#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**March 28, 2016**[[1]](#footnote-1)

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# NEW DEVELOPMENTS

New information is available on the following issues in this Update:

Federal Issues

CAA Issues

Oregon Senators Seek Improved Federal Air Quality Programs, page 5

CERCLA Issues

EPA Agrees To Begin CERCLA Section 108(b) Rulemaking For Hardrock Mining Industry By December 2016, page 5

CWA/SDWA Issues

NMFS And California Urge ESA Consult For Draft Recommended Aquatic Life Water Quality Criteria For Cadmium, page 6

EPCRA Issues

EPA OIG Intends To Identify Unregulated Facilities Using TRI Data, page 6

TSCA Issues

EPA And State Organizations Send Letters To Congress On TSCA Reform, page 7

Mining Issues

Senate Begins To Debate Energy Policy Modernization Act; White House Issues Statement Of Administration Policy, page 7

EPA Announces National Enforcement Initiatives For FYs 2017-19, Will Drop Reducing Pollution From Mineral Operations, page 8

GAO Finds More Could Be Done To Expedite The Mine Plan Review Process, page 8

Gold King Mine Spill

*Senators Question EPA Statements On Gold King Mine Spill*, page 8

*House Bill Intended To Ensure Accountability*, page 8

*House Committee Releases Report On Gold King Mine Spill*, page 9

*Utah Will File Notice Of Claim Against EPA*, page 9

*House Committee Subpoenas Gold King Mine Documents*, page 9

*EPA Responds To Senate Committee’s Questions*, page 10

*Colorado Town And County Boards Seek Cleanup Through Superfund*, page 10

*New Mexico Bills EPA $1.5 Million For Emergency Response Costs*, page 10

Miscellaneous Issues

DOE Publishes RFI For Updated Critical Materials Strategy; Cadmium Listed As Material Of Interest, page 11

NSTC Publishes Report Concerning Assessment Of Critical Minerals, page 11

USDA And FDA Hold Meeting In Advance Of CCCF Meeting, page 11

State Issues

Safer States Offers Toxics Policies Prediction For 2016, page 12

*California*

As You Sow Claims Cadmium Found In Chocolate Products, page 12

*Minnesota*

House Bill Would Require Manufacturers To Report Information On Priority Chemicals, page 13

House Bill Intended To Protect Children From Exposure To Harmful Chemicals In Products, page 13

*New Jersey*

Senate Bill Would Prohibit The Sale Of Certain Children’s Products Containing Cadmium, page 13

*New York*

Amendment To Rockland County Toxic Free Toys Act Eliminates Language Prohibiting Use Of Metals, Including Cadmium, page 14

Albany County’s Amended Toxic Free Toys Act Will Take Effect July 1, page 14

*Oregon*

NGO Sues EPA For Failing To Promulgate Water Quality Criteria For Pollutants, Including Cadmium, page 15

ODEQ Seeks Comment On Proposed Temporary Rules On Air Toxics, page 15

*Vermont*

VDOH Releases Proposed Chemical Disclosure Program Guidance, page 16

*Washington*

WDOE Delays Chemical Action Plans Rulemaking, page 16

WDOE Posts Guidance On Enforcement Of Lead, Phthalates, And Cadmium Limitations, page 16

WDOE Announces High Levels Of Cadmium Found In Children’s Jewelry Accessories, page 17

International Issues

Canada

Canada Seeks Early Stakeholder Engagement To Address Remaining Substances Under CMP, page 18

BC And Tsilhqot’in Nation Reach Land-Use Agreement, page 19

Statistics Canada Publishes Report On Cadmium Levels And Sources Of Exposure In Canadian Adults, page 20

Canada Publishes Notice With Respect To Substances In The NPRI For 2016 And 2017, page 20

Canada Amends Schedule To The First Nations Land Management Act, page 20

China

AQSIQ Adds 41 Chemicals, Including Cadmium Telluride, To Catalog Of Commodities For Entry-Exit Inspection And Quarantine, page 21

China Releases Five-Year Plan For National Economic And Social Development, page 21

Soil Pollution Prevention And Treatment Law Will Be Delayed, page 22

Hong Kong

Hong Kong Amends Toys And Children’s Products Safety Ordinance, page 22

The Philippines

NGO Warns Of Cadmium Pollution Due To Unregulated Use Of Tarpaulins, page 23

South Korea

South Korea Publishes Guidance On Annual Reporting For Overseas Companies, page 23

Thailand

Legislation Will Control The Amount Of Heavy Metals, Including Cadmium, In Enamel Paints, page 24

**FEDERAL ISSUES**

**CAA ISSUES**

**Oregon Senators Seek Improved Federal Air Quality Programs**

Senator Ron Wyden (D-OR) issued a March 21, 2016, [press release](https://www.wyden.senate.gov/news/press-releases/wyden-merkley-seek-improved-federal-air-quality-programs), stating that he and Senator Jeff Merkley (D-OR) “are urging their colleagues to improve federal air quality programs in the wake of several Portland neighborhoods learning last month that there are high levels of heavy metals in the air.” The Senators urged increased funding for EPA to monitor hazardous air pollutants, and to provide grants and technical assistance to reduce pollution. The Senators stated that hazardous air pollutants, “such as lead, arsenic, and **cadmium**, can cause cancer, neurological disorders and other serious health impairments.”

**CERCLA ISSUES**

**EPA Agrees To Begin CERCLA Section 108(b) Rulemaking For Hardrock Mining Industry By December 2016**

On January 29, 2016, the U.S. Court of Appeals for the District of Columbia Circuit approved a joint motion filed by the NGO petitioners and EPA for an order on consent. *In re Idaho Conservation League*, No. 14-1149. The NGOs filed suit against EPA in August 2014, seeking compliance with the CERCLA Section 108(b) requirement to promulgate regulations requiring “that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.” The agreement includes a schedule for a rulemaking for the hardrock mining industry and a timetable by which EPA would consider whether other industries would be involved with a financial assurance rulemaking. Under the agreement, EPA will begin the rulemaking process for the hardrock mining industry by **December 1, 2016**, and publish its notice of final action by **December 1, 2017**. EPA will decide by **December 1, 2016**, whether it will proceed with a rulemaking for any of three other industries -- chemical manufacturing; petroleum and coal products manufacturing; and electric power generation, transmission, and distribution.

