitoring network is being done “precisely to avoid” conditions that allowed local governments to interfere in assessing data or conducting data fraud.

**Guidance On The Catalog Of Hazardous Chemicals Includes Mandatory GHS Classifications For Cadmium And Several Cadmium Compounds**

On August 19, 2015, SAWS [released](http://www.chinasafety.gov.cn/newpage/Contents/Channel_5330/2015/0902/257317/content_257317.htm) guidance on the Catalog of Hazardous Chemicals. The guidance includes mandatory GHS classifications for all 2,828 listed chemicals, including **cadmium telluride**, **cadmium fluoride**, **cadmium fluoborate**, **cadmium (non-pyrophoric)**, **cadmium sulfide**, **cadmium sulfate**, **cadmium chloride**, **cadmium cyanide**, **cadmium selenide**, **cadmium nitrate**, and **cadmium oxide (non-pyrophoric)**. It also provides instructions on how to determine if a mixture is listed in the Catalog and whether firms producing or handling listed chemicals require licenses or hazardous chemical registrations. If listed chemicals are present by 70 percent or more by weight or volume, the mixture is deemed as listed in the Catalog, and administrative licenses may be required. Companies must prepare or update SDSs and labels in accordance with the mandatory classifications for the listed chemicals. Most of the classifications are based on those in the EU, Japan, or South Korea. The Catalog of Hazardous Chemicals and its guidance are intended to help businesses that produce, import, distribute, or use listed chemicals comply with the safe management of hazardous chemicals regulations (Decree 591).

**SAWS Proposes Regulations To Implement Safe Production Law**

SAWS [issued](http://www.chinasafety.gov.cn/newpage/Contents/Channel_5826/2015/0914/257914/content_257914.htm) on September 14, 2015, a draft document on implementing regulations for the Safe Production Law. The proposed regulations would increase requirements for those producing hazardous chemicals or fireworks, as well as those in the mining and metal refining industries, by having facilities establish additional internal standards to prevent significant accidents and reduce risk. Companies would be required to create risk profiles for facilities and to provide professional training for workers responsible for safety standard compliance. Local provincial safety bureaus would have to establish three levels of compliance guidelines that companies could use as reference. Companies meeting compliance at the top two levels would automatically be granted administrative approvals for license extensions.

**HONG KONG**

**CFS Food Safety Report For June Includes Report Of Rice With Excessive Cadmium**

On July 31, 2015, CFS announced its food safety report for June 2015. According to the report, the 38 unsatisfactory samples included one portion of rice imported from Japan detected with excessive **cadmium**. CFS took follow-up action on the unsatisfactory samples, including informing the trade concerned of the test results, instructing the trade concerned to stop sale of the incriminated food items, and tracing the sources of the food items in question.

**CFS Bans Crabs “Contaminated” By Cadmium**

On August 19, 2015, CFS announced an embargo on brown crabs exported by Anglesey firms after claiming they contain “excessive” **cadmium**, a “metallic contaminant.” In response, DEFRA stated that all crabs sold in the UK need to comply with EU regulations on the level of **cadmium** permitted. DEFRA is working with CFS to find a “workable solution” so trade can resume “as soon as possible.” According to CS, two crab samples that were ready for export to China contained **cadmium** at 15 and 22 ppm, exceeding the 2 ppm limit.

**SOUTH KOREA**

**South Korea Recommends Companies Sign In To Joint Registration System By September 30**

On September 22, 2015, South Korea released an [English version](http://www.lawbc.com/uploads/docs/guidance_on_joint_submission_procedure_en.pdf) of the Guidance on Joint Submission Procedure. The Guidance recommends that manufacturers, importers, or ORs on behalf of foreign manufacturers sign in to the Joint Registration Information System by **September 30, 2015**, and begin joint registration after identifying those manufacturing or importing the same chemical and complete the registration within the three-year grace period. As reported in our July 28, 2015, Update, the final list of 510 priority existing chemical substances for registration under K-REACH includes **cadmium**, as well as several **cadmium compounds**. The Joint Registration Information System is available at <https://kreach.me.go.kr/opeweb/main.do>.

**TAIWAN**

**Phase 1 Notification Began September 1, 2015**

Taiwan’s phase 1 notification activities in association with the TCSCA began on September 1, 2015. Notification of all existing substances imported in quantities greater than 100 kg per year or 100 kg in one of the past three years must be completed prior to **March 31, 2016**. The notification does not require hazard information to be generated, but serves to function as a pre-registration phase. Taiwan does not have provisions for an Only Representative, but it does allow for a Third Party Representative to be appointed to assist non-Taiwanese companies by appointing an Agent on behalf of the importer to protect confidential substance/formulation details. A three-year volume average is considered to support the volume to be notified. Basic use information is also required to be reported.

