#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

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

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**FEDERAL ISSUES**

**CAA ISSUES**

**EPA Submits ICR To OMB On NESHAP For Nine Metal Fabrication And Finishing Sources**

On March 18, 2019, EPA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2019/03/18/2019-05017/information-collection-request-submitted-to-omb-for-review-and-approval-comment-request-neshap-for) announcing that it submitted an ICR, “NESHAP for Nine Metal Fabrication and Finishing Sources,” to OMB for review and approval in accordance with the PRA. EPA proposes to extend the ICR, which is currently approved through **March 31, 2019**. The NESHAP applies to owners or operators of any existing or new metal fabrication and finishing facility that is an area source of HAP emissions and uses or has the potential to emit metal fabrication or finishing metal HAPs, defined to be the compounds of **cadmium**, chromium, lead, manganese, and nickel, or any of these metals in the elemental form with the exception of lead. Comments are due **April 17, 2019**. Under the PRA, a federal agency generally cannot conduct a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB and displays a currently valid OMB Control Number. OMB authorization for an ICR cannot be for more than three years without renewal. As this type of notice concerns continuing a current collection of information, rather than enacting a new requirement, typically it is not worthy of comment.

**CERCLA ISSUES**

**Canadian Mining Company Petitions Supreme Court For Review Of CERCLA’s Foreign Reach**

On March 4, 2019, Teck Metals, a Canadian mining company, petitioned the Supreme Court for review of a September 14, 2018, U.S. Court of Appeals for the Ninth Circuit ruling requiring it to pay cleanup response costs even though the release occurred outside the U.S. Teck Metals argues that new case law warrants a high court examination of the extraterritorial application of CERCLA law even though the court in 2008 rejected a similar petition from the same company. The petition cites two Supreme Court rulings in 2010 and 2016 to argue that the U.S. Court of Appeals for the Ninth Circuit’s 2018 decision in *Pakootas, et al. v. Teck* “cannot be squared” with the high court's recent rulings. In 2008, the Supreme Court declined to review the Ninth Circuit’s 2006 ruling in the same case, where the appellate court had found the suit did not involve an extraterritorial application of CERCLA because Teck’s pollution had “come to be located” in the U.S. Teck Metals operated a lead and zinc smelter for more than 100 years just north of the U.S. border in British Columbia, Canada, discharging into the Columbia River that flows into Washington state.

**Court Hears Oral Arguments In Challenge To EPA’s Decision Not To Issue Final Financial Responsibility Requirements For Hardrock Mining Industry**

On March 13, 2019, the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments in the NGOs’ challenge to EPA’s decision not to issue a final rule regarding financial responsibility requirements for the hardrock mining industry. *Idaho Conservation League v. Pruitt*, No. 18-1141. The NGOs argued that by deciding not to issue a final rule, EPA ignored “significant” risks posed by other mines. EPA maintained that issuing a final rule requiring hardrock mining companies to show they have set aside funding to clean up contamination at mining sites would have been “arbitrary and capricious.” The rule would have cost the industry more than $170 million annually, according to EPA, and created an undue burden on the mining sector. According to industry intervenors, the rule duplicates existing financial assurances required by states. Fourteen states support EPA’s decision not to regulate financial assurance for hardrock mines -- Alaska, Arizona, Arkansas, Colorado, Louisiana, Michigan, Montana, Nevada, New Mexico, South Carolina, South Dakota, Utah, Wisconsin, and Wyoming. Judge Thomas B. Griffith noted that “we live in the world of Chevron, for better or for worse,” citing the high court's principle that generally gives agencies discretion to interpret ambiguous statutes.

**EPCRA ISSUES**

**EPA Releases 2017 TRI National Analysis**

EPA released on March 5, 2019, its [2017 TRI National Analysis](https://www.epa.gov/trinationalanalysis/report-sections-tri-national-analysis), which highlights the following sectors: manufacturing, chemical manufacturing, paint and coating manufacturing, electric utilities, metal mining, and federal facilities. Under EPCRA, facilities must report details about their releases of TRI-listed chemicals for the prior calendar year to EPA by July 1 of each year. Facilities must include information on pollution prevention and other waste management activities involving TRI chemicals. The TRI chemical list includes **cadmium** with a *de minimis* limit of 0.1 percent. For calendar year 2017, more than 21,000 facilities submitted TRI data to EPA. The National Analysis provides the following highlights regarding metal mining releases from 2007 to 2017:

* More than 99 percent of the metal mining sector’s releases were in the form of on-site land disposal. The quantity of on-site land disposal by metal mines has fluctuated in recent years;
* Several mines reported that changes in production and changes in the chemical composition of the deposit being mined are the primary causes of fluctuations in the amount of chemicals reported as disposed of on site;
* Metal mining facilities typically handle large volumes of material, and even a small change in the chemical composition of the deposit being mined can lead to big changes in the amount of TRI chemicals reported; and
* The quantity of TRI chemicals released is not an indicator of health risks posed by the chemicals.

In 2017, the metal mining sector reported the largest quantity of total disposal or other releases, accounting for 50 percent of total TRI releases and 72 percent of on-site land disposal for all industries. None of the 85 metal mining facilities reported initiating source reduction activities for TRI chemicals in 2017. The TRI National Analysis notes that unlike manufacturing, the nature of mining -- the necessary movement and disposal of TRI chemicals present in large volumes of earth to access the target ore -- does not lend itself to source reduction.

