#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

**May 28, 2018**[[1]](#footnote-1)

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# NEW DEVELOPMENTS

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

Federal Issues

CERCLA Issues

EPA Hosts Listening Sessions On Superfund Task Force Recommendations, page 4

NGOs Sue EPA For Failing To Proceed With Final Rule Regarding Financial Responsibility Requirements For Hardrock Mining Industry, page 5

Mining And Mineral Issues

MSHA Amends Rule Regarding Examinations Of Working Places In Metal And Nonmetal Mines, page 5

TSCA Issues

EPA Includes Active-Inactive Designations On Updated TSCA Inventory, page 6

EPA Extends Comment Period For Proposed User Fees, Supplements Rulemaking Docket, page 7

OMB Reviewing Final Rule Regarding Reporting Requirements For TSCA Mercury Inventory, page 7

EPA Could Use Safer Chemical Ingredients List To Identify Low-Priority Chemicals, page 8

Miscellaneous Issues

CDC Updates National Report On Human Exposure To Environmental Chemicals, Including Data On Blood Cadmium, page 8

EPA Publishes Proposed Rule On Strengthening Transparency In Regulatory Science, page 8

State Issues

*California*

Jewelry Company Fined For Selling Products With Illegal Levels Of Lead And Cadmium, page 10

*Colorado*

Senate Committee Postpones Bill Prohibiting Hardrock Mining Companies From Self-Bonding, page 10

*Montana*

MDEQ Identifies Hecla Mining CEO As Bad Actor, page 11

*Oregon*

Cleaner Air Oregon Rules Advisory Committee Met In May, page 11

*Vermont*

Vermont House Fails To Override Governor’s Veto Of Toxics Bill, page 12

International Issues

Australia

Australia Updates HCIS, Including Amended Classifications For A Number Of Cadmium Compounds, page 12

Canada

Canadian Government Will Not Fund Transportation Corridor In Nunavut, page 13

Canada Amends Hazardous Products Regulations To Protect CBI, page 13

Canada Publishes Proposed CMP Approach For Subset Of Inorganic And Organometallic Substances, page 14

Canada Enacts Cadmium Limit For Children’s Jewelry, page 14

China

NGOs Publish Report Calling For China To Establish A PRTR, page 16

Hong Kong

Hong Kong Amends Toys And Children’s Products Safety Ordinance, page 16

North America

CEC Report Includes Analysis Of Pollutant Reporting By North American Mining Sector, page 16

Philippines

NGO Calls For Political Candidates To “Go Easy” On Tarpaulins Containing Cadmium, page 17

South Korea

Ministry Recalls Children’s Products That Contain Hazardous Substances, Including Cadmium, In Excess Of Permitted Levels, page 18

Taiwan

MOL Holds Public Consultation On Changes To Regulation Regarding Labeling Of Hazardous Chemicals, page 18

Taiwan EPA Begins Consultation On Proposed Revisions To Registration Regulations, page 19

Taiwan Promulgates Regulation On Residue Limit For Cadmium In Cosmetics, page 20

Cabinet Proposes To Create New Ministry, Elevate TCSB, page 20

Parliamentary Committee Proposes Board To Coordinate National Chemical Safety, page 20

RoHS Standard Will Apply To More Products As Of July 1, page 21

**FEDERAL ISSUES**

**CERCLA ISSUES**

**EPA Hosts Listening Sessions On Superfund Task Force Recommendations**

On May 21, 2018, EPA hosted the first of [eight web-based listening sessions](https://www.epa.gov/enforcement/listening-sessions-superfund-task-force-recommendations) to solicit public and stakeholder input related to specific recommendations from its Superfund Task Force Recommendations Report:

* May 21, 2018: Expediting Negotiations with Potentially Responsible Parties for Superfund Cleanup Agreements, Recommendation 16-2, Part 1;
* **June 5, 2018**: Exploring CERCLA Environmental Liability Transfer Approaches, Recommendation 22;
* **June 5, 2018**: New Tools to Support Private Party Investment in Cleaning Up and Reusing Superfund Sites, Recommendation 27;
* **June 11, 2018**: Encouraging Potentially Responsible Parties to Implement Reuse, Recommendation 21;
* **June 11, 2018**: Revising EPA’s “Common Elements” Guidance to Encourage Third Party Investment, Recommendation 29;
* **June 13, 2018**: Informing Parties About Streamlining the Cleanup and Redevelopment Process, Recommendation 23;
* **June 18, 2018**: Improving Comfort Letters to Address Superfund Liability Concerns, Recommendation 28; and
* **June 18, 2018**: Improving Implementation of Cleanup Agreements for Response Actions by Potentially Responsible Parties, Recommendation 16-2, Part 2.

During the listening sessions, staff from OSRE and regional offices will provide background information on specific recommendations and a progress report on activities related to the recommendations, followed by live verbal remarks from registered participants. Written comments may be submitted within seven calendar days after a listening session unless otherwise indicated on the registration form or session information web page.

**NGOs Sue EPA For Failing To Proceed With Final Rule Regarding Financial Responsibility Requirements For Hardrock Mining Industry**

Earthjustice [announced](https://earthjustice.org/news/press/2018/lawsuit-targets-pruitt-for-refusing-to-hold-mining-industry-accountable-for-toxic-waste-cleanups) on May 16, 2018, that a coalition of NGOs filed suit against EPA, challenging its decision not to issue a final rule regarding financial responsibility requirements for the hardrock mining industry. EPA’s January 11, 2017, proposed rule would have required owners and operators of certain classes of hardrock mines and mineral processing facilities to show financial ability to address risks from hazardous substances. EPA [announced](https://www.epa.gov/newsreleases/epa-determines-risks-hardrock-mining-industry-minimal-and-no-need-additional-federal) its decision not to proceed on December 1, 2017, stating that it analyzed the need for financial responsibility based on risk of taxpayer-funded cleanups at hardrock mining facilities operating under modern management practices and modern environmental regulations, *i.e*., the type of facilities to which financial responsibility regulations would apply. According to EPA, the record demonstrates that, in the context of CERCLA Section 108(b), the degree and duration of risk associated with the modern production, transportation, treatment, storage, or disposal of hazardous substances by the hardrock mining industry does not present a level of risk of taxpayer-funded response actions that warrant imposition of financial responsibility requirements for the sector. Earthjustice’s press release states that EPA estimates the backlog of cleanup costs for hard-rock mines across the country at $20-$54 billion. According to Earthjustice, the final rule “would have incentivized mining companies to avoid leaving cancer-causing chemicals behind, and kept the financial burden of cleanups off the backs of taxpayers.” The coalition of NGOs includes Earthworks, Idaho Conservation League, Amigos Bravos, Great Basin Resource Watch, Sierra Club, and Communities for a Better Environment.

**MINING AND MINERAL ISSUES**

**MSHA Amends Rule Regarding Examinations Of Working Places In Metal And Nonmetal Mines**

As reported in our January 28, 2017, Update, on January 23, 2017, MSHA published a final rule amending provisions regarding examinations of working places in metal and nonmetal mines that were later stayed. MSHA published a [final rule](https://www.federalregister.gov/documents/2018/04/09/2018-07084/examinations-of-working-places-in-metal-and-nonmetal-mines) on April 9, 2018, further amending the affected provisions following expiration of the stay. According to MSHA, these additional amendments provide mine operators additional flexibility in managing their safety and health programs and reduce regulatory burdens without reducing the protections afforded miners. MSHA’s changes to 30 C.F.R. Sections 56.18002(a) and 57.18002(a) require that a competent person examine each working place at least once each shift before work begins, or as miners begin work in that place, for conditions that may adversely affect safety or health. The final rule also amends 30 C.F.R. Sections 56.18002(b) and 57.18002(b) to require that the working place examination record include a description of each condition found that may adversely affect the safety or health of miners and is not corrected promptly. Lastly, the final rule makes a conforming change and amends 30 C.F.R. Sections 56.18002(c) and 57.18002(c) to require that when a condition that may adversely affect the safety or health of miners is not corrected promptly, the examination record shall include, or be supplemented to include, the date of the corrective action. MSHA published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/04/09/2018-07083/examinations-of-working-places-in-metal-and-nonmetal-mines) on April 9, 2018, announcing that it would hold several stakeholder meetings in May 2018 on the amended standards.

**TSCA ISSUES**

**EPA Includes Active-Inactive Designations On Updated TSCA Inventory**

On April 12, 2018, EPA announced the availability of the [April 2018 Toxic Substances Control Act (TSCA) Chemical Substance Inventory](https://www.epa.gov/tsca-inventory/how-access-tsca-inventory). For the first time, the Inventory includes a field designating substances that are “active” in U.S. commerce based on the following:

* Reporting from the 2012 and 2016 CDR cycles;
* Notices of Commencement received by EPA since June 21, 2006; and
* Notice of Activity Form A’s received by EPA through the February 7, 2018, deadline, per the TSCA Inventory Notification (Active-Inactive) Rule.

EPA states that it “carefully processed and conducted a quality check of the data to ensure duplicate entries and confidential business information were removed” from the large number of notices received under the Active-Inactive Rule. EPA also posted a [list of substances reported in a Notice of Activity Form A from February 8 through March 30, 2018](https://www.epa.gov/tsca-inventory/list-substances-reported-under-tsca-inventory-notification-active-inactive-rule). According to EPA, this list should assist processors in determining which of their substances on the Inventory have not yet been designated as “active” to date. Based on our review, the Inventory lists approximately 38,303 total active substances, or about 44.5 percent. The deadline for voluntary submission of a Notice of Activity Form A by processors is **October 5, 2018**. More information on EPA’s Final TSCA Inventory Notification (Active-Inactive) Rule is available in B&C®’s memorandum, “[EPA Issues Final TSCA Framework Rules](http://www.lawbc.com/regulatory-developments/entry/epa-issues-final-tsca-framework-rules).”

**EPA Extends Comment Period For Proposed User Fees, Supplements Rulemaking Docket**

As reported in our March 28, 2018, Update, on February 26 2018, EPA published in the *Federal Register* a [proposed rule](https://www.gpo.gov/fdsys/pkg/FR-2018-02-26/html/2018-02928.htm) concerning user fees for the administration of TSCA. EPA proposes to set user fees applicable to any person required to submit information to EPA under TSCA Section 4 or a notice, including an exemption or other information, to be reviewed by the Administrator under TSCA Section 5, or who manufactures (including imports) a chemical substance that is the subject of a risk evaluation under TSCA Section 6(b). The proposed rule provides a description of proposed TSCA fees and fee categories for FYs **2019**, **2020**, and **2021**, and explains the methodology by which the proposed TSCA user fees were determined and would be determined for subsequent FYs. EPA published an April 24, 2018, [*Federal Register* notice](https://www.federalregister.gov/documents/2018/04/24/2018-08427/user-fees-for-the-administration-of-the-toxic-substances-control-act-tsca) extending the comment period and providing notice that it added a supplemental analysis to the rulemaking docket. According to EPA, the supplemental analysis provides additional estimates for the impact of setting the small business definition based on an employee-based threshold. Comments were due May 24, 2018. More information on the proposed rule is available in B&C’s February 9, 2018, memorandum, “[Administrator Pruitt Signs TSCA User Fee Proposal](http://www.lawbc.com/regulatory-developments/entry/administrator-pruitt-signs-tsca-user-fee-proposal).”

**OMB Reviewing Final Rule Regarding Reporting Requirements For TSCA Mercury Inventory**

On May 7, 2018, EPA submitted to OMB a final rule regarding the reporting requirements for the TSCA mercury inventory. As reported in our November 28, 2017, Update, on October 26, 2017, EPA published a [proposed rule](https://www.federalregister.gov/d/2017-23225) regarding reporting requirements for applicable persons to provide information to assist in the preparation of an “inventory of mercury supply, use, and trade in the United States,” where “mercury” is defined as “elemental mercury” and “a mercury compound.” EPA proposed that the supply, use, and trade of mercury include reporting requirements for activities comparable to established TSCA terms: manufacture, import, distribution in commerce, storage, and export. The proposed reporting requirements would not apply to persons engaged in the generation, handling, or management of mercury-containing waste, unless that person manufactures or recovers mercury in the management of that waste with the intent to use the recovered mercury or store it for use. The list of potentially affected entities includes all other metal ore mining (NAICS Code 212299); nonferrous metal (except aluminum) smelting and refining (NAICS Code 331410); and secondary smelting, refining, and alloying of nonferrous metal (except copper and aluminum) (NAICS Code 331492). Based on the inventory of information collected, TSCA Section 8(b)(10)(D) directs EPA to “identify any manufacturing processes or products that intentionally add mercury; and … recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use.” The final rule is not yet publicly available.

**EPA Could Use Safer Chemical Ingredients List To Identify Low-Priority Chemicals**

During EPA’s May 14, 2018, Safer Choice Partner & Stakeholder Summit, EPA representatives suggested using the Safer Chemical Ingredients List to identify low-priority chemicals. Under the Lautenberg Act, EPA must designate at least 20 chemicals as low-priority by **December 22, 2019**. While this process is already underway to identify the first batch of low-priority chemicals, EPA representatives proposed using the Safer Chemical Ingredients List to identify future low-priority chemicals. An Akzo Nobel N.V. representative stated that EPA’s idea to rely on the Ingredients List for a new purpose “brings uncertainty, and uncertainty makes me nervous.” While chemical manufacturers have generated a lot of data about the substances on the Ingredients List, they stated that they wish to understand what data EPA wants when it decides whether a chemical qualifies as a low-priority chemical and whether EPA would seek that information through a data call-in or other means. An EPA toxicologist acknowledged that the Lautenberg Act requires low-priority chemicals to meet a broader set of requirements than Safer Choice requires for the Safer Chemical Ingredients List. The toxicologist stated that it is possible that a chemical initially thought to pose little risk could lack needed safety information, or that information emerging from EPA’s review could raise questions.

**MISCELLANEOUS ISSUES**

**CDC Updates National Report On Human Exposure To Environmental Chemicals, Including Data On Blood Cadmium**

In March 2018, CDC published [*Updated Tables, March 2018*](https://www.cdc.gov/exposurereport/), which provide nationally representative and cumulative biomonitoring data gathered from 1999-2000 through 2015-2016. It also includes all the data from each previous *National Report on Human Exposure to Environmental Chemicals* and each of the previous Updated Tables. The Updated Tables are represented in two separate volumes: Volume One contains data tables for chemicals measured in the general U.S. population, including **cadmium**; Volume Two contains data tables for chemicals measured in pooled samples and adult cigarette smokers and nonsmokers. Chemicals with updated data include blood **cadmium**. CDC notes that many of the data tables include a link at the bottom to a biomonitoring summary that has information about a specific chemical or chemical group. The [biomonitoring summary for **cadmium**](https://www.cdc.gov/biomonitoring/Cadmium_BiomonitoringSummary.html) has not been updated since our March 28, 2017, Update, which reported on CDC’s *Updated Tables, January 2017*.

**EPA Publishes Proposed Rule On Strengthening Transparency In Regulatory Science**

On April 30, 2018, EPA published in the *Federal Register* a [proposed rule](https://www.federalregister.gov/documents/2018/04/30/2018-09078/strengthening-transparency-in-regulatory-science) intended to strengthen the transparency of EPA regulatory science. The proposed rule provides that, for the science pivotal to its significant regulatory actions, EPA will ensure that the data and models underlying the science are publicly available in a manner sufficient for validation and analysis. EPA seeks comment on the proposed rule and how it can best be implemented in light of existing law and prior federal policies that already require increasing public access to data and scientific information used to inform federal regulation. According to the proposed rule, EPA “has not previously implemented these policies and guidance in a robust and consistent manner.” The proposed rule includes a provision allowing the EPA Administrator to exempt significant regulatory decisions on a case-by-case basis if he or she determines that compliance is impracticable because it is not feasible to ensure that all dose response data and models underlying pivotal regulatory science are publicly available in a fashion that is consistent with law, protects privacy and confidentiality, and is sensitive to national and homeland security, or in instances where OMB’s Information Quality Bulletin for Peer Review provides for an exemption. During a March 13, 2018, interview, EPA Administrator Scott Pruitt stated that EPA should rely on science that is “very objective, very transparent and very open,” describing his concern as focused on third-party research in which findings are published but the underlying data and methodology are not open for scrutiny. According to Pruitt, whenever EPA receives scientific evaluations from third parties, “the methodology and data need to be a part of the official record -- the rulemaking -- so that you and others can look at it and say, ‘was it wisely done?’” Critics of the policy argue that the release of underlying data could potentially violate medical privacy protections or require the disclosure of trade secret information and other data that form the basis for air quality standards, pesticide and chemical approvals, and other rules. EPA [announced](https://www.epa.gov/newsreleases/epa-announces-extended-comment-period-and-public-hearing-proposed-rule-strengthen) on May 24, 2018, that it has extended the comment period and will hold a public hearing on the proposed rule. The public hearing will be held **July 17, 2018**. Registration to present oral testimony at the hearing will end **July 15, 2018**. Comments on the proposed rule are due **August 16, 2018**. More information on the proposed rule is available in B&C’s April 30, 2018, memorandum, “[EPA Releases Strengthening Transparency in Regulatory Science Proposed Rule](http://www.lawbc.com/regulatory-developments/entry/epa-releases-strengthening-transparency-in-regulatory-science-proposed-rule).”

On May 7, 2018, eight state attorneys general sent a letter to Pruitt to express their concern with the proposal. The attorneys general asked Pruitt to withdraw the proposed rule and convene a process to first consult with the National Academy of Sciences and other independent scientists and science organizations before deciding whether any changes to EPA’s current use of scientific evidence are in order. Attorneys general from California, Delaware, Iowa, Maine, Minnesota, New York, Pennsylvania, and the District of Columbia signed the letter.

The SAB will discuss the proposed rule at its **May 31-June 1, 2018**, meeting. The [materials](https://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCalBOARD/7D239353BCECF85B852582600058B716?OpenDocument) for the meeting include a May 12, 2018, [memorandum](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf) regarding preparations for SAB’s discussions of EPA’s proposed rule. The memorandum summarizes the charge to the SAB Work Group formed to review the fall 2017 Regulatory Agenda, their discussion regarding the proposed rule, and issues and questions for SAB to discuss at the upcoming meeting. According to the memorandum, the proposed rule merits further review by SAB. The memorandum notes that the proposed rule “deals with issues of scientific practice and proposes constraints that the agency may apply to the use of scientific studies in particular contexts.” As such, the memorandum states that the proposed rule “deals with a myriad of scientific issues for which the Agency should seek expert advice from the Science Advisory Board.” The Work Group requests that the chartered SAB highlight to the EPA Administrator the need for EPA “to provide more complete information to support future SAB decisions about the adequacy of the science supporting actions in future regulatory agendas.”

**STATE ISSUES**

***California***

**Jewelry Company Fined For Selling Products With Illegal Levels Of Lead And Cadmium**

CDTSC [announced](http://www.dtsc.ca.gov/PressRoom/upload/Luxy-Accessory-Inc.pdf) on April 24, 2018, that a judge ordered a Los Angeles-based jewelry company to pay $1.6 million in penalties for “repeatedly selling jewelry, including children’s jewelry, with dangerous amounts of lead and **cadmium**.” In a case brought by CDTSC and the California Attorney General’s Office, Luxy Accessory Inc. was found in violation of California’s Metal-Containing Jewelry Law following a CDTSC investigation. CDTSC states that it confiscated more than 110 styles of jewelry found to contain excessive lead and **cadmium** levels. According to CDTSC, Luxy has a history of violating the state’s law for the manufacture, distribution, and sale of jewelry. On April 12, 2018, Judge Stephanie M. Bowick issued a default judgement based on the [20-page complaint](http://www.dtsc.ca.gov/upload/Signed_Luxy_Complaint.pdf). The complaint also outlines Luxy’s disregard for the Unfair Competition Act for its improper labeling practices. The complaint names Hyun Sook Kim, Luxy’s president and chief executive officer, and references other defendants whose identities are unknown.

***Colorado***

**Senate Committee Postpones Bill Prohibiting Hardrock Mining Companies From Self-Bonding**

On April 16, 2018, the House passed a bill (H.B. 1301) that would prohibit hardrock mining companies from self-bonding to cover the costs of cleaning up their operations after they have abandoned a site. The bill would require the companies to secure bonds to cover the cost of protecting local waterways from contamination, including the costs for any necessary treatment and monitoring. The bill includes new water treatment requirements for hardrock mining companies to show they are meeting water quality standards. The House passed the bill by a vote of 35-29. On April 25, 2018, the Senate Committee on State, Veterans, and Military Affairs voted to postpone the bill indefinitely. Stan Dempsey, President of the Colorado Mining Association, stated that the bill is “designed to eliminate any kind of new hardrock mining in Colorado” and “articulates things the Division of Reclamation, Mining, and Safety are already doing.” According to Dempsey, the Association “actively opposes the bill and the elimination of self-bonding as a tool.”

***Montana***

**MDEQ Identifies Hecla Mining CEO As Bad Actor**

According to an MDEQ spokesperson, MDEQ has recently started more formally tracking mining companies’ corporate officers. MDEQ informed Hecla Mining Co. on March 20, 2018, that it had confirmed that Phillips S. Baker Jr., Hecla President and CEO, once held top jobs at bankrupt companies that have not paid their land cleanup tab. MDEQ sent letters to Hecla ordering it to stop mining in Montana until it either pays back the reclamation costs incurred by the now-defunct Zortman Mining Inc. and Pegasus Gold Mining Inc., Baker’s old companies, or proves that Baker is not involved in mining or exploration in the state. According to Luke Russell, Hecla’s Vice President for External Affairs, Hecla intends to reject these options and instead file a legal challenge. Russell stated: “Hecla had no association with Pegasus. It is a far stretch to suggest now that Hecla, a 127-year-old company, is required to pay for reclamation of a mine conducted by another, totally unrelated company.” MDEQ acknowledged that Montana’s bad actor law has been used only once before, and that Baker is the first officer at a large company to be scrutinized under it. The spokesperson stated that Montana is “implementing changes to the permit application process for hardrock mines that more formally track and identify officers.” While MDEQ already has ways of identifying bad actors in the coal mining industry, because it is connected to a national database, MDEQ is still “trying to figure out how we can do that” on the hardrock side. Baker responded to the allegations and stated: “I am not restricted from mining and exploration in Montana because I was not the person that Montana has ever issued a permit for mining or exploration. I never did the mining or was responsible for the reclamation. I was not a principal, nor did I control the companies who did the mining and had the reclamation responsibility. And I was not an employee of the companies when the sureties made payment to the state of Montana.” Baker noted that MDEQ “never asked me to provide any information, so I do not understand how they can make a determination about me.”

***Oregon***

**Cleaner Air Oregon Rules Advisory Committee Met In May**

On May 8-9, 2018, the Cleaner Air Oregon Rules Advisory Committee met to continue developing draft rules to reform how Oregon regulates air toxics. The Committee’s role is to provide advice to state regulators and health experts on policy decisions to create air toxics rules that are based on health risks. According to ODEQ’s April 30, 2018, [press release](http://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=2689), ODEQ and OHA will convene the meeting to discuss updates the rulemaking team made to the 2017 draft rules and the fiscal impact statement. The press release states that the updates are based on a new legislative mandate, public comments from 2017, and technical improvements. The Committee will also review and provide input to ODEQ and OHA on the fiscal impact of the rules, the fiscal impact on small business, and ways to mitigate the impacts. As reported in our November 28, 2017, Update, the proposed Cleaner Air Oregon rules would require companies to report their use of 600 heavy metals, chemicals, and other pollutants, including **cadmium**, and set risk limits for 260 industrial air toxics, including **cadmium**. More information on the proposed rules is available in our November 28, 2017, Update.

***Vermont***

**Vermont House Fails To Override Governor’s Veto Of Toxics Bill**

On April 16, 2018, Vermont