#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**January 28, 2019**[[1]](#footnote-1)

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*B&C® and its consulting affiliate Acta® published on January 8, 2019, our “*[*Forecast for U.S. Federal and International Chemical Regulatory Policy 2019*](http://www.lawbc.com/regulatory-developments/entry/forecast-for-u.s.-federal-and-international-chemical-regulatory-policy-2019)*.” In this richly detailed document, the legal, scientific, and regulatory professionals of B&C and Acta distill key trends in U.S. and global chemical law and provide our best informed judgment as to the shape of key developments we are likely to see in 2019. This edition contains new features -- a detailed table of contents, more detail (the document is 70 pages), a glossary, the schedule of our complimentary webinars in 2019, links to key writings, and a summary of key presentations.*

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**FEDERAL ISSUES**

**CERCLA ISSUES**

**NGOs Challenge EPA’s Decision Not To Issue Final Rule Regarding Financial Responsibility Requirements For Hardrock Mining Industry**

State intervenors filed their brief on November 30, 2018, in the U.S. Court of Appeals for the District of Columbia Circuit. *Idaho Conservation League v. Pruitt*, No. 18-1141. State intervenors argue that EPA correctly concluded that additional financial assurance at the federal level is unnecessary. According to the state intervenors, EPA departed from CERCLA by considering both financial and environmental risks. State intervenors state that EPA “placed a thumb on the scale *in favor* of requiring financial assurances and thereby *helped*” petitioners’ position. EPA’s overbroad reading of the statute “therefore had no effect on the ultimate decision not to require redundant financial assurances.” Industry intervenors argue that the record supports EPA’s finding that CERCLA Section 108(b) requirements are not appropriate for hardrock-mining facilities as a class: (a) EPA appropriately reconsidered the risks from hardrock mines given comments on its proposed rule; (b) petitioners’ examples do not undermine EPA’s final action; (c) petitioners’ allegation of “rampant” violations lacks record support and relies on data that do not demonstrate environmental risk; (d) EPA reasonably accounted for “bankruptcy risk,” long-term water treatment, and natural-resource damages; (e) EPA reasonably considered existing financial-responsibility programs; and (f) EPA reasonably weighed the proposed rule’s advantages and disadvantages.

Petitioners filed their reply brief on December 21, 2018, arguing that EPA reinterpreted Section 108(b)(1) as focusing on only financial risks, “in defiance of the provision’s [] plain language and congressional intent to prevent tragedies like Love Canal.” Even within this new limited framework of financial risks, EPA deemed assurances in place from other programs to be adequate without acknowledging the gaps in these programs. Moreover, EPA only considered the risk that the taxpayers would incur costs via the Superfund, “despite CERCLA’s plain language directing EPA to consider a broad range of information on the costs of cleanup.” According to petitioners, EPA justified its final action based on costs saved by pulling isolated figures out of its cost-benefit analysis and using them out of context, while ignoring the benefits that analysis identified.

A number of briefs were filed on January 18, 2019:

* The ten state mining trade associations and the American Exploration & Mining Association filed a final brief of *amici curiae* in support of EPA, arguing that since EPA could be persuaded to change course because of public comments, “especially comments from its regulatory partners,” is evidence of an open and responsive administrative process;
* The state intervenors’ opening brief states that by considering environmental risks as well as financial risks, EPA “placed a thumb on the scale *in favor* of requiring financial assurances and thereby *helped* Petitioners’ position. EPA’s overbroad reading of the statute therefore had no effect on the ultimate decision not to require redundant financial assurances”;
* Respondents argue in their response brief that EPA’s final action was a “logical outgrowth” of the proposed rule, and “no additional notice and comment proceedings were required”;
* Industry intervenors maintain that petitioners’ “cherry-picked examples of releases (many of which were remediated without taxpayer funds or involved legacy contamination), unfounded allegations of ‘rampant’ violations and substantial bankruptcy-related risks, selective criticism of existing financial-responsibility programs, and mischaracterizations of EPA’s weighing of the Proposed Rule’s advantages and disadvantages, cannot surmount the deference owed to EPA’s Final Action”;
* Petitioners maintain in their opening brief that EPA’s decision is arbitrary and unlawful for four reasons: (1) EPA unlawfully ignored risks to health and the environment; (2) even if EPA could lawfully limit its analysis to financial considerations, it ignored substantial evidence of financial risk, including evidence CERCLA explicitly directs EPA to consider; (3) EPA based its decision in part on a comparison of costs to industry with costs to the Superfund; and (4) EPA cannot abandon a proposed rule based on entirely new rationales and arbitrary assertions at odds with its prior factual findings without providing a new opportunity for comment; and
* According to petitioners’ reply brief, EPA reinterpreted Section 108(b)(1) as focusing on only financial risks, in defiance of the provision’s plain language and Congressional intent to prevent tragedies like Love Canal; even within this new limited framework of financial risks, EPA deemed assurances in place from other programs to be adequate without acknowledging the gaps in these programs; EPA justified the final action based on costs saved by pulling isolated figures out of its cost-benefit analysis and using them out of context, while ignoring the benefits that analysis identified; and EPA “sprung its new CERCLA interpretation and narrowed view of what evidence is relevant on the public in its final action, without prior notice or opportunity for comment.”