**MINING AND MINERAL ISSUES**

**Senate Bill Would Eliminate Double Subsidies For Mining Industry**

On March 7, 2018, Senators Jeanne Shaheen (D-NH) and Tom Udall (D-NM) introduced the Elimination of Double Subsidies for the Hardrock Mining Industry Act of 2019 (S. 714). Shaheen’s March 8, 2019, [press release](https://www.shaheen.senate.gov/news/press/shaheen-udall-push-to-eliminate-double-subsidies-for-gold-and-silver-mining-industry) states that the bill “would end tax breaks for mining companies that are already mining public lands for free.” According to the press release, the General Mining Law of 1872 allows hardrock mining companies to mine on taxpayer-owned lands while paying nothing to the government, which significantly reduces their costs. In addition, the Percentage Depletion Allowance for mining on public lands gives U.S. mining companies the option of deducting a set percentage of their gross annual income from their federal income taxes, as an alternative to the standard corporate tax break for capital investment. The bill would eliminate this special alternative tax break. Mining companies would still be able to claim deductions based on actual capital investment.

**NIOSH Requests Information To Inform Prioritization Of Research Regarding Mining Automation And Safety**

NIOSH published a [*Federal Register* notice](https://www.federalregister.gov/documents/2019/03/18/2019-04926/mining-automation-and-safety-research-prioritization) on March 18, 2019, requesting information to inform the prioritization of research to be undertaken by the NIOSH Mining Program. NIOSH seeks input on priority gaps in knowledge regarding the safety and health implications of humans working with automated equipment and associated technologies in mining, with an emphasis on worker safety and health research in which NIOSH has the comparative advantage, and is unlikely to be undertaken by other federal agencies, academia, or the private sector. NIOSH seeks comment on the following questions:

1. To what extent will automation and associated technologies be implemented in mining and in what timeframe;

2. What are the related health and safety concerns with automation and associated technologies in mining;

3. What gaps exist in OSH research related to automation and associated technologies;

4. What are the major safety concerns associated with humans working near or interacting with automated mining equipment, and have other organizations addressed the safety concerns associated with humans working near or interacting with automated mining equipment;

5. What research has been conducted, or approaches taken, to address the potential for human cognitive processing confusion, misunderstanding, and task or information overload associated with monitoring or controlling automated mining equipment or other monitoring systems (*e.g*., fleet management, environmental monitoring, safety systems, health care systems);

6. What is the state of the art for display methodologies and technologies to provide mine personnel and equipment operators with information on operational status, location, and sensory and environmental feedback from automated mining equipment or systems;

7. What sensor technology improvements are needed to ensure the safety of humans working on or near automated equipment;

8. How are existing methods of big data analytics applied to automated mining equipment or systems, and are there health and safety benefits to these applications;

9. Are there any needed improvements to guidelines or industry standards for automated mining system safe design and operation practices; and

10. Are there any needed improvements to training materials, training protocols, and operating procedures for system safety design principles related to automated mining systems.

Comments are due **May 17, 2019**.

**TSCA ISSUES**

**EPA Releases Updated TSCA Inventory**

EPA released on February 19, 2019, an update of the TSCA Chemical Inventory, which lists chemicals that are “active” versus “inactive” in commerce in the U.S. EPA’s [News Release](https://www.epa.gov/newsreleases/epa-releases-first-major-update-chemicals-list-40-years) states that a “key result of the update is that less than half of the total number of chemicals on the current TSCA Inventory (47 percent or 40,655 of the 86,228 chemicals) are currently in commerce.” According to EPA, more than 80 percent (32,898) of the chemicals in commerce have identities that are not CBI, increasing public access to additional information about them. For the less than 20 percent of the chemicals in commerce that have confidential identities, EPA is developing a rule outlining how it will review and substantiate all CBI claims seeking to protect the specific chemical identities of substances on the confidential portion of the TSCA Inventory. More information is available in B&C®’s February 21, 2019, memorandum, “[EPA Releases Updated TSCA Inventory](http://www.lawbc.com/regulatory-developments/entry/epa-releases-updated-tsca-inventory).”

**EPA Submits Proposed CBI Rule To OMB For Review**

On February 28, 2019, EPA submitted a proposed procedural rule regarding the review of CBI claims for the identity of chemicals on the TSCA Inventory. Under the Lautenberg Act, EPA must review and make determinations regarding the validity of CBI claims based on the criteria in the statute and regulations. The Lautenberg Act also imposed new requirements that submitters must meet when claiming information as CBI, including:

* Assertions that the submitter must make;
* Substantiation of all CBI claims, except for those on information exempt from substantiation under TSCA Section 14(c)(2); and
* If a CBI claim is for specific chemical identity, a structurally descriptive generic name.

According to Alexandra Dapolito Dunn, OCSPP Assistant Administrator, EPA expects to publish the proposed rule in **March 2019**.

**EPA Releases List Of 40 Chemicals Undergoing Prioritization For Risk Evaluation**

EPA released on March 20, 2019, a list of 40 chemicals for which it is initiating the prioritization process for risk evaluation. TSCA Section 6(b)(2)(B) requires that, as of three and a half years after enactment (by **December 22, 2019**), at least 20 high-priority chemicals be undergoing risk evaluations and at least 20 low-priority chemicals be designated by EPA. In a March 21, 2019, [*Federal Register* notice](https://www.federalregister.gov/documents/2019/03/21/2019-05404/initiation-of-prioritization-under-the-toxic-substances-control-act), EPA provides a general explanation of why it chose these chemical substances and information on the data sources that EPA plans to use to support the designation. **Cadmium** is not included among the 40 chemicals. EPA is providing a 90-day comment period during which interested persons may submit relevant information on these chemical substances. Comments are due **June 19, 2019**. More information on the chemicals undergoing prioritization is available in B&C’s March 22, 2019, memorandum, “[EPA Releases List of 40 Chemicals Undergoing Prioritization for Risk Evaluation](http://www.lawbc.com/regulatory-developments/entry/epa-releases-list-of-40-chemicals-undergoing-prioritization-for-risk-evalua).”