**CWA/SDWA ISSUES**

**NMFS And California Urge ESA Consult For Draft Recommended Aquatic Life Water Quality Criteria For Cadmium**

NMFS filed comments on January 26, 2016, on EPA’s draft recommended aquatic life water quality criteria for **cadmium**. According to NMFS, “EPA needs to work with NMFS to conduct a more thoughtful evaluation of the implications of their guidelines for ESA-listed species and apply a more suitable analysis in guideline derivation, taking existing assessments of state-proposed criteria into consideration. New data are needed, but its generation needs to strategically target issues identified in prior consultations” and in NMFS’s comments. The California State Water Resources Control Board filed comments on February 1, 2016, stating that it hoped to use EPA’s draft recommended criteria to revise the **cadmium** objectives included in the California Toxics Rule. The Control Board states that it “does not believe” that EPA’s draft recommended criteria “is sufficiently protective of threatened and endangered species within the State of California or for West Coast freshwater fisheries in general.” More information on EPA’s draft recommended aquatic life water quality criteria for **cadmium** is available in our January 28, 2016, Update.

**EPCRA ISSUES**

**EPA OIG Intends To Identify Unregulated Facilities Using TRI Data**

On March 11, 2016, EPA OIG sent a [memo](http://go.usa.gov/cGUf5) to OCSPP Assistant Administrator Jim Jones and OECA Assistant Administrator Cynthia Giles, notifying them that OIG plans to begin preliminary research on the identification of unregulated facilities using TRI data. The OIG’s overall objective is to determine how EPA uses TRI data to identify potentially unregulated facilities in its major media programs. Specific questions to be addressed during preliminary research are:

1. Whether TRI facilities meeting RMP criteria have filed these plans with EPA for all chemicals;

2. Whether TRI facilities identified as surface water dischargers have received the required permits from EPA or the delegated state; and

3. Whether RMP filers and surface water dischargers subject to TRI reporting filed TRI reports?

**TSCA ISSUES**

**EPA And State Organizations Send Letters To Congress On TSCA Reform**

EPA Administrator Gina McCarthy sent a [letter](http://www.lawbc.com/uploads/docs/WhiteHouseJanuary2016Letter.pdf) on January 20, 2016, to Congress regarding its views on the TSCA bills passed by the House (H.R. 2576) and Senate (S. 697). The letter “encourages Congress to ensure several important issues are addressed sufficiently in any legislation to emerge from the reconciliation process.” According to the letter, “[t]he lack of a workable safety standard, deadlines to review and act on existing chemicals, and a consistent source of funding are all fundamental flaws in TSCA that should be addressed.” The letter includes an attachment expressing the Administration’s views that is intended to assist Congress in reconciling the bills. The letter states that the Administration “would welcome the opportunity to work with Congress on more technical drafting issues during the reconciliation process.” More information is available in B&C®’s March 7, 2016, memorandum, “[Administration Letter Submitted to Congress on TSCA Reform Legislation](http://www.lawbc.com/regulatory-developments/entry/tsca-reform-administration-letter-submitted-to-congress-on-tsca-reform-legi).”

On February 12, 2016, the National Governors Association, the National Conference of State Legislatures, Environmental Council of the States, and Association of State and Territorial Health Officials sent a [letter](https://www.dropbox.com/s/2eqx5sg0vpvq2j1/Final%20Joint%20TSCA%20Letter%202_12_16.pdf?dl=0) to Congress urging that state authority to regulate chemicals be preserved. Senator Jim Inhofe (R-OK), Chair of the Senate Environment and Public Works Committee, stated on March 2, 2016, that the Committee is close to resolving the differences between the House and Senate bills, and he is hopeful that Congress will be able to “wrap up TSCA soon.”

**MINING ISSUES**

**Senate Begins To Debate Energy Policy Modernization Act; White House Issues Statement Of Administration Policy**

On January 27, 2016, the Senate began to debate the Energy Policy Modernization Act of 2015 (S. 2012), which is intended to modernize energy policies on efficiency, infrastructure, supply, accountability, and reauthorizing conservation programs. 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 January 27, 2016, OMB issued a [Statement of Administration Policy](https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saps2012s_20160127.pdf) concerning the Energy Policy Modernization Act of 2015 (S. 2012). The statement expresses support for some provisions of the bill, and concerns with others. The statement does not address critical minerals.

**EPA Announces National Enforcement Initiatives For FYs 2017-19, Will Drop Reducing Pollution From Mineral Operations**

On February 18, 2016, EPA announced its [national enforcement initiatives](http://www.epa.gov/enforcement/national-enforcement-initiatives) for FYs **2017-19**. In FY **2017**, reducing pollution from mineral processing operations will no longer be a national enforcement initiative and will return to base program level. EPA states: “Recent settlements that address some high risk mineral processing facilities have helped provide examples for how to resolve future cases at other high risk facilities in this sector.”

**GAO Finds More Could Be Done To Expedite The Mine Plan Review Process**

On February 22, 2016, GAO released a report entitled [*BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More*](http://www.gao.gov/products/GAO-16-165). According to GAO, from FYs 2010 through 2014, BLM and the Forest Service approved 68 mine plans of operation. The length of time it took the agencies to approve the mine plans ranged from about one month to over 11 years, and averaged approximately two years. Of the 68 approved mine plans, 13 had not begun operations as of November 2015. GAO states that agency officials attribute this to difficulties that mine operators may face, such as obtaining other required federal and state permits. The most frequently cited challenges affecting the length of time to review the plans were: (1) the low quality of information operators provided in their mine plans; and (2) the agencies’ limited allocation of resources for their hardrock mining programs. GAO recommends that the agencies take actions to improve the quality of mine plan submissions and seek additional recovery of the costs associated with conducting mine plan reviews. The agencies generally concurred with these recommendations.