**MINING AND MINERAL ISSUES**

**SEC Amends Rule To Modernize Property Disclosures Required For Mining Registrants**

As reported in our November 28, 2018, Update, SEC [announced](https://www.sec.gov/news/press-release/2018-248) on October 31, 2018, that it voted to adopt amendments to modernize the property disclosure requirements for mining registrants, and related guidance, under the Securities Act of 1933 and the Securities Exchange Act of 1934. Under the [final rule](https://www.federalregister.gov/documents/2018/12/26/2018-26337/modernization-of-property-disclosures-for-mining-registrants), promulgated on December 26, 2018, a registrant with material mining operations must disclose specified information in its Securities Act and Exchange Act filings concerning its mineral resources, in addition to its mineral reserves. Current SEC rules and guidance permit the disclosure of non-reserve estimates only in limited circumstances. Requiring the disclosure of mineral resources in addition to mineral reserves will provide investors with important information concerning the registrant’s operations and prospects. The final rule provides a two-year transition period so that a registrant will not be required to begin to comply with the new rules until its first FY beginning on or after **January 1, 2021**.

**New Chair Of House Natural Resources Committee Intends To Introduce Bill Updating Mining Law In May**

Representative Raul Grijalva (D-AZ), Chair of the House Committee on Natural Resources, intends to introduce legislation that will update the Mining Law of 1872, which does not charge hardrock miners any royalty fees on the minerals they extract. Grijalva plans to introduce the legislation in **May 2019**, the 147th anniversary of the Act. In the previous session of Congress, Grijalva and Representative Alan Lowenthal (D-CA), then Ranking Member of the House Natural Resources Subcommittee on Energy and Mineral Resources, introduced a bill (H.R. 5753) that would set a 12.5 percent royalty on new mines and an eight percent royalty on existing mines, then use that money for abandoned mine cleanup, as is done with coal mines.

**TRADE ISSUES**

**USTR Will Postpone Date On Which Additional Tariffs Will Apply**

In a forthcoming *Federal Register* notice, USTR will postpone the date on which the rate of additional duties will increase to 25 percent for the products of China covered by the [September 2018 action](https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/ustr-finalizes-tariffs-200) in the Section 301 investigation. The rate of additional duty for the products covered by the September 2018 action will increase to 25 percent on **March 2, 2019**. As reported in our September 28, 2018, Update, the final list includes the following **cadmium** products:

| **HTSUS Subheading** | **Product Description** |
| --- | --- |
| 2620.91.00 | Ash and residues (other than from the manufacture of iron or steel), containing antimony, beryllium, **cadmium**, chromium, or their mixtures |
| 2825.90.75 | **Cadmium oxide** |
| 2830.90.20 | **Cadmium sulfide** |
| 8107.20.00 | **Cadmium, unwrought; cadmium powders** |
| 8107.30.00 | **Cadmium waste and scrap** |
| 8107.90.00 | **Cadmium, articles thereof nesoi** |
| 8507.30.40 | **Nickel-cadmium storage batteries**, of a kind used as the primary source of electrical power for electrically powered vehicles of 8703.90 |

**TSCA ISSUES**

**NRDC Files Suit Challenging Final TSCA Mercury Inventory Rule**

On December 7, 2018, NRDC filed its opening brief in the U.S. Court of Appeals for the Second Circuit. *NRDC v. EPA*, No. 18-2121. It presents the following statement of issues:

1. Whether the reporting rule is unlawful because it exempts manufacturers and importers of products with mercury-added component parts, despite TSCA’s instruction that EPA require reporting from “any person who manufactures [or imports] mercury or mercury-added products”; and

2. Whether the reporting rule is unlawful because it exempts manufacturers and importers of mercury in amounts (i) greater than or equal to 2,500 pounds per year for elemental mercury, or (ii) greater than or equal to 25,000 pounds per year for mercury compounds -- specifically three of the largest mercury suppliers in the country -- despite TSCA’s requirement that EPA require reporting from “any person” who manufactures or imports mercury and that EPA prepare an accurate and comprehensive “inventory” of mercury supply and trade.