As reported in our November 28, 2018, Update, on October 5, 2018, EPA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/10/05/2018-21747/a-working-approach-for-identifying-potential-candidate-chemicals-for-prioritization-notice-of) announcing the availability of the document outlining the approach it will use to identify chemicals that could be included in the next group of risk evaluations under TSCA. Upon publication of the notice in the *Federal Register*, EPA opened [73 chemical-specific public dockets](https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/submitting-information-tsca-work-plan-chemicals-inform), one for each of the remaining chemicals on the 2014 TSCA Work Plan, as well as a general docket to suggest chemicals for risk evaluation that are not on the Work Plan. EPA states: “By providing the public with a venue for submitting use, hazard, and exposure information on these chemicals, EPA is facilitating the sharing of information by stakeholders and the general public that could update the information EPA currently has on the chemicals on the 2014 Update to the TSCA Work Plan for Chemical Assessments. EPA will use this data to inform TSCA prioritization and risk evaluation for these chemicals.” **Cadmium** and **cadmium compounds** are included in the 2014 TSCA Work Plan, and the docket for **cadmium** and **cadmium compounds** is [Docket ID EPA-HQ-OPPT-2018-0479](https://www.regulations.gov/docket?D=EPA-HQ-OPPT-2018-0479). Information should be submitted to the chemical-specific dockets by **December 1, 2019**.

**MISCELLANEOUS ISSUES**

**CDC Updates Tables For National Report On Human Exposure To Environmental Chemicals**

CDC posted *Updated Tables, January 2019* for the [*National Report on Human Exposure to Environmental Chemicals*](https://www.cdc.gov/exposurereport/). The *Updated Tables* “present[] nationally representative and cumulative biomonitoring data gathered from 1999-2000 through 2015-2016.” They also include all the data from each previous *National Report on Human Exposure to Environmental Chemicals* and each of the previous *Updated Tables*. The National Report includes **cadmium** (blood; urine).

**U.S. Seeks Public Comments On Positions To Be Discussed At 13th Session Of The CCCF**

On February 20, 2019, the U.S. Codex Office published a [*Federal Register* notice](https://www.federalregister.gov/documents/2019/02/20/2019-02743/codex-alimentarius-commission-meeting-of-the-codex-committee-on-contaminants-in-foods) announcing that it will hold a public meeting on **April 1, 2019**, to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 13th Session of the CCCF of the Codex Alimentarius Commission, in Yogyakarta, Indonesia, **April 29-May 3, 2019**. According to the notice, items on the agenda for the 13th Session of the CCCF include:

* Proposed draft MLs for **cadmium** in chocolate and cocoa-derived products;
* Lead and **cadmium** in quinoa; and
* Development of a code of practice for the prevention and reduction of **cadmium** contamination in cocoa.

**Senate Approves Wheeler’s Nomination To Be Permanent EPA Administrator**

As reported in our January 28, 2019, Update, 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. 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. On February 5, 2019, the Committee approved Wheeler’s nomination. On February 28, 2019, the Senate confirmed Wheeler as EPA Administrator by a vote of 52-47.

**House Committee And Subcommittee Intend To Resume “Long-Overdue” Oversight Of CPSC**

On February 22, 2019, Representatives Frank Pallone, Jr. (D-NJ), Chair of the Energy and Commerce Committee, and Jan Schakowsky (D-IL), Chair of the Energy and Commerce Subcommittee on Consumer Protection and Commerce, sent a letter to Ann Marie Buerkle, Acting CPSC Chair, announcing that the Committee will resume its traditional oversight role. According to the Committee’s February 22, 2019, [press release](https://energycommerce.house.gov/newsroom/press-releases/pallone-schakowsky-begin-long-overdue-oversight-of-cpsc), under the Trump Administration, CPSC has taken several actions that raise questions about its commitment to protecting consumers. -- CPSC failed to alert parents about the specific inclined sleeper products that have caused infant deaths and did not adequately respond to long-known dangers of certain IKEA dressers. The press release states that Pallone and Schakowsky believe CPSC should exercise the full extent of its authority to protect consumers from hazardous and defective products.

**House Committee Holds Hearing On EPA’s Enforcement Program**

On February 26, 2019, the House Energy and Commerce Subcommittee on Oversight and Investigations held a hearing on “[EPA’s Enforcement Program: Taking the Environmental Cop Off the Beat](https://energycommerce.house.gov/committee-activity/hearings/hearing-on-epas-enforcement-program-taking-the-environmental-cop-off-the).” The hearing examined the effectiveness and consistency of EPA in implementing and enforcing federal environmental regulations and laws, as well as the resulting impacts of its efforts and actions on human health and the environment. The Subcommittee heard from the following witnesses:

* Susan Bodine, Assistant Administrator, OECA, EPA;
* Bruce Buckheit, J.D., M.S., Analyst and Consultant, Former Director, Air Enforcement Division, OECA, EPA;
* Bakeyah Nelson, Ph.D., Executive Director, Air Alliance Houston;
* Eric Schaeffer, J.D., Executive Director, Environmental Integrity Project;
* Chris Sellers, Ph.D., M.D., Professor of History, Director, Center for the Study of Inequality and Social Justice, Stony Brook University;
* Jay Shimshak, Ph.D., Associate Professor of Public Policy and Economics, Frank Batten School of Leadership and Public Policy, University of Virginia; and
* Ronald J. Tenpas, J.D., Partner, Vinson & Elkins LLP, Former Assistant Attorney General, Environment and Natural Resources Division, DOJ.