**Gold King Mine Spill**

***Senators Question EPA Statements On Gold King Mine Spill***

On February 3, 2016, Senators James Inhofe (R-OK), Chair of the Senate Environment and Public Works Committee, and Mike Rounds (R-SD), Chair of the Subcommittee on Superfund, Waste Management, and Regulatory Oversight, sent a [letter](http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=6E877FA5-7D64-41CC-8DE7-8D2C6F00BFD8) to EPA Administrator Gina McCarthy seeking clarification and correction, if necessary, about McCarthy’s testimony at the Committee’s September 16, 2015, hearing on the Gold King Mine spill. The letter also requests communications between EPA, DOI, and USACE about a DOI review of the causes of the Gold King Mine spill.

***House Bill Intended To Ensure Accountability***

Representative Steve Pearce (R-NM) introduced on February 4, 2016, the Gold King Mine Spill Accountability Act of 2016 (H.R. 4483). According to Pearce’s February 4, 2016, [press release](https://pearce.house.gov/press-release/congressman-pearce-introduces-bill-ensure-accountability-gold-king-mine-spill), the bill would ensure that those responsible for the spill are held accountable by commissioning a special investigation into who specifically was responsible for the incident. The bill would also help to expedite claims for parties injured as a result of the spill. Lastly, the bill would prevent a “clear conflict of interest” by allowing the state, instead of EPA, to carry out a long-term water quality monitoring plan.

***House Committee Releases Report On Gold King Mine Spill***

On February 11, 2016, the House Committee on Natural Resources [announced](http://naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=399936) the availability of a Majority staff report detailing information uncovered during the Committee’s ongoing investigation of the Gold King Mine spill in August 2015. The Committee states that the report documents EPA’s and DOI’s “inaccurate and misleading accounts of the events and decisions that led to the blowout and deconstructs their conflicting accounts.”

***Utah Will File Notice Of Claim Against EPA***

Attorney General Sean Reyes stated on February 12, 2016, that Utah will file a notice of claim against EPA for its role in the Gold King Mine spill. According to Reyes, the action is intended “to ensure the EPA lives up to its promise to be fully accountable and transparent -- and to make our citizens and environment whole” in the aftermath of the incident. After the spill, Utah waited to take legal action “because in good faith we hoped that cooperation with the EPA could bring more rapid reimbursement and remediation.” While there is still a chance for that to happen, “Utah needs to be in a position to file a lawsuit if the federal government is not more responsive and transparent.” According to Reyes, water sample results taken by EPA in late 2015 showed elevated levels of metals, a discovery that EPA did not share with the state. That “is a cause for serious concern and could lead to additional claims after we have fully investigated that omission.” Reyes stated that Utah will bring its claims under RCRA and the CWA.

***House Committee Subpoenas Gold King Mine Documents***

The House Committee on Natural Resources announced on February 18, 2016, that Committee Chair Rob Bishop (R-UT) issued subpoenas to DOI and USACE for documents related to the USACE’s peer review of DOI’s Technical Evaluation of the August 2015 Gold King Mine spill. The Committee’s press release states that “Republicans and Democrats on the Committee have raised numerous concerns about DOI’s Technical Evaluation.” According to the Committee, the USACE peer review of the DOI Technical Evaluation could “shed light on these concerns. At the Committee’s December 9, 2015, oversight hearing, DOI Secretary Sally Jewell rebuffed bipartisan requests for the release of this information.” The Committee claims that it requested the materials directly from USACE, but “DOI interfered with the Committee’s request and blocked USACE from releasing the information USACE had identified as responsive to the Committee’s request.” According to the Committee, “USACE held serious reservations about the scope and veracity of DOI’s report, though the full nature of these concerns remain unclear due to DOI’s efforts to redact and withhold documents.”

***EPA Responds To Senate Committee’s Questions***

On February 18, 2016, EPA responded to questions posed by the Senate Committee on Environment and Public Works after its September 16, 2015, hearing on “Oversight of the Cause, Response, and Impacts of EPA’s Gold King Mine Spill.” According to EPA, as part of the initial lessons learned, it identified notification as an area to address. EPA states that the Assistant Administrator for EPA’s Office of Land and Emergency Management issued a guidance memo to EPA regions on strengthening the notification process. In response to the Committee’s question whether EPA would take financial responsibility for the financial loss experienced by any local business or farmers as the result of the spill, EPA stated: “Upon reviewing the relevant facts, the EPA Claims Officer together with officials in the Department of Justice, will determine whether the FTCA provides a means of compensating claims for money damages arising from the Gold King Mine incident.”

***Colorado Town And County Boards Seek Cleanup Through Superfund***

In a February 22, 2016, joint meeting, the Silverton Town Board and the San Juan Board of County Commissioners voted unanimously to ask EPA to place the Gold King Mine and other legacy mines in San Juan County on the NPL. According to a San Juan County Commissioner spokesperson, the main goals are to “clean up the environment, protect our community and our downstream neighbors, and to ensure that a disaster like the Gold King spill never happens again.” The Boards requested that EPA call the Superfund area the “Bonita Peak Mining District Site” and stated that it was important to keep the words “Silverton” and “San Juan County” out of the name. The Boards sent a letter on February 22, 2016, to Governor Hickenlooper (D) seeking his support for the NPL designation. On February 29, 2016, Hickenlooper sent a letter to EPA expressing his support for the proposed NPL designation of the “Bonita Peak Mining District.”

***New Mexico Bills EPA $1.5 Million For Emergency Response Costs***

NMED Secretary Ryan Flynn submitted a bill for $1.5 million to EPA, seeking reimbursement for emergency response costs incurred in New Mexico in connection with the Gold King Mine spill. According to Flynn, it is too early to assess the overall monetary damage, but New Mexico seeks to have three critical objectives addressed: reimbursement; development of a long-term monitoring plan; and having the area added to the NPL to advance Superfund designation. An EPA spokesperson stated that EPA would review NMED’s submission “as quickly as possible.”