Vermont’s statement of issues includes the above issues, as well as whether EPA’s decision to exempt certain entities from the reporting requirements is contrary to Congress’s intent to create a detailed and complete inventory of the relevant mercury activities involving mercury supply, use, and trade under TSCA.

On December 14, 2018, 11 states filed an *amici* brief in support of the petitioners. The states argue that EPA exempted from the reporting requirement two significant categories of importers and manufacturers: those who import products containing a component that is a mercury-added product, and those manufacturers who incorporate a component made by another entity into their finished products. Thus, for example, a business that imports mercury-containing batteries by themselves may be required to report, but a business that imports a toy containing the very same batteries would not be required to report.

More information on the final rule is available in our July 28, 2018, Update, and June 25, 2018, memorandum, “[EPA Publishes Final Reporting Requirements for TSCA Mercury Inventory](http://www.lawbc.com/regulatory-developments/entry/epa-publishes-final-reporting-requirements-for-tsca-mercury-inventory).”

**MISCELLANEOUS ISSUES**

**Senate Committee Holds Confirmation Hearing On Wheeler’s Nomination To Be Permanent EPA Administrator**

On January 9, 2019, President Donald Trump nominated Acting EPA Administrator Andrew Wheeler to be the permanent EPA Administrator. Wheeler has been Acting Administrator since former EPA Administrator Scott Pruitt resigned in July 2018. On November 16, 2018, President Donald Trump stated that Acting EPA Administrator Andrew Wheeler is “going to be made permanent. He’s done a fantastic job and I want to congratulate him.” The Senate Committee on Environment and Public Works held a [confirmation hearing](https://www.epw.senate.gov/public/index.cfm/2019/1/hearing-on-the-nomination-of-andrew-wheeler-to-be-administrator-of-the-environmental-protection-agency) on January 16, 2019. After the hearing, Senate Environment and Public Works Committee Chair John Barrasso (R-WY) stated that he agreed to a request made by Senator Tom Carper (D-DE), Ranking Member, to slow down Committee action on Wheeler. The Committee is scheduled to vote on the nomination on **February 5, 2019**. With 53 senators, Republicans control the Senate and have enough votes to confirm Wheeler.

**STATE ISSUES**

***Georgia***

**NGOs Examine Groundwater Contamination From Coal Ash**

Earthjustice and the Environmental Integrity Project released a report on December 13, 2018, entitled [*Georgia at a Crossroads: Groundwater contamination from coal ash threatens the Peach State*](https://earthjustice.org/features/coal-ash-contamination-georgia-groundwater). The report states that coal ash “contains a brew of hazardous pollutants, such as arsenic, boron, **cadmium**, chromium, lead, radium, selenium and more, which can severely harm human health, fish and wildlife.” The report uses a health-based threshold of 5 μg/L (MCL) for **cadmium**, noting that the groundwater protection standard in the CCR rule is 5 μg/L for **cadmium**.

***Illinois***

**NGOs Report On Coal Ash Contamination**

On November 30, 2018, a coalition of NGOs issued a report entitled [*Cap and Run: Toxic Coal Ash Left Behind by Big Polluters Threatens Illinois Water*](https://illinoiscoalash.org/). Issued by Environmental Integrity Project, Earthjustice, Prairie Rivers Network, and Sierra Club, the report “shows that Illinois’ coal-fired power plants, after decades of unsafe disposal of coal ash, have severely polluted the underlying groundwater.” According to the report, the coalition found unsafe groundwater contamination at 22 of the 24 coal plants with available data. The list of pollutants found includes **cadmium**, “which can cause kidney and bone damage, is likely to cause cancer, and is toxic to aquatic life.”

***New York***

**Senate Bill Would Provide Greater Regulation Of Children’s Products**

S.B. 501, introduced on January 9, 2019, would amend the environmental conservation law to provide greater regulation of children’s products. The bill would:

* Require NYSDEC to post lists of dangerous chemicals and chemicals of concern on its website;
* Allow NYSDEC, in consultation with NYSDOH, to review the list of dangerous chemicals and chemicals of concern periodically to identify or remove dangerous chemicals or chemicals of concern based on credible scientific evidence;
* Permit designation of a “dangerous chemical” if such chemical is:
* Found to be present in humans;
* Found to be present in household dust, indoor air, or drinking water;
* Found to be present in fish, wildlife, or the natural environment;
* Found to be present in a consumer product or present in the home, school, or children’s day care center; or
* Banned for sale in another state;
* Require manufacturers that sell a children’s product that contains an intentionally added priority chemical to report the following information:
* The identification of the product;
* The name of the priority chemical; and
* The intended purpose of the chemicals;
* Require manufacturer of children’s products containing a priority chemical to notify persons that offer the children’s products for sale or distribution of the presence of such priority chemical, and provide such persons with information regarding the toxicity of such chemical;
* Prohibit the sale of children’s products containing a priority chemical; and
* Authorize NYSDEC to participate in an interstate chemical clearing house.