**MOL And EPA Harmonize Inventory Of Existing Chemical Substances**

The MOL has updated the [TCSI](https://csnn.osha.gov.tw/content/home/Substance_Home.aspx), which now contains over 100,000 existing chemical substances, including **cadmium**. MOL and the Taiwan EPA worked together to create a harmonized list. Previously, MOL maintained a list of substances registered under the OSHA, while EPA maintained a list of substances registered under TCSCA. Following the release of the TCSI, EPA announced the availability of the Guidance for the Regulation of New and Existing Chemical Substance Registration. The Guidance was based on MOL’s January 1, 2015, Guidance of New Chemical Substance Registration. EPA’s Guidance includes minor amendments and clarifications.

**Taiwan FDA Limits Heavy Metals, Including Cadmium, In Vegetables And Fruits**

On September 2, 2015, the Taiwan FDA [announced](http://www.fda.gov.tw/TC/newsContent.aspx?id=14006&chk=92b1cd58-7602-4c81-a86c-0f327176e28f#.Vgmgn9TD9p9) revisions to the Limits of Heavy Metals in Vegetables and Fruits. The limits for **cadmium** include:

| **Category** | **Limit for cadmium** | **Applicable scope** |
| --- | --- | --- |
| Leafy vegetables | <0.2 ppm | Also applicable to leafy vegetables under brassica. |
| Brassica vegetables | <0.05 ppm | Applicable to head cabbages, kohlrabi, cauliflower, broccoli, and “head” part of Brussels sprouts. Not applicable to leafy vegetables under brassica. |
| Root and tuber vegetables | <0.1 ppm | Applicable to whole commodity after removing tops and soils, as well as potatoes after removal of peel. Not applicable to celeriac and parsnips. |
| Celeriac and parsnips | <0.2 ppm |  |
| Stalk and stem vegetables | <0.1 ppm | Applicable to leaf stems only for rhubarb, and flower head only for globe artichoke. Adhering soils should be removed first for the application to celery and asparagus. |
| Bulb vegetables | <0.05 ppm | Applicable to dry onion and garlic after removal of roots, soils, and peel easy to break off. |
| Fruiting vegetables | <0.05 ppm | Applicable to fruiting vegetables after removal of stems, husks of sweet corn and fresh corn excluded. |
| Legume vegetables | <0.1 ppm | Including edible pods. |
| Pulses | <0.1 ppm | Including edible pods and dry legume vegetables picked when dry, soybeans excluded. |
| Soy beans | <0.2 ppm |  |
| Other vegetables and fruits | <0.05 ppm |  |
| Herbs and spices, fresh | <0.2 ppm |  |

\* \* \* \* \*

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

**µg/L** -- Microgram Per Liter

**AA** -- Alternatives Analysis

**ADAF** -- Age-Dependent Adjustment Factor

**AF** -- Adjustment Factor

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

**BC** -- British Columbia

**BLM** -- Bureau of Land Management

**CDR** -- Chemical Data Reporting

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

**CFS** -- Center for Food Safety

**CPSC** -- Consumer Products Safety Commission

**CWA** -- Clean Water Act

**DEFRA** -- Department for Environment, Food, and Rural Affairs

**DOI** -- United States Department of the Interior

**DOL** -- Department of Labor

**EDF** -- Environmental Defense Fund

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

**EU** -- European Union

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

**HRL** -- Health Risk Limit

**ICdA** -- International Cadmium Association

**ICR** -- Information Collection Request

**kg** -- Kilogram

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

**L/kg-day** -- Liter Per Kilogram Per Day

**MDH** -- Minnesota Department of Health

**MEP** -- Ministry of Environmental Protection

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

**mg/kg-day** -- Milligram Per Kilogram of Body Weight Per Day

**MOL** -- Ministry of Labor

**NA** -- Not Applicable

**NGO** -- Non-Governmental Organization

**NRDC** -- Natural Resources Defense Council

**NWEA** -- Northwest Environmental Advocates

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

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

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

**OR** -- Only Representative

**OSHA** -- Occupational Safety and Health Act

**ppm** -- Part Per Million

**RfD** -- Reference Dose

**RSC** -- Relative Source Contribution

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

**SCP** -- Safer Consumer Products

**SDS** -- Safety Data Sheet

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

**SF** -- Slope Factor

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

**Taiwan FDA** -- Taiwan Food and Drug Administration

**TCSCA** -- Toxic Chemical Substance Control Act

**TCSI** -- Taiwan Chemical Substance Inventory

**TSCA** -- Toxic Substances Control Act

**UK** -- United Kingdom

**USFS** -- United States Forest Service

**VOC** -- Volatile Organic Compound

**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)