**MISCELLANEOUS ISSUES**

**DOE Publishes RFI For Updated Critical Materials Strategy; Cadmium Listed As Material Of Interest**

On February 10, 2016, DOE [published](http://www.energy.gov/epsa/articles/new-request-information-inform-department-energy-critical-materials-strategy) an RFI seeking information from stakeholders on rare earth elements and other materials used in an array of energy technologies, as well as key materials used in the manufacturing of energy technologies that do not necessarily appear in the final product. The listed materials of interest include **cadmium**. DOE intends to use the information to update the 2010 and 2011 Critical Materials Strategy reports, which articulated a strategy to address proactively material criticality based on three pillars: (1) diversifying global supply chains to mitigate supply risk; (2) developing material and technology substitutes; and (3) promoting recycling, reuse, and more efficient use to significantly lower global demand. Topics of interest include energy technology and component material intensity, market projections, technology transitions, primary production, supply chains, and recycling. Comments are due **April 11, 2016**. NAMC, of which ICdA is a member, is preparing comments focusing on the issues related to permitting in the U.S. and the regulatory impediments for recycling metals due to EPA’s interpretation of byproducts.

**NSTC Publishes Report Concerning Assessment Of Critical Minerals**

The White House [announced](https://www.whitehouse.gov/blog/2016/03/18/what-makes-mineral-critical-0) on March 18, 2016, that NSTC published a report entitled [*Assessment of Critical Minerals: Screening Methodology and Initial Application*](https://www.whitehouse.gov/sites/default/files/microsites/ostp/NSTC/csmsc_assessment_of_critical_minerals_report_2016-03-16_final.pdf). The White House notes that there have been many reports on critical minerals, and many approaches to defining what minerals are critical in a given context. The White House states that in general, though, there is agreement that a critical mineral has two characteristics: its supply chain is vulnerable to disruption; and it serves an essential function in the manufacture of a product whose absence would impact economic or national security. The NSTC report focuses on a systematic methodology to screen for potential criticality by using openly available and regularly-collected data reflecting supply risks, production growth, and market dynamics. It constitutes the first part of a two-stage process to determine which minerals should be considered critical, with the second stage involving in-depth analyses of the potentially critical minerals identified by the screening to assess the extent to which availability constraints would cause significant economic, social, or security consequences, and to clarify the underlying factors driving indications of potential criticality.

**USDA And FDA Hold Meeting In Advance Of CCCF Meeting**

On March 7, 2016, USDA and FDA held a public meeting to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the [10th Session of the CCCF](http://www.fao.org/fao-who-codexalimentarius/meetings-reports/detail/en/?meeting=CCCF&session=10), which will be held **April 4-8, 2016**. According to a February 11, 2016, *Federal Register* notice, items to be discussed at the CCCF meeting include proposed draft maximum levels for **cadmium** in cocoa and cocoa derived products (at Step 4 of the Codex Decision Process).

**STATE ISSUES**

**Safer States Offers Toxics Policies Prediction For 2016**

Safer States published on February 22, 2016, its [toxics policies prediction for 2016](http://www.saferstates.com/news/2016map/). Safer States anticipates that about half of the states will propose policies intended to reduce exposures to untested and toxic chemicals in consumer products. State legislation takes aim at toxic chemicals with established links to cancer, reproductive harm, or developmental harm in children’s products, furniture, and other consumer products. In addition, according to Safer States, states are also moving to empower consumers with information about which chemicals are in specific products by requiring manufacturers to disclose this information to the public. Safer States’ highlights of 2016 state policy include:

* Identification and Disclosure of Toxic Chemicals: At least 12 states will consider policy to identify chemicals of concern; require makers of consumer products to disclose chemicals of concern; and/or phase out chemicals of concern (Alaska, California, Illinois, Maine, Massachusetts, Michigan, Minnesota, North Carolina, New York, Rhode Island, Vermont, and Washington); and
* **Cadmium**: At least six states will consider restricting **cadmium** in electronics, kids’ products, and other products (California, Illinois, Minnesota, New Jersey, New York, and Washington).

***California***

**As You Sow Claims Cadmium Found In Chocolate Products**

As You Sow issued a March 23, 2016, [press release](http://www.asyousow.org/wp-content/uploads/2016/03/release_toxic_chocolate_easter_bunnies_eggs_and_more_20160322.pdf) announcing that it found that 35 of 50 chocolate products tested, including chocolate bunnies and eggs, expose consumers to lead and **cadmium** above levels set by Proposition 65. According to As You Sow, testing indicates that the chocolate products contain lead and/or **cadmium**, and the chocolate manufacturers failed to provide the legally required warning to consumers. As You Sow filed legal notices against chocolate manufacturers, including Trader Joe’s, Hershey’s, Green and Black’s, Lindt, Whole Foods, Kroger, Godiva, See’s Candies, Mars, Theo Chocolate, Equal Exchange, Ghirardelli, Earth Circle Organics, and more, for failure to warn of lead and/or **cadmium** in their chocolate products.

***Minnesota***

**House Bill Would Require Manufacturers To Report Information On Priority Chemicals**

Under H.F. 2717, a manufacturer or distributor of a children’s product offered for sale that contains one or more priority chemicals would be required to provide certain information to MPCA. Information would include information that MPCA determines is necessary to determine the extent to which a child is likely to be exposed to the priority chemical through normal use of the product and any assessment conducted by the manufacturer, distributor, or others regarding the use of safer alternatives to the priority chemical contained in the children’s product. MPCA has identified **cadmium** as a priority chemical.

**House Bill Intended To Protect Children From Exposure To Harmful Chemicals In Products**

H.F. 2761 was introduced on March 8, 2016. The bill would amend the criteria for identification of priority chemicals; require disclosure by manufacturers of children’s products that contain harmful chemicals; authorize MPCA to prohibit sales of children’s products that contain harmful chemicals; provide a waiver process from sale prohibition; establish fees; and require a report from MPCA. Under the bill, a priority chemical would be defined as a chemical identified by MDH as a chemical of high concern that meets the following criteria:

(1) Has been identified as a high-production volume chemical by EPA;

(2) Has been found through biomonitoring to be present in human blood, including umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;

(3) Has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(4) Has been found through monitoring to be present in fish, wildlife, or the natural environment.

MDH has identified **cadmium** as a priority chemical. The chemicals of high concern list includes **cadmium chloride**.