Bodine defended EPA’s FY 2018 enforcement record, which showed the number of inspections and evaluations conducted by EPA declined to 10,612 in 2018 from 11,941 the previous year. The number has been declining since 2012. Bodine urged the Subcommittee not to judge EPA “by a narrow set of parameters.” According to Bodine, EPA “look[s] for opportunities to maximize the impact of our cases so that a single settlement returns multiple facilities into compliance.”

**STATE ISSUES**

***California***

**Senate Bill Would State Intent Of Legislature To Enact Legislation Preventing Cadmium Exposure From Jewelry**

S.B. 647, introduced on February 22, 2019, would state the intent of the legislature to enact legislation that would protect the public health, safety, and welfare of Californians by preventing lead and **cadmium** exposure from jewelry that is sold in the state.

***District of Columbia***

**Safe Fields And Playgrounds Act Requires Publication Of Approved Synthetic Materials That Include Cadmium**

The Safe Fields and Playgrounds Act of 2018 (B. 946) was enacted on January 30, 2019. The bill requires a study on the safety of all synthetic materials currently used in construction projects at District of Columbia public recreational spaces. Within 30 days after the transmission of the study to the Council, the Department of General Services would be required to publish on its website a list of approved synthetic materials that includes the concentration of any “known toxins, including lead, **cadmium**, chromium, mercury, tin, and zinc.”

***Kansas***

**Bills Would Set Maximum Cadmium Limit In Medical Cannabis**

The Safe Act Access Act (H.B. 2303, S.B. 195) is intended to provide for the safe, legal, humanitarian, and therapeutic use of cannabis for medical conditions; provide for the registration and functions of compassion centers; authorize the issuance of identification cards; establish the compassion board; and provide for administration of the act by the department of health and environment. The bill would set maximum limits for several metals, including **cadmium** (maximum limit less than 4.1 ppm). H.B. 2303 was introduced on February 13, 2019, and S.B. 195 was introduced on February 15, 2019.

***Massachusetts***

**Bill Would Require Preparation Of Chemical Action Plan For Cadmium As Found In Children’s Products**

S.B. 519 would require MDEP, in consultation with the Toxic Use Reduction Institute at the University of Massachusetts at Lowell, to prepare chemical action plans for the following three chemicals and specific uses: **cadmium** as found in children’s products; trichloroethylene as found in industrial degreasers; and nonylphenol ethoxylates as found in household cleaning products. The chemical action plans would include draft regulations, for review by the council and members of the public. A chemical action plan for these three chemical substances' use with feasible alternatives must:

(a) Identify specific actions that manufacturers and users of these chemical substances shall be required to implement;

(b) Require substitution of a safer alternative;

(c) Establish schedules, timelines, and deadlines for achieving substitution of these chemical substances with safer alternatives, for specified uses;

(d) Where appropriate, require manufacturers or users of these chemical substances to prepare and submit to the department plans to effect the substitution(s); and

(e) Provide for technical assistance to manufacturers and users of these chemical substances.

***Minnesota***

**Minnesota Continues To Take Action To Stop Sale Of “Toxic” Children’s Jewelry**

The March 2019 issue of MDH’s [*Toxic Free Kids Update*](https://content.govdelivery.com/accounts/MNMDH/bulletins/235ce64) includes an item entitled “State of Minnesota continues to take action to stop the sale of toxic kids’ jewelry.” According to the item, following MDH’s 2017 investigation of children’s jewelry for lead and **cadmium**, the Chemicals in Products Interagency Team conducted a second study in 2018. One product, a girl’s clothing set with metal pendant, resulted in a national recall. MDH provides a link to its [handout on lead and **cadmium** in children’s jewelry](https://www.health.state.mn.us/communities/environment/childenvhealth/docs/childrensjewelry.pdf) for more information.

***Missouri***

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

H.C.R. 33, which was introduced on February 5, 2019, calls for the U.S. Army to hold town hall sessions in the St. Louis region to explain the testing that occurred as a result of Operation Large Area Coverage in the 1950s and 1960s in St. Louis. The resolution also calls for EPA and DHHS to conduct a study to track the health effects on populations exposed to Operation Large Area Coverage testing. The resolution states that, during the 1950s and 1960s, as part of a series of Cold War experiments, the U.S. Army dusted chosen American cities with a fine powder of a fluorescent, potentially toxic chemical. The powder scattering was part of Operation Large Area Coverage, a series of tests intended to assess the threat of biological attacks by simulating the airborne dispersion of germs. According to the resolution, the experiments exposed large portions of the U.S., and parts of Mexico and Canada, “to flurries of a synthesized chemical called **zinc cadmium sulfide**.”

***New York***

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

S.B. 3761, introduced on February 13, 2019, would regulate **cadmium** in certain substrate components of children’s jewelry. Under the bill, accessible components of children’s jewelry that exceed a total **cadmium** content screening level of 300 ppm must meet the following migration limits:

* Accessible plastic components shall not exceed 75 ppm **cadmium**;
* Accessible metal components shall not exceed 200 µg **cadmium**; and
* Accessible plastic and metal components shall not exceed 18 µg **cadmium**.