Under the bill, **cadmium** and **cadmium compounds** would be listed as chemicals of concern, and the list of dangerous chemicals would include **cadmium**. The bill was referred to the Senate Environmental Conservation Committee. Similar versions of the bill were introduced in previous legislative sessions: 2015-2016 (S.B. 7507) and 2017-2018 (S.B. 1454).

**Senate Bill Would Regulate Chemicals Of High Concern To Children**

On January 9, 2019, S.B. 503 was introduced. The bill would direct NYSDOH, in consultation with NYSDEC, to establish a list of chemicals of high concern to children. NYSDOH and NYSDEC would publish the list and require manufacturers to disclose whether they use these chemicals in their children’s products. A “chemical of high concern to children” would be any chemical identified as such by a state, federal, or international governmental entity on the basis of credible scientific evidence or reliable information; and “priority chemicals for disclosure” would be chemicals that are designated for disclosure by NYSDOH, in consultation with NYSDEC. The bill was referred to the Senate Consumer Protection Committee.

**Senate Bill Would Regulate Toxic Chemicals In Children’s Products**

S.B. 2199, introduced on January 23, 2019, would amend the environmental conservation law in relation to the regulation of toxic chemicals in children’s products. The bill would:

* Require NYSDEC to establish a public website that lists all chemicals of high concern and all priority chemicals;
* Allow NYSDEC, in consultation with NYSDOH, to review the list of chemicals of high concern periodically and identify or remove priority chemicals or chemicals of high concern or based on credible scientific evidence;
* Permit designation of a priority chemical if found to be present in humans; found to be present in household dust, indoor air, or drinking water; found to be present in fish, wildlife, or the natural environment; found to be present in a consumer product or present in the home, school, or children’s day care center; or banned for sale in another state;
* Require every manufacturer that offers a children’s product for sale that contains an intentionally added priority chemical to report the identification of the product, the name of the priority chemical, and the intended purpose of the chemicals;
* Require a manufacturer or distributor of a children’s product containing a priority chemical to notify persons that offer the children’s product for sale or distribution in the state of the presence of such priority chemical, and provide such persons with information regarding the toxicity of such chemical;
* Prohibit the sale, effective **January 1, 2022**, of a children’s product containing a priority chemical;
* Specify that the provisions of this Act shall apply only to new products; and
* Prohibit the sale or distribution of a children’s product if the manufacturer or distributor has failed to provide the required information and authorize NYSDEC to participate in an interstate chemical clearing house to assist in carrying out this title.

Under the bill, **cadmium** would be listed as a priority chemical. The bill was referred to the Senate Environmental Conservation Committee. Similar versions of the bill were introduced in previous legislative sessions: 2011-2012 (S.B. 1526); 2013-2014 (S.B. 1223); 2015-2016 (S.B. 2408); and 2017-2018 (S.B. 5176).

***Oregon***

**NGO Report On Chemicals Reported Under Toxic Free Kids Act Includes Cadmium**

The Oregon Environmental Council [published an analysis](https://oeconline.org/chemicals-of-concern/) in November 2018 regarding the chemicals of concern reported under the Toxic Free Kids Act. According to the Council, 4,348 reports show that toys, clothes, crafts, bedding, and baby gear sold in Oregon in 2017 contained more than 50 chemicals of concern, including **cadmium** and **cadmium compounds**. Manufacturers were required to report for the first time by January 1, 2018.

***Vermont***

**Bill Would Create Interagency Committee On Chemical Management**

S.B. 55, introduced on January 25, 2019, would establish an Interagency Committee on Chemical Management to evaluate chemical inventories in Vermont and identify potential risks from the inventories. The bill would require a manufacturer of a children’s product containing a chemical of high concern to children to report the brand name, product model, and available universal product code of a product. The Commissioner of Health would be authorized to add a chemical to the list of chemicals of high concern on the basis of independent, peer-reviewed scientific research. The bill would allow the Commissioner of Health to restrict the sale of or require the labeling of a children’s product containing a chemical of high concern after consultation with the Working Group, instead of upon recommendation of the Working Group. The bill would authorize the Commissioner of Health to restrict the sale or require labeling of a children’s product with a chemical of high concern to children if the Commissioner determines children may be exposed to a chemical of high concern in the product. The list of chemicals of high concern to children includes **cadmium** and **cadmium compounds**.