***New Jersey***

**Senate Bill Would Prohibit The Sale Of Certain Children’s Products Containing Cadmium**

A.B. 731 would prohibit the sale of any children’s product intended for use by a child under the age of six years containing, composed of, or made with lead, mercury, or **cadmium**. Under the bill, the Director of Consumer Affairs or any manufacturer, distributor, or importer of children’s products who discovers that a children’s product intended for use by a child under the age of six years contains, is composed of, or is made with lead, mercury, or **cadmium** would have to issue an immediate recall for that product. The bill would take effect on the first day of the seventh month following enactment.

***New York***

**Amendment To Rockland County Toxic Free Toys Act Eliminates Language Prohibiting Use Of Metals, Including Cadmium**

Effective February 21, 2016, Rockland County’s Toxic Free Toys Act has been amended to:

* Eliminate the language prohibiting the use of antimony, arsenic, benzene, **cadmium**, cobalt, lead and mercury in children’s apparel and children’s products;
* Require children’s apparel and children’s products to comply with existing product safety laws, including federal product safety laws; and
* Declare this local law to be preempted by state or federal laws if the state of New York or the U.S. has a final rule in effect with respect to a children’s product safety standard that relates to a specific hazard that conflicts with this local law.

**Albany County’s Amended Toxic Free Toys Act Will Take Effect July 1**

Albany County filed an amended Toxic Free Toys Act with the New York Secretary of State on February 18, 2016. The amendments include:

* Mandating a specific total content value for each of antimony, arsenic, benzene, **cadmium**, cobalt, lead, and mercury; and
* Declaring this local law to be preempted by state or federal laws if New York State or the U.S. federal government has a final rule in effect with respect to a children’s product safety standard that relates to a specific hazard that conflicts with this local law.

The amended law prohibits a total content value of **cadmium** equal to or greater than 75 ppm. The amended law will take effect **July 1, 2016**.

***Oregon***

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

On February 19, 2016, the parties filed a joint motion for extension of time 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. According to the motion, the parties “have now drafted and exchanged both a proposed consent decree and a separate settlement agreement resolving this matter; each document is nearly ready for submission to senior management for approval.” The parties have not yet reached an agreement regarding NWEA’s claim for attorneys’ fees pursuant to the CWA’s citizen suit provision, “but expect to do so shortly.” The motion states that, given the additional time that the parties need to reach an agreement on fees, as well as the time that EPA will need to secure senior management approval of the final settlement agreement and consent decree, the parties request a 6-week extension (to **April 1, 2016**) of the deadline to file the proposed consent decree. On February 22, 2016, the court granted the motion.

**ODEQ Seeks Comment On Proposed Temporary Rules On Air Toxics**

OEQC convened a special meeting on March 15, 2016, to consider proposed temporary rules and amendments regarding air quality emissions from facilities that manufacture colored glass for use in art, architecture, interior design, and other similar decorative applications, or that manufacture glass products for use by manufacturers of colored glass for use in art, architecture, interior design, and other similar decorative applications. The [meeting materials](http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbXNpZD0mYXVpZD0mbWFpbGluZ2lkPTIwMTYwMzE2LjU2NjEyMTMxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE2MDMxNi41NjYxMjEzMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE2ODA5MzE1JmVtYWlsaWQ9Y2h1dHRvbkBsYXdiYy5jb20mdXNlcmlkPWNodXR0b25AbGF3YmMuY29tJnRhcmdldGlkPSZmbD0mZXh0cmE9TXVsdGl2YXJpYXRlSWQ9JiYm&&&101&&&http://www.oregon.gov/deq/EQC/Documents/2016/031516eqcAgenda.pdf) state that elevated and possibly unsafe levels of metals have been found in the air around two glass manufacturing facilities in Portland. In May 2015, ODEQ received the initial results of a study conducted by the U.S. Forest Service using moss samples as an indicator or screening tool for contaminants in the air. The results of that study showed that the moss samples in the areas near two colored art glass manufacturers contained high levels of **cadmium** and arsenic in Southeast and North Portland. ODEQ issued a February 12, 2016, [press release](http://www.oregon.gov/oha/news/Pages/DEQ-OHA%20joint%20news%20release%20-%20Portland%20glass%20companies%20to%20suspend%20use%20of%20chromium,%20cadmium.aspx) announcing that two Portland glass companies have agreed to stop using all chromium, **cadmium**, and arsenic in their manufacturing processes in response to an ODEQ request. ODEQ is asking the OEQC to adopt proposed temporary rules limiting metals emissions from small colored art glass manufacturers. According to ODEQ’s [web page on the temporary rulemaking](http://www.oregon.gov/deq/RulesandRegulations/Pages/comments/Ctoxics2016temp.aspx), the proposed rules would fill a regulatory gap by setting operation standards for the smaller art glass businesses that emit air toxics and potentially cause serious health effects. ODEQ seeks comment on the proposed temporary rules. Comments are due **March 30, 2016**.

***Vermont***

**VDOH Releases Proposed Chemical Disclosure Program Guidance**

VDOH held a public comment period on the [proposed chemical disclosure program guidance](http://healthvermont.gov/enviro/chemical/documents/manufacturer_guidance_proposed.pdf), which would provide guidance to manufacturers responsible for reporting to VDOH and defines and explains key terms and concepts relating to the rule on chemicals of high concern in children’s products. The 66 chemicals of high concern to children include **cadmium**. Chemicals that are intentionally added to a product, usually to serve a specific function, must be reported when present above the PQL for that chemical. The [PQL](http://healthvermont.gov/enviro/chemical/documents/PQL.pdf) for **cadmium** and **cadmium compounds** is 1.0 ppm. Comments were due March 15, 2016.

***Washington***

**WDOE Delays Chemical Action Plans Rulemaking**

WDOE announced on January 28, 2016, that, due to limited resources during this legislative session, the [Chemical Action Plans rulemaking](http://www.ecy.wa.gov/programs/hwtr/laws_rules/PBT/1512ov.html) is on hold until **April 2016** (after the current legislative session ends). At that time, WDOE expects to convene a rulemaking advisory committee to discuss preliminary proposals for rule changes. WDOE will not send out the stakeholder survey that it previously announced, but will collect stakeholder feedback on proposed rule changes during public advisory committee meetings and through listserv messages, website updates, and other outreach efforts. WDOE states that it does not anticipate a change to the schedule for proposing the draft rule in **September 2016**. WDOE intends to amend the Persistent Bioaccumulative Toxins Rule, which would be renamed the Chemical Action Plans Rule. The Rule identifies the criteria for persistence, bioaccumulation, and toxicity used to identify a chemical as PBT, provides a list of chemicals for which Chemical Action Plans may be developed, identifies the Chemical Action Plans development process, and details the Chemical Action Plans contents.

**WDOE Posts Guidance On Enforcement Of Lead, Phthalates, And Cadmium Limitations**

WDOE posted a February 12, 2016, [guidance document](http://www.ecy.wa.gov/programs/hwtr/rtt/cspa/pdf/LeadCadmiumPhthalatesenforcement.pdf) on its enforcement of lead, phthalates, and **cadmium** limitations. WDOE notes that the federal CPSIA prohibits the enforcement of any state safety regulation that prescribes content limits: (1) on the same “consumer product” as the federal limit; and (2) for “the same risk of injury associated with such consumer product” unless the state regulation is identical to the federal standard. According to WDOE, Washington’s limits on lead, phthalates, and **cadmium** are generally more stringent than the CPSIA limits, and in those cases, and for those consumer products to which a federal standard applies, the Washington standard for that constituent is preempted and cannot be enforced. WDOE states that Washington’s limits on lead, phthalates, and **cadmium** in children’s products apply to a broader range of consumer products than are covered by the CPSIA. For those children’s products that are covered by the Washington standards, but not by federal standards, WDOE intends to enforce the applicable state standards. The guidance document describes the analysis that WDOE will use to determine whether it will enforce the limits on lead, phthalates, or **cadmium** of Washington’s Children’s Safe Products Act with respect to a particular consumer product.

**WDOE Announces High Levels Of Cadmium Found In Children’s Jewelry Accessories**

WDOE issued a [press release](http://www.ecy.wa.gov/news/2016/032.html) on March 15, 2016, announcing that testing by WDOE revealed high levels of the heavy metals **cadmium** and lead in several necklaces sold as accessories packaged with girls’ dresses. WDOE states that it recently tested 27 pieces of jewelry packaged with clothing and found five that contained very high levels of lead or **cadmium**. WDOE also tested 132 items of children’s jewelry sold separately, none of which were found to contain concerning levels of these metals. The press release states:

Under Washington’s Children’s Safe Products Act, items intended for children cannot contain more than 40 parts per million of **cadmium**. In four pieces of jewelry sold packaged with a girl’s clothing item, Ecology’s testing found **cadmium** at levels up to 984,000 parts per million, meaning the item was 98 percent **cadmium**. Ecology has notified the manufacturers of the jewelry that they are in violation of Washington’s Children's Safe Products Act and could be required to take corrective action or be subject to penalties.

WDOE posted [FAQs](http://www.ecy.wa.gov/programs/hwtr/RTT/cspa/jewelryQandA.html) regarding its children’s jewelry testing. The FAQs include the following question and answer:

Why is the Washington Department of Ecology taking this action instead of the U.S. Consumer Product Safety Commission?

Ecology shared its test results on both **cadmium** and lead with the [Consumer Product Safety Commission]. The federal Consumer Product Safety Improvement Act does not regulate **cadmium** in children’s jewelry, but there are voluntary national standards some manufacturers have agreed to meet. Washington’s Children’s Safe Products Act does regulate **cadmium** in children’s jewelry. For lead, the federal law regulates lead in children’s jewelry and preempts state regulations for this product.

**INTERNATIONAL ISSUES**

**CANADA**

**Canada Seeks Early Stakeholder Engagement To Address Remaining Substances Under CMP**

Canada published on February 6, 2016, a [notice of intent](http://www.gazette.gc.ca/rp-pr/p1/2016/2016-02-06/html/notice-avis-eng.php#nl5) seeking early stakeholder engagement to help inform the plan to address the remaining 1,550 substances under the CMP. Environment and Climate Change Canada and Health Canada invite stakeholders to provide information that will inform the path forward for the next phase (2016-**2020**) of the CMP. The CMP is an initiative aimed at reducing the risks posed by chemicals to Canadians and their environment. The notice states that information obtained will help tailor assessment and management approaches and inform the implementation plan for the next phase of the CMP, which will be made available in **spring 2016**. The list of remaining 1,550 substances includes:

| **Identifier (CAS Number or confidential accession number)** | **Chemical name** |
| --- | --- |
| 2420-98-6 | Hexanoic acid, 2-ethyl-, cadmium salt |
| 12442-27-2 | Cadmium zinc sulfide ((Cd,Zn)S) |
| 69011-69-4 | Cadmium, dross |
| 69011-70-7 | Cadmium, sponge |

The types of information being sought may include:

* Information that could influence the timing and complexity of an assessment;
* Composition data for unknown or variable composition, complex reaction products, or biological materials;
* Information on releases of a substance to the environment;
* Information on the fate of the substance in the environment;
* Information on industrial facility processes, operating conditions and practices, and handling of the substance;
* Information on controls (*e.g*., on-site wastewater treatment) relevant to limiting the release of a substance to the environment;
* Information on products (industrial, commercial, or consumer) that contain the substance, as well as the concentration of a substance in a given product; information regarding the function of a substance in a product that could influence potential exposures or releases;
* Data on hazard potential (human health, ecotoxicity);
* Data on the function of the substance (*e.g*., whether it is consumed in reactions during industrial use; if it is designed to be released to the environment due to its use);
* Data on migration or release of the substance from products;
* Data that could help refine substance-specific assumptions (such as dermal absorption data);
* Access to existing information, such as data shared within a SIEF under REACH; and
* National and international research activities related to a substance, including monitoring.

According to the notice, Canada plans to begin assessment activity on the remaining 1,550 substances in **spring 2016**. Canada will periodically publish more detailed notifications as it updates the work plan to specify the substances for which additional information is needed, the associated timelines, and details on how to provide this information.

**BC And Tsilhqot’in Nation Reach Land-Use Agreement**

On February 12, 2016, BC [announced](https://news.gov.bc.ca/releases/2016ARR0019-000206) that it signed a five-year framework agreement with the Tsilhqot’in Nation that establishes “a shared vision, principles and structures to negotiate a comprehensive and lasting reconciliation between the Nation and the Province.” The Nenqay Deni Accord outlines eight pillars of reconciliation to be negotiated in a holistic manner, including Tsilhqot’in culture and language, children and families, healthy communities, justice, education and training, lands and resources, and economic development. Joint negotiating tables comprised of senior provincial staff and Tsilhqot’in representatives will be established to make progress in all of these areas, while the longer-term negotiations take place. A leadership table comprised of Tsilhqot’in chiefs and key ministers will continue to lead the negotiations. Crown land within the Tsilhqot’in territory will be part of the negotiation, with no private lands involved. The amount of Crown land will be subject to further negotiations with the Tsilhqot’in. The Nenqay Deni Accord clarifies the next steps in transitioning the title area to Tsilhqot’in management and control and commits to a joint exploration of economic and social opportunities for the Tsilhqot’in throughout the larger traditional territory.

**Statistics Canada Publishes Report On Cadmium Levels And Sources Of Exposure In Canadian Adults**

Statistics Canada published a report on February 17, 2016, entitled “[**Cadmium** levels and sources of exposure among Canadian adults](http://www.statcan.gc.ca/pub/82-003-x/2016002/article/14311-eng.htm).” The analysis uses data from cycles one (2007 to 2009) and two (2009 to 2011) of the CHMS to examine blood and urinary **cadmium** levels among Canadians aged 20 to 79, and associations with sources of exposure. The conclusion states: “According to the present study, smoking behaviour was the greatest contributor to **cadmium** levels among Canadians aged 20 to 79, with modest or small contributions from diet. However, among non-smokers, diet may be a significant source of **cadmium**.”

**Canada Publishes Notice With Respect To Substances In The NPRI For 2016 And 2017**

On February 27, 2016, Environment and Climate Change Canada published a *Canada Gazette* notice with respect to substances in the NPRI for **2016** and **2017**. Under the authority of CEPA, owners or operators of facilities that meet published reporting requirements are required to report to the NPRI. Companies that meet reporting requirements but fail to report, do not report on time, or knowingly submit false or misleading information, face penalties as listed under CEPA Sections 272 and 273. Environment and Climate Change Canada suggests that facilities that in previous years did not meet the reporting criteria or were exempt should review their status to determine whether they are required to report for the current reporting year. The notice includes:

|  |  |  |
| --- | --- | --- |
| **Schedule 1, Part 1, Group B Substances** | **Mass Reporting Threshold** | **Concentration by Weight** |
| Cadmium (and its compounds) | 5 kg | 0.1 percent |

The notice applies to the calendar years **2016** and **2017**. Information pertaining to the **2016** calendar year must be provided no later than **June 1, 2017**. Information pertaining to the **2017** calendar year shall be provided no later than **June 1, 2018**.

**Canada Amends Schedule To The First Nations Land Management Act**

On March 9, 2016, the Minister of Indian Affairs and Northern Development published an [order](http://www.gazette.gc.ca/rp-pr/p2/2016/2016-03-09/html/sor-dors27-eng.php) in the *Canada Gazette* that amends the Schedule to the First Nations Land Management Act. The order confirms full control of management of their lands for 21 aboriginal First Nations, including environmental assessments and conservation initiatives. Under the order, the aboriginal groups are now able to issue and enforce their own laws on environmental assessment and protection, as well as zoning and land use, subject to the provisions of the First Nations Land Management Act. The order sets dates for handing over control for each group. The First Nations covered by the order are Nanoose, Campbell River, Haisla, St. Mary’s, Shuswap, Stz’uminus, Williams Lake, Skowkale, Yakweakwioose, Aitchelitz, Kwantlen, Shxw’ow’hamel, and Malahat in BC; Flying Dust, Kahkewistahaw, and One Arrow in Saskatchewan; Brokenhead Ojibway in Manitoba; and Dokis, Bingwi Neyaashi Anishinaabek, Shawanaga, and Magnetwan in Ontario.

**CHINA**

**AQSIQ Adds 41 Chemicals, Including Cadmium Telluride, To Catalog Of Commodities For Entry-Exit Inspection And Quarantine**

AQSIQ [added](http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2015/201601/t20160104_457682.htm) 41 hazardous chemicals, including **cadmium telluride**, to the Catalog of Commodities for Entry-Exit Inspection and Quarantine. According to China’s Law on the Inspection of Import and Export Commodities, manufacturers and importers must use the Catalogue to determine which commodities require customs clearance. Manufacturers and importers of listed chemicals must complete the appropriate documents and submit them to the customs department prior to import or export.

**China Releases Five-Year Plan For National Economic And Social Development**

The [Five-Year Plan for National Economic and Social Development](http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm) outlines how China intends to increase its assessment of the environmental and health risks of harmful chemicals. According to the Plan, China intends to:

* Strengthen environmental control;
* Establish a management system for safe production and process supervision;
* Formulate and enact safety product rules, regulations, and standards;
* Strengthen supervision of occupational health; and
* Relocate some enterprises that manufacture and store hazardous chemicals.

According to the Plan, China also plans to put an emergency response system in place for companies handling hazardous chemicals.

**Soil Pollution Prevention And Treatment Law Will Be Delayed**

On March 10, 2016, a government spokesperson stated that deliberation on the Soil Pollution Prevention and Treatment Law will likely continue into **2017**. The government is still determining how to define responsibility for soil pollution prevention and remediation; conducting soil pollution investigations; and establishing a monitoring system and standards system. According to the spokesperson, the Law will heavily target farmland -- in an effort to curb crop contamination -- and residential construction land. In July 2015, the government allocated approximately $43 million to 30 cities for a special heavy metal pollution treatment effort.

**HONG KONG**

**Hong Kong Amends Toys And Children’s Products Safety Ordinance**

A January 15, 2016, [notice](http://www.gld.gov.hk/egazette/pdf/20162002/es2201620027.pdf) in the *Gazette* amended Schedules 1 and 2 of the Toys and Children’s Products Safety Ordinance. As of **October 1, 2016**, companies that manufacture or import toys in Hong Kong must comply with the international toy safety standard, ISO8124-5: 2015. The standard determines the total allowable concentration of several metals in toys, including **cadmium**. It applies to all toys made from the following materials:

* Coatings, including paints, varnishes, lacquers, printing inks, polymers, and similar;
* Polymeric and similar materials, including laminates, whether textile-reinforced or not, but excluding other textiles;
* Paper, paperboard, and cardboard;
* Natural or synthetic textiles;
* Coated and non-coated metallic materials;
* Other materials, whether mass-colored or not, such as wood, fiberboard, hardboard, bone, and leather;
* Materials intended to leave a trace (for example, the graphite materials in pencils and liquid ink in pens);
* Pliable modeling materials, including modeling clays and gels;
* Paints to be used as such in the toy, including finger paints, varnishes, lacquers, and similar materials in solid or liquid form; and
* Packaging materials that form part of the toy, or have intended play value.

**THE PHILIPPINES**

**NGO Warns Of Cadmium Pollution Due To Unregulated Use Of Tarpaulins**

On February 21, 2016, EcoWaste Coalition posted a blog item entitled “[EcoWaste Coalition Warns of **Cadmium** Pollution due to Unregulated Use of Tarpaulins](http://ecowastecoalition.blogspot.com/2016/02/ecowaste-coalition-warns-of-cadmium.html).” EcoWaste Coalition screened 300 pieces of campaign tarps from various national and local candidates that were among those removed by the MMDA from illegal sites. According to EcoWaste Coalition, “[a]ll of the 300 tarps were found to contain **cadmium** in the range of 697 to 1,921 parts per million (ppm), way above the European Union’s 100 ppm limit for **cadmium** in plastics.” EcoWaste Coalition calls for the ban of the intentional use of **cadmium**-based pigments and stabilizers in all plastics, including tarps and packaging materials.

**SOUTH KOREA**

**South Korea Publishes Guidance On Annual Reporting For Overseas Companies**

MOE published on February 26, 2016, a [notice](http://www.chemnavi.or.kr/chemnavi/spkreach/archivesdetail.do?idx=8672&category=4) concerning the “Summary Guidance on Reporting by Overseas Manufacturer or Producer.” Under K-REACH Article 8, a person who manufactures, imports, or sells non-phase-in substances or one ton or more of a phase-in substance must complete the first report on the use and amount of the relevant substances by **June 30, 2016**. A phase-in substance is defined as any of the following:

(a) Chemical substances domestically distributed for commercial purposes prior to February 2, 1991, and publicly announced by the Minister of Environment after consultation with the Minister of Employment and Labor; or

(b) Chemical substances examined with respect to hazards after February 2, 1991, pursuant to the former Toxic Chemicals Control Act and publicly announced by the Minister of Environment.

A non-phase-in substance is defined as “all chemical substances excluding phase-in substances.” The scope of the report is the previous year (in this case, January 1, 2015, through December 31, 2015). The purpose of reporting is to provide a basis for MOE to designate and announce phase-in substances subject to registration.

**THAILAND**

**Legislation Will Control The Amount Of Heavy Metals, Including Cadmium, In Enamel Paints**

Under an [administrative decree](http://www.ratchakitcha.soc.go.th/DATA/PDF/2559/A/010/11.PDF) that will take effect in **January 2017**, alkyd enamel paints will be required to meet industrial product standards. All enamel paints used for construction and decorative purposes that are manufactured or sold in Thailand will be required to meet the following limits:

* No more than 0.01 percent lead, mercury, and **cadmium** (dry weight); and
* No more than 0.1 percent hexavalent chromium (dry weight).

All alkyd enamel paints will also be required to carry a warning label about the potential dangers of the product.

\* \* \* \* \*

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

**AQSIQ** -- State Administration of Quality Supervision, Inspection, and Quarantine

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

**BC** -- British Columbia

**BLM** -- Bureau of Land Management

**CAA** -- Clean Air Act

**CAS** -- Chemical Abstracts Service

**CCCF** -- Codex Committee on Contaminants in Food

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

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

**CHMS** -- Canadian Health Measures Survey

**CMP** -- Chemicals Management Plan

**CPSIA** -- Consumer Product Safety Improvement Act

**CWA** -- Clean Water Act

**DOE** -- United States Department of Energy

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

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

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

**ESA** -- Endangered Species Act

**FAQ** -- Frequently Asked Question

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

**FY** -- Fiscal Year

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

**ICdA** -- International Cadmium Association

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

**MDH** -- Minnesota Department of Health

**MMDA** -- Metropolitan Manila Development Authority

**MOE** -- Ministry of the Environment

**MPCA** -- Minnesota Pollution Control Agency

**NAMC** -- North American Metals Council

**NGO** -- Non-Governmental Organization

**NMED** -- New Mexico Environment Department

**NMFS** -- National Marine Fisheries Service

**NPL** -- National Priorities List

**NPRI** -- National Pollutant Release Inventory

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

**NWEA** -- Northwest Environmental Advocates

**OCSPP** -- Office of Chemical Safety and Pollution Prevention

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

**OECA** -- Office of Enforcement and Compliance Assurance

**OEQC** -- Oregon Environmental Quality Commission

**OIG** -- Office of the Inspector General

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

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

**ppm** -- Part Per Million

**PQL** -- Practical Quantification Limit

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

**REACH** -- Registration, Evaluation, Authorization and Restriction of Chemicals

**RFI** -- Request for Information

**RMP** -- Risk Management Program

**SDWA** -- Safe Drinking Water Act

**SIEF** -- Substance Information Exchange Forum

**TRI** -- Toxics Release Inventory

**TSCA** -- Toxic Substances Control Act

**USACE** -- United States Army Corps of Engineers

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

**VDOH** -- Vermont Department of Health

**WDOE** -- Washington Department of Ecology

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)