**Bill Would Regulate Chemicals Of Concern In Children’s Products, Designate Cadmium As A Dangerous Chemical**

A.B. 6296, introduced on March 4, 2019, would regulate chemicals of concern in children’s products. Under the bill, **cadmium** and **cadmium compounds** would be included on the list of chemicals of concern, and **cadmium** would be included on the list of dangerous chemicals. Within 180 days of the effective date of the bill, New York would be required to publish lists of dangerous chemicals and chemicals of concern on its website. No later than one year after appearing on a published list, manufacturers who offer a children’s product for sale or distribution that contains a dangerous chemical or chemical of concern must report such chemical use. Effective **January 1, 2023**, no person would be allowed to distribute, sell, or offer for sale a children’s product containing a dangerous chemical.

**Senate Bill Would Establish Criteria Designating Toys Contaminated With Toxic Substances**

S.B. 4431, introduced on March 11, 2019, would establish criteria by which a toy would be defined as contaminated with a toxic substance. The criteria include whether a toy is coated with paints and lacquers containing compounds of lead of which the lead content is in excess of that permitted by federal regulations, or soluble compounds of antimony, arsenic, **cadmium**, mercury, selenium or barium, introduced as such.

***Texas***

**Bill Would Require Manufacturer Disclosures For Toxic Metals In Lipstick And Lip Gloss Cosmetics**

H.B. 2745, introduced on February 28, 2019, would require a manufacturer that sells a lipstick or lip gloss to disclose the presence of any “toxic metal,” including **cadmium**, regardless of whether the concentration of the metal in the cosmetic is less than one percent.

***Vermont***

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

On March 22, 2019, the Senate passed S.B. 55, which would establish an Interagency Committee on Chemical Management to evaluate chemical inventories in Vermont and identify potential risks from the inventories. As reported in our January 28, 2019, Update, 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 list of chemicals of high concern to children includes **cadmium** and **cadmium compounds**. More information on the bill is due in our January 28, 2019, Update.

**INTERNATIONAL ISSUES**

**CANADA**

**Ontario Posts Proposal To Repeal Far North Act**

On February 25, 2019, the Ontario Ministry of Natural Resources and Forestry [announced](https://news.ontario.ca/mnr/en/2019/02/ontario-taking-steps-to-unlock-economic-development-potential-of-the-far-north.html) that the government has been reviewing the Far North Act “with the goal of reducing red tape and restrictions on important economic development projects in the Far North including the Ring of Fire, all-season roads and electrical transmission projects for communities.” The Far North Act, which came into effect in 2011, intended to strike a balance between conservation and mining interests. The Act was strongly opposed by indigenous communities who claimed that it left most power over natural resources with the provincial government. The government seeks input on a proposal to repeal the Far North Act, amend the Public Lands Act to continue approved community-based land use plans, and, for a time-limited period, enable completion of the planning process for communities that are at an advanced planning stage. Comments are due **April 11, 2019**.

**Canada Announces Canadian Minerals And Metals Plan**

On March 3, 2019, Canada [announced](https://www.canada.ca/en/natural-resources-canada/news/2019/03/canadas-mines-ministers-announce-the-canadian-minerals-and-metals-plan-for-a-competitive-sustainable-and-responsible-minerals-and-metals-sector.html) the release of the Canadian Minerals and Metals Plan. The Canadian Minerals and Metals Plan covers issues that are key to a successful and modern minerals and metals industry: competitiveness; the participation of Indigenous Peoples; community benefits; respect for the environment; scientific and technological innovation; and, global leadership. Areas for action include:

* Tax and financial incentives: The federal, provincial, and territorial governments should review Canada’s tax position and adjust tax policies and other fiscal instruments to support cost competitiveness and attract investment;
* Regulation: The federal, provincial, and territorial governments should continue to harmonize or mutually recognize regulations, where appropriate. The federal, provincial, and territorial governments should continue to work with industry to develop tools to help stakeholders understand and navigate regulations. The federal, provincial. and territorial governments should ensure that those government bodies conducting environmental assessments have the capacity to deliver advice and decisions in a timely and efficient manner;
* Geoscience: The federal, provincial, and territorial governments and industry should explore options for increased funding for geoscience and examine ways to increase international collaboration on geoscience innovation;
* Land access and land use: The federal government, in collaboration with the provinces and territories, should continue to settle land claims as a principle for reconciling with Indigenous Peoples. The federal, provincial, and territorial governments should explore ways to provide increased clarity around land use and land access where it does not exist. Decisions should incorporate economic factors alongside social and environmental considerations, and leverage scientific and local knowledge;
* Infrastructure: The federal, provincial, and territorial governments should work with Indigenous Peoples, remote and isolated communities, and industry to identify enabling infrastructure needs in regions of high mineral-development potential. The federal, provincial, and territorial governments could consider dedicating additional resources to unlock the mineral potential of northern, remote, and isolated areas; and
* Mineral processing: The federal and provincial governments should study further processing opportunities to expand Canada’s smelting, refining, and pelletizing capabilities to contribute added value to the economy.

The press release notes that on the date of the Plan’s release, it had been endorsed by all of Canada’s Mines Ministers with the exception of the Ministers from Ontario and Saskatchewan.

**Canada Promulgates Environmental Emergency Regulations**

On March 6, 2019, Canada published a [*Canada Gazette* notice](http://www.gazette.gc.ca/rp-pr/p2/2019/2019-03-06/html/sor-dors51-eng.html) promulgating the Environmental Emergency Regulations, 2019, which are intended to reduce the frequency and severity of accidental releases of hazardous substances into the environment. The Regulations require that any person who owns or has the charge, management, or control of a regulated substance at or above certain quantities notify Environment and Climate Change Canada. For higher-risk facilities, an environmental emergency plan must also be prepared, brought into effect, and exercised. Schedule 1 of the final regulations includes 249 substances that pose an acute hazard to the environment or to human health should an accidental release occur. Schedule 1 includes:

| **CAS Number** | **Name of Substance** | **Concentration (% mass/mass)** | **Minimum Quantity (tonnes)** | **Hazard Category (Short Form)** |
| --- | --- | --- | --- | --- |
| 1306-19-0  | **Cadmium oxide**  | 10  | 0.22  | A |
| 1306-23-6  | **Cadmium sulfide**  | 10  | 0.22  | A |
| 10108-64-2  | **Cadmium chloride**  | 10  | 0.22  | A |
| 10124-36-4  | **Cadmium sulfate**  | 10  | 0.22  | A |

A -- Aquatically toxic

The Regulations will come into force on **August 24, 2019**.

**Canada Proposes Guideline For Drinking Water Quality For Cadmium**

Canada published a [*Canada Gazette* notice](http://gazette.gc.ca/rp-pr/p1/2019/2019-03-16/html/notice-avis-eng.html) on March 16, 2019, announcing a proposed guideline for Canadian drinking water quality for **cadmium**. Canada proposes an MAC of 0.005 mg/L (5 µg/L) for total **cadmium** in drinking water. The executive summary in the notice states:

**Cadmium** is a metal that can be found in the environment either in its elemental form or in a number of different salts. It is often associated with lead, copper, and zinc ores. **Cadmium** may enter drinking water sources naturally (leaching from soil), as a result of human activities (as a by-product of refining or from its use in technological applications), or through leaching from some pipes and well components.

This guideline technical document reviews and assesses all identified health risks associated with **cadmium** in drinking water. It incorporates new studies, assessments and approaches and takes into consideration the availability of appropriate treatment technology. Based on this review, the document proposes to reaffirm an MAC of 0.005 mg/L (5 µg/L) for **cadmium** in drinking water.

During its spring 2018 meeting, the Federal-Provincial-Territorial Committee on Drinking Water reviewed the guideline technical document on **cadmium** and its endorsement for this document to undergo public consultation.

Comments on the [proposed technical document](https://www.canada.ca/en/health-canada/programs/consultation-cadmium-drinking-water.html) for the guideline are due **May 15, 2019**.

**CHINA**

**China Includes Cadmium And Cadmium Compounds On List Of Toxic And Hazardous Air Pollutants (First Batch)**

MEE [published](http://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/201812/t20181214_684863.html) on January 23, 2019, the list of toxic and hazardous air pollutants (first batch), which includes **cadmium** and **cadmium compounds**. Companies discharging listed pollutants are required to comply with the following obligations:

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

**Draft List Of First Batch Of Toxic And Hazardous Water Pollutants Includes Cadmium And Cadmium Compounds**

On January 25, 2019, MEE began a [public consultation](http://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/201902/t20190201_691863.html) on the draft list of toxic and hazardous water pollutants (first batch), which includes **cadmium** and **cadmium compounds**. Under the Water Pollution Prevention and Control Law, entities discharging listed pollutants would be required to implement risk management measures, including self-monitoring of emissions, data storage, pollutants information disclosure, and practical environmental risk prevention. Comments were due February 16, 2019.

**Draft National Standard For Marine Coatings Would Limit Cadmium**

MIIT has published [two draft national standards](http://www.standardcn.com/article/show.asp?id=63768) for marine coatings and interior floor coatings. The draft standard for marine coatings would set the following threshold limits:

* VOCs at 400-700 g/l, depending on the coating type;
* Hazardous solvents, including xylene at 15 percent, benzene at one percent, methanol at one percent, and haloalkane at one percent; and
* Lead at 1,000 mg/kg, **cadmium** at 100 mg/kg, hexavalent chromium at 1,000 mg/kg, and mercury at 1,000mg/kg.

The draft standard for marine coatings would ban organotin compounds and DDT. If approved, the standards would be mandatory for industry. Comments are due **April 12, 2019**.

**China Seeks Suggested Amendments To Guidance On Catalog Of Hazardous Chemicals**

NRCC issued a [notice](http://www.nrcc.com.cn/Content/fabd0240-8859-4849-982a-fd76df28415f) on March 18, 2019, requesting comment on how to amend the Guidance for the Implementation of the Catalog of Hazardous Chemicals. As reported in our March 28, 2015, Update, the 2015 Catalog of Hazardous Chemicals includes almost 3,000 substances, including **cadmium**. In general, the substances listed are subject to Decree 591 and its subordinate regulations addressing their safe management throughout the supply chain. Listed substances would need a license to be produced, used, or imported. The public comment period provides stakeholders an opportunity to comment on the classifications provided or request clarification on how to classify a chemical product. Comments are due **April 30, 2019**.

**MALAYSIA**

**Malaysia Is Considering Requiring Classification Approvals Before Allowing Import Of Hazardous Chemicals**

According to a DOSH spokesperson, DOSH is considering amending the CLASS Regulations to require companies to obtain classification approvals for hazardous chemicals before they can be imported. The spokesperson stated that companies that do not have classification of chemicals might not be able to bring them into Malaysia. DOSH is conducting feasibility studies concerning the requirement, which would require the involvement of several different government agencies. ICOP includes a list of chemicals classified under the CLASS Regulations. Companies must use the ICOP classification for listed chemicals. **Cadmium, elemental and compound, as Cd**, is listed.

**PHILIPPINES**

**NGO Claims Lucky Charms And Amulets Contain Dangerous Levels Of Cadmium**

On February 4, 2019, EcoWaste Coalition posted a blog item entitled “[Luck Seekers Warned against Lucky Charms and Amulets Laden with Toxic **Cadmium** and Lead](http://ecowastecoalition.blogspot.com/2019/02/luck-seekers-warned-against-lucky.html).” According to EcoWaste Coalition, out of 20 assorted lucky charms and amulets purchased from retailers in Binondo and Quiapo, 15 were found to be contaminated with excessive levels of lead and **cadmium** in excess of the 90 ppm limit for lead in paint under Philippine and U.S. laws, and 100 ppm limit for **cadmium** in jewelry in the EU. The blog item states that **cadmium** ranging from 1,906 to 293,000 ppm was detected in the pendants adorning four red fabric bracelets and steel chain necklaces.

**NGO “Raises Alarm” Over Cadmium In Plastic Tarpaulins**

EcoWaste Coalition posted a February 7, 2019, blog item entitled “[EcoWaste Coalition Raises the Alarm Over Toxic](https://ecowastecoalition.blogspot.com/2019/02/ecowaste-coalition-raises-alarm-over.html) **[Cadmium](https://ecowastecoalition.blogspot.com/2019/02/ecowaste-coalition-raises-alarm-over.html)** [in Plastic Tarpaulins (Group urges poll candidates to avoid excessive use of plastic tarpaulins to control](https://ecowastecoalition.blogspot.com/2019/02/ecowaste-coalition-raises-alarm-over.html) **[cadmium](https://ecowastecoalition.blogspot.com/2019/02/ecowaste-coalition-raises-alarm-over.html)** [pollution)](https://ecowastecoalition.blogspot.com/2019/02/ecowaste-coalition-raises-alarm-over.html).” The NGO warns that “plastic tarpaulins may contain **cadmium**, a heavy metal with a high toxicity that is used as plastic colorant and/or stabilizer.” EcoWaste Coalition sent five tarpaulin samples to a global testing company, for **cadmium** analysis. Two laboratory tests were done for each tarpaulin sample, one on the scraped coatings, and the other on composite materials. The samples were made by commercial sign makers located in Makati, Mandaluyong, Manila, Pasay, and Quezon Cities. According to EcoWaste Coalition, the samples, which were analyzed for **cadmium** in paint and other similar surface coatings, were found to contain **cadmium** in the range of 515 to 1,038 ppm. The average **cadmium** content of the samples was 718 ppm, exceeding the 100 ppm limit set by the EU for **cadmium** in plastics. EcoWaste Coalition urges EMB “to fast track the approval of a strong Chemical Control Order (CCO) for **Cadmium** and **Cadmium Compounds**.”

**SOUTH KOREA**

**Amendment To OSH Act Enters Into Force**

On January 15, 2019, an amendment to the OSH Act entered into force. Under the amendment, companies must submit SDSs to MOEL, as well as along the supply chain. Where a company has applied, and received approval for, CBI protection, it must still supply an alternative name and contents that provide enough information to protect workers from the risk of exposure to hazardous substances. This amendment will apply beginning **January 16, 2021**. Other changes, which will apply beginning **January 16, 2020**, include:

* Increased penalties for worker deaths from health and safety violations;
* Increased penalties for industrial accidents affecting sub-contracted personnel;
* Extension of protections to ancillary workers, such as transport personnel;
* Industrial accident prevention system requirements to apply to whole businesses rather than individual sites; and
* Prohibition of outsourcing high-risk work, such as plating or works that handle mercury, lead, and **cadmium**, except when temporary or for training purposes.

**TAIWAN**

**Taiwan EPA Amends Regulation Of New And Existing Chemical Substances Registration**

On March 11, 2019, Taiwan EPA [issued](https://enews.epa.gov.tw/enews/fact_Newsdetail.asp?InputTime=1080311161024) the amended Regulation of New and Existing Chemical Substances Registration. The amended Regulation:

* Allows companies to submit joint registration applications for new chemicals;
* Revises the confidentiality periods for new chemical standard registration, small amount registration for substances of low concern, and standard registration of existing chemical substances to five years. For simplified and small amount registrations of new chemicals, the period is two years. The maximum period of confidentiality for new chemical substance registration is 15 years and ten years for existing chemical registrations;
* Allows companies intending to manufacture or import less than 100 kg of a new chemical substance to use “small amount registration.” “Standard registration” will apply only when companies expect to manufacture or import in quantities exceeding one tonne;
* The requirements for new toxic chemical registrations for Taiwan EPA and MOL are harmonized so that companies manufacturing or importing Class II or Class III toxic chemicals in volumes of ten tonnes or more will be required to submit data on hazard risk evaluation and exposure risk;
* Requires that new chemical substances that are CMRs be subject to standard registration;
* Requires companies claiming new chemical substances that are for R&D or for nanochemical substances to submit a registration form;
* Requires manufacturers or importers of existing chemical substances of up to 100 kg to register within six months; and
* Gives companies 30 days to provide additional documentation or data if requested by Taiwan EPA. Companies can apply for an extension only if there are scientific or technical reasons preventing them from complying with the deadline.

The revised Regulation includes a final list of 106 PECs that are subject to standard registration. **Cadmium** is not listed as a PEC. The revised Regulation came into effect on March 11, 2019.

**UN**

**UNEP Calls For Strengthened Governance To Improve Social And Environmental Outcomes Of Mining**

UNEP released on February 19, 2019, a report entitled *Mineral Resource Governance in the 21st Century: Gearing Extractive Industries Towards Sustainable Development*, prepared by the International Resource Panel. According to UNEP’s [press release](https://www.unenvironment.org/news-and-stories/press-release/call-strengthened-governance-improve-social-and-environmental), the Panel calls for an international mineral agency or a global treaty “to address priorities of transformation and economic diversification, along with concerns about security of supply.” In preparing the report, the Panel analyzed at least 80 existing international instruments governing mining, ranging from site-specific to global initiatives. Despite the “plethora of instruments,” the press release states that these have not succeeded in promoting shared benefits and creating links to local economies. According to the Panel, international action is needed to consolidate existing rules and regulations in the mining sector, and to agree on international standards on such things as transparency and codes of conduct. The Panel recommends reform at both the international and national levels. At the national level, the Panel suggests that countries adopt a Strategic Plan for the mining sector and other sectors impacted by it. The Plan should be set in the context of sustainable development, and could include a mining law that enshrines the principles of consultation, transparency, and reporting, as well as explicitly recognizing the rights of local populations. The Plan should also facilitate the creation of three core public institutions to promote and regulate the development of mines and metals industries: an Environmental Directorate in charge of developing environmental policies, laws, and regulations; a Mining Directorate in charge of mines and metals-related policies; and a Geological Survey in charge of acquiring, conserving, managing, modeling, and disseminating geological, geophysical, geochemical, and other data. At the international level, the Panel proposes an International Minerals Agency, or an international agreement, to, among others, coordinate and share data on economic geology, mineral demand needs, and promote transparency on impacts and benefits. At this time, UNEP has posted only a preview copy of the Summary for Policymakers. The full report will be released “in the coming weeks.”

**UNEP Releases *Global Resources Outlook 2019*, Calls For “Urgent Rethink”**

On March 12, 2019, UNEP [announced](http://www.resourcepanel.org/file/1209/download?token=SPgpRdbP) the release of the [*Global Resources Outlook 2019*](http://www.resourcepanel.org/reports/global-resources-outlook) to the UN Environment Assembly. According to the report, rapid growth in extraction of materials” is the chief culprit in climate change and biodiversity loss -- a challenge that will only worsen unless the world urgently undertakes a systemic reform of resource use.” UNEP states that:

* Resource extraction has more than tripled since 1970, including a five-fold increase in the use of non-metallic minerals and a 45 percent increase in fossil fuel use;
* By **2060**, global material use could double to 190 billion tonnes (from 92 billion), while greenhouse gas emissions could increase by 43 percent; and
* The extraction and processing of materials, fuels, and food contribute half of total global greenhouse gas emissions and over 90 percent of biodiversity loss and water stress.

The report examines the trends in natural resources and their corresponding consumption patterns since the 1970s to support policymakers in strategic decision-making and transitioning to a sustainable economy. Since 2000, growth in extraction rates have accelerated to 3.2 percent per annum, driven largely by major investments in infrastructure and higher material living standards in developing and transitioning countries, especially in Asia. More specifically, UNEP states, “the use of metal ores increased by 2.7 per cent annually and the associated impacts on human health and climate change doubled during 2000-2015.”

\* \* \* \* \*

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, or Carla N. Hutton at (202) 557-3809 or chutton@lawbc.com.

## ACRONYMS

**μg** -- Microgram

**μg/L** -- Microgram Per Liter

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

**CAA** -- Clean Air Act

**CAS** -- Chemical Abstracts Service

**CBI** -- Confidential Business Information

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

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

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

**CLASS** -- Classification, Labeling, and Safety Data Sheets of Hazardous Chemicals

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

**CPSC** -- United States Consumer Product Safety Commission

**DDT** -- Dichlorodiphenyltrichloroethane

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

**DOJ** -- United States Department of Justice

**DOSH** -- Department of Occupational Safety and Health

**EMB** -- Environmental Management Bureau

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

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

**EU** -- European Union

**FY** -- Fiscal Year

**g/L** -- Grams Per Liter

**HAP** -- Hazardous Air Pollutant

**ICdA** -- International Cadmium Association

**ICOP** -- industry code of practice

**ICR** -- Information Collection Request

**kg** -- Kilogram

**Lautenberg Act** -- Frank R. Lautenberg Chemical Safety for the 21st Century Act

**MAC** -- Maximum Acceptable Concentration

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

**MDH** -- Minnesota Department of Health

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

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

**mg/L** -- Milligram Per Liter

**MIIT** -- Ministry of Industry and Technology

**ML** -- Maximum Level

**MOEL** -- Ministry of Employment and Labor

**MOL** -- Ministry of Labor

**NESHAP** -- National Emission Standards for Hazardous Air Pollutants

**NGO** -- Non-Governmental Organization

**NIOSH** -- National Institute for Occupational Safety and Health

**NRCC** -- National Registration Center for Chemicals

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

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

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

**OSH** -- Occupational Safety and Health

**PEC** -- Priority Existing Chemical

**ppm** -- Part Per Million

**PRA** -- Paperwork Reduction Act

**R&D** -- Research and Development

**SDS** -- Safety Data Sheet

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

**TRI** -- Toxics Release Inventory

**TSCA** -- Toxic Substances Control Act

**UN** -- United Nations

**UNEP** -- United Nations Environment Program

**VOC** -- Volatile Organic Compound

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)