**INTERNATIONAL ISSUES**

**RMI Publishes Blockchain Guidelines To Drive Alignment In Mineral Supply Chain Due Diligence**

RMI [announced](http://www.responsiblemineralsinitiative.org/about/media-news/news/responsible-minerals-initiative-releases-blockchain-guidelines-to-drive-alignment-in-mineral-supply-chain-due-diligence/) on December 12, 2018, voluntary guidelines intended to drive the common adoption of definitions and concepts in the application of blockchain-enabled solutions. According to RMI, the [RMI Blockchain Guidelines](http://www.responsiblemineralsinitiative.org/emerging-risks/blockchain/) represent a first industry effort to define a common set of principles, attributes, and definitions for the application of blockchain technology to support mineral supply chain due diligence. The Guidelines seek to reduce the fragmentation of blockchain projects by recommending a set of fundamental attributes for projects to include at each stage of mineral supply chains. RMI worked with its members and external stakeholders to develop the Guidelines, including organizations along the full mineral value chain, as well as blockchain service providers. RMI states that it recognizes the ongoing work to design and test blockchain-enabled solutions in mineral supply chains and is committed to review regularly and update its Guidelines. RMI invites any organization to apply the Guidelines during the conceptualization, design, and implementation of blockchain projects in mineral supply chains and share feedback.

**CANADA**

**Canada Publishes Updates To Two-Year Rolling Work Plans (2018-2020)**

On December 14, 2018, Canada published updates to the two-year rolling work plans (2018-2020):

* [Two-Year Rolling Information Gathering Plan (2018-**2020**)](https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/two-year-rolling-information-gathering-plan.html): The Plan is intended to provide stakeholders with an overview of active and potential upcoming information gathering initiatives. The data gathering approach for these initiatives may be through mandatory surveys (*e.g*., Section 71 notices) or through voluntary surveys, including targeted e-mails in which ECCC and HC are following up on information obtained through previous information gathering initiatives;
* [Two-Year Rolling Risk Assessment Publication Plan (2018-**2020**)](https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/cmp-third-phase-update.html#toc2): The Plan visually indicates time periods during which assessment products will be published for the third and fourth years of the third phase of the CMP (April 2018 to **March 2020**). This includes both Science Approach Documents and Screening Assessment Reports involving the substances listed under the Substances List tab. Also shown are Screening Assessment Reports initiated in earlier phases of CMP; substances addressed in these documents are not included in the list in the Substances List tab, however;
* [Two-Year Rolling Risk Assessment Publication Plan for the Remaining Existing Living Organisms to be Assessed under CEPA (**2019-2020**)](https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/two-year-work-plan-publication-remaining-existing-living-organisms.html); and
* [Two-Year Rolling Risk Management Activities and Consultations Schedule (2018-**2020**)](https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/two-year-rolling-risk-management-activitiesconsultations-schedule.html).: The table provides a high level summary of risk management activities, including opportunities for stakeholder consultations and engagement, and is a source of information on risk management activities that are scheduled to occur during the next two years for substances managed under the CMP. The timelines of activities outlined in the table may be subject to change.

**Canada Publishes Proposed Cross-border Movement Of Hazardous Waste And Hazardous Recyclable Material Regulations**

On December 15, 2018, Canada published the [proposed Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations](http://gazette.gc.ca/rp-pr/p1/2018/2018-12-15/html/reg2-eng.html). The proposed Regulations would consolidate three previous regulations to improve the management of permits and the tracking of shipments, as well as clarify regulatory requirements to continue ensuring that movements of hazardous waste and hazardous recyclable materials across Canada’s international and inter-provincial/territorial borders reach the intended destination. The proposed Regulations would list **cadmium** on the list of environmentally hazardous constituents and **cadmium** and **cadmium compounds** on the list of constituents of potentially hazardous waste. Comments are due **February 13, 2019**.

**Canada Publishes Results Of 2017-2018 CMP Prioritization Exercise**

On January 14, 2019, Canada announced the availability of the results of the 2017-2018 CMP prioritization exercise results. The [Identification of Risk Assessment Priorities: Results of the 2017-2018 Review](https://www.canada.ca/content/canadasite/en/environment-climate-change/services/evaluating-existing-substances/identification-risk-assessment-priorities-irap-2017-18.html) and its [supporting document](https://www.canada.ca/content/canadasite/en/environment-climate-change/services/evaluating-existing-substances/identification-risk-assessment-priorities-irap-results-2017-18-sd.html) describe how the approach was applied to identify chemicals and polymers, beyond those identified through DSL categorization, as risk assessment priorities under CEPA. Canada primarily focused on identifying new information that would constitute indicators of hazard and/or exposure for the following types of substances:

* Substances on the DSL that have not been assessed within the last five years, and are not scheduled to be assessed under the CMP;
* Previously assessed substances that were not found to meet the criteria under CEPA Section 64, depending on the time elapsed since data/information on the substance was last reviewed;
* Substances that were nominated by CMP Program staff as being of potential concern based on knowledge acquired through research and/or expertise gained from previous assessments; and
* Substances identified as potentially requiring review pursuant to CEPA Section 75.

After searching the pertinent sources of information, the process identified approximately 8,400 substances that fit the scope of the review and had at least one new piece of information representing potential indicators requiring further consideration. The analysis identified substances that are:

* Unlikely to require further work based on information available (approximately 7,100 chemical substances);
* New candidates for risk assessment (one chemical substance, 1-H-benzotriazole);
* Likely to require further data gathering (58 chemical substances);
* Likely to require further scoping/problem formulation (1,094 chemical substances). This includes **cadmium**. The rationale states: “On Schedule 1 of CEPA. Further scoping is required to determine if there are additional sources of exposure to assess/manage. Based on biomonitoring levels reported under Canadian Health Measures Survey (CHMS)”; or
* Subjects of ongoing international activities (77 chemical substances).

**Canada Begins Consultation On Informed Substitution**

Canada announced on January 16, 2019, a [public consultation](https://www.canada.ca/en/health-canada/programs/consultation-informed-substitution-canadas-chemical-program.html) seeking comments for advancing informed substitution in Canada. HC and ECCC are exploring ways to support informed substitution and drive Canadian innovation and the adoption of safer chemistry. Canada states that informed substitution “is the considered transition from a chemical of concern to safer chemicals or non-chemical alternatives, and is an internationally recognized strategy for reducing health and environmental risks posed by chemicals.” Canada commissioned the Lowell Center for Sustainable Production to conduct a study to identify potential ways for Canada to advance informed substitution in a future iteration of the CMP after **2020**. The purpose of the consultation is to solicit feedback on the proposed elements and activities outlined in the study. The key questions for discussion include:

* Who are the partners that have a role to play in considering informed substitution, and what role should each of them play;
* Are there considerations or is there information missing from the study; and
* Are there potential costs, benefits, or impacts of informed substitution on the health of Canadians, the environment, companies, or others.

Canada will consider this feedback when planning the next phase of chemicals management in Canada. Comments are due **March 18, 2019**.

**CHINA**

**China Includes Cadmium And Cadmium Compounds On Draft List Of Toxic And Hazardous Air Pollutants**

On December 13, 2018, MEE [published](http://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/201812/t20181214_684863.html) the draft list of toxic and hazardous air pollutants (first batch). The first batch includes:

* Dichloromethane;
* **Cadmium and its compounds**;
* Chromium and its compounds;
* Mercury and its compounds;
* Formaldehyde;
* Lead and its compounds;
* Tri-chloromethane;
* Tri-chloroethylene;
* Arsenic and its compounds;
* Tetra-chloroethylene; and
* Acetaldehyde.

Companies discharging listed pollutants would be required to comply with the following obligations:

* Article 78 of the Air Pollution Prevention Law:
* Establish environment risk early warning system;
* Regular monitoring on outlets and surroundings;
* Assessment on environment risk to check environment potential safety hazard; and
* Improve technics to prevent environment risk;
* Management measures on pollutants emission permit:
* Implementing pollutants emission permit system; and
* Supervision and original data record.

Comments were due December 28, 2018.

**China Begins Public Consultation On Revisions To MEP Order No. 7**

MEE published on January 8, 2019, the “Chemical Environmental Risk Assessment and Control Regulation (Draft)” for public comment. The Regulation would update MEP Order No. 7, “Environmental Management of New Chemical Substances.” The key provisions include:

* Scope:
  + The scope of the Regulation is expanded from new chemical substances to all chemical substances, including both existing and new chemical substances.
* Inventory and Lists:
  + Risk assessment and control of chemical substances are managed under the lists based on priority and risk, which includes:
* Inventory of Existing Chemical Substances in China;
* List of Priority Control Chemical Substances;
* List of Chemical Substances Strictly Restricted;
* List of Chemical Substances Restricted for Import and Export; and
* List of Prohibited Chemical Substances.
* Registration of New Chemical Substances:
  + Exemption: New chemical substances used for research in laboratories or reference standards with annual production or import volume of less than 100 kg;
  + New Chemical Substance Record: New chemical substances with annual production or import volume of less than one metric ton; polymers with less than two percent of new chemical monomer or polymers of low concern; and new chemical substances used for research and development with annual production or import volume of less than ten metric tonnes for no more than two years; and
  + New Chemical Substance Registration: New chemical substances with annual production or import volume of more than one metric ton that do meet criteria for New Chemical Substance Record.
* Risk Assessment and Reporting of Existing Chemical Substances:
* MEE shall establish technical guidance, procedures, and database for environmental impact assessment of chemical substances;
* Producers, processors/users, or importers of chemical substances shall annually report identity, quantity, and uses of the chemical substances to the MEE;
* MEE shall publish work plans for risk assessment of priority control chemical substances, which are persistent, bioaccumulative, or relatively high risk to environment or human health, and conduct risk assessment of the priority control chemical substances; and
* Producers, processors/users, or importers of substances on the List of Priority Control Chemical Substances shall report emission data, local environment impact, and necessary physicochemical properties, toxicology, and ecotoxicology data of the chemicals. MEE can request the enterprises to conduct additional tests if the existing information is insufficient for risk assessment.

Comments on the draft Regulation are due **February 20, 2019**. More information is available in Acta’s January 16, 2019, memorandum, “[China Publishes Chemical Environmental Risk Assessment and Control Regulation to Update MEP Order No. 7 for Public Comment](http://www.actagroup.com/regulatory-developments/entry/china-publishes-chemical-environmental-risk-assessment-and-control-regulati).”

**HONG KONG**

**Proposal Would Bring Safety Standards For Toys In Line With International Requirements**

CEDB recently held a public consultation on its proposal to update the safety standards for toys and other children’s products in line with the latest international requirements. The proposed updates include replacing the European Standard Safety of Toys -- Part 3: Migration of certain elements -- EN 71-3:2013 + A1:2014 with the updated EN 71-3:2013+A3:2018, which applies to both toys and children’s paints. The revised standard specifies requirements and test methods for the migration of 19 elements, including lead, **cadmium**, and mercury, for different toys. The changes would cover the relevant standards for five classes of toys and children’s products: children’s safety barriers for domestic use; children’s cots for domestic use; children’s high chairs and multi-purpose high chairs for domestic use; children’s paints; and playpens for domestic use. Comments were due December 31, 2018.

**NEW ZEALAND**

**Ministry Awards Grant For Two-Year Cadmium Study**

The Ministry of Business and Innovation awarded a $999,808 grant to Dr. Adam Hartland, Waikato University geochemistry senior lecturer, for a two-year study on the environmental impact of **cadmium**. The Waikato Regional Council estimates that around 8.3 tonnes of **cadmium** is currently applied to Waikato soils each year. The largest single source of **cadmium** is superphosphate fertilizer. According to Hartland, there is some evidence to suggest that **cadmium** is mobile. In recent years, **cadmium** accumulation rates slowed, but this did not match the amount of fertilizer applied to farmland. Hartland stated: “When you look at how much is in the soil verses how much is going on, it doesn’t tally up. There is reason to believe it is moving outside the soil.” The **cadmium** could be leaching into groundwater and accumulating in plants.

**SOUTH KOREA**

**KATS Proposes To Regulate Synthetic Resin Consumer Products**

KATS held a public consultation on proposed safety standards that would be applied to synthetic resin consumer products. The proposed standards would be adopted under the Electric Products and Consumer Products Safety Management Act and would regulate consumer products with synthetic resins that come into contact with human skin for levels of heavy metals and phthalates. Products to which the standard could apply include mats; shoes and shoe insoles; bags; mobile phone cases; gym balls; headphones; and toilet seats. The safety requirements would set maximum levels for hazardous substances in the resins for lead (300 mg/kg); **cadmium** (75 mg/kg); and phthalate plasticizers. The proposed safety standards would not apply to products already covered by other regulations such as the Food Hygiene Act and the Children’s Products Safety Special Law, or addressed under other sections of the Electric Products and Consumer Products Safety Management Act. The consultation ended January 11, 2019.

**MOE Publishes Final Lists Of CMR, Priority Control, And Exempt Chemical Substances**

On December 28, 2018, MOE published three notices related to registration and substance management under K-REACH:

* [CMR substances](http://www.lawbc.com/uploads/docs/2018-232_CMR_list._announcement-1.PDF) subject to K-REACH registration by **December 31, 2021** (364 substances). Listed substances must be registered if they are imported or manufactured in total annual volumes of one tonne or more. Companies importing or manufacturing 100 kg or more annually must register. The list includes a number of **cadmium compounds**;
* [Substances exempted](http://www.lawbc.com/uploads/docs/2018-234_exempted_substances._announcement.PDF) from registration under K-REACH (44 substances); and
* [Priority substances](http://www.lawbc.com/uploads/docs/2018-233_Priority_control_subs_announcment_and_list-1.PDF) where products that contain the listed chemical substances are subject to ongoing management and reporting under K-REACH (672 substances). The list includes CMRs, endocrine disrupting chemicals, PBTs, STOTs, and SVHCs. Producers or importers must report when products contain a priority substance above 0.1 percent of its weight and the total weight of the priority substance in products is over one tonne per year. The rules take effect for 204 of the chemical substances, including **cadmium (inorganic metal)** (CMR, PBT, STOT) and a number of **cadmium compounds**, from **July 1, 2019**. For the remaining 468, including other **cadmium compounds**, the rules take effect **July 1, 2021**.

**K-REACH Pre-Registration Begins**

The amended K-REACH took effect January 1, 2019. Under the amendments, all existing chemical substances manufactured in or imported to South Korea at greater than or equal to one ton per year are now subject to registration. The pre-registration period began January 1, 2019, and will end **June 30, 2019**. Pre-registered substances benefit from the following registration grace periods that allow existing chemical substances to be imported without full registrations:

| **Substance Type** | **Registration Deadline** |
| --- | --- |
| >1,000 t/y existing substances  >1 t/y CMR substances | **December 31, 2021** |
| 100-1,000 t/y existing substances | **December 31, 2024** |
| 10-100 t/y existing substances | **December 31, 2027** |
| 1-10 t/y existing substances | **December 31, 2030** |

More information on pre-registration is available in Acta’s January 14, 2019, memorandum, “[Information on the Upcoming Registration Deadline for Chemical Substances in South Korea -- June 30, 2019](http://www.actagroup.com/regulatory-developments/entry/information-on-the-upcoming-registration-deadline-for-chemical-substances-i).”

**TAIWAN**

**Parliament Passes Amendments To Toxic Chemical Substance Control Act**

On December 21, 2018, Taiwan’s parliament passed legislation amending the Toxic Chemical Substance Control Act, now renamed the Toxic Chemicals and Concerned Substances Control Act. According to a TCSB statement, the amendments will usher in a “new era of toxic chemical substance regulation” by:

* Increasing the scope of regulation to include “substances of concern” that may not be directly toxic but nonetheless carry health and safety risks;
* Adding a new chapter on accident prevention and emergency response;
* Forming a national chemical management board convened by the premier to bolster horizontal coordination among ministries involved in chemical regulation;
* Establishing a toxic and chemical substance fund with registration fees and fines collected by Taiwan EPA from chemical users to finance programs that bolster point-of-origin regulation and help companies lower disaster response costs;
* Implementing measures to help reduce incident reporting times from one hour to 30 minutes and provide better reporting of storage and use of dangerous chemicals to fire departments and other local authorities;
* Prohibiting purchases without clear identification, for example through online sales, of toxic and chemical substances; and
* Increasing provisions to protect and reward whistle-blowers together with stiffer measures to confiscate profits from illegal activities.

Once the legislation is signed into law, Taiwan EPA is expected to review over 30 subordinate laws and proposed updates as necessary. President Tsai Ing-wen signed the Toxic and Chemical Substances of Concern Control Act on January 16, 2019.

\* \* \* \* \*

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

**Acta** -- The Acta Group

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

**CCR** -- Coal Combustion Residual

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

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

**CERCLA** -- Comprehensive Environmental Response, Compensation, and Liability Act

**CMP** -- Chemicals Management Plan

**CMR** -- Carcinogenic, Mutagenic, or Reprotoxic

**DSL** -- Domestic Substances List

**ECCC** -- Environment and Climate Change Canada

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

**FY** -- Fiscal Year

**HC** -- Health Canada

**HTSUS** -- Harmonized Tariff Schedule of the United States

**ICdA** -- International Cadmium Association

**KATS** -- Agency for Technology and Standards

**kg** -- Kilogram

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

**MCL** -- Maximum Contaminant Level

**MEE** -- Ministry of Ecology and Environment

**MEP** -- Ministry of Environmental Protection

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

**MOE** -- Ministry of Environment

**NGO** -- Non-Governmental Organization

**NRDC** -- Natural Resources Defense Council

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

**NYSDOH** -- New York State Department of Health

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

**RMI** -- Responsible Minerals Initiative

**SEC** -- Securities and Exchange Commission

**STOT** -- Specific Target Organ Toxicity

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

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

**TCSB** -- Toxic Chemical Substances Bureau

**TSCA** -- Toxic Substances Control Act

**USTR** -- Office of the United States Trade Representative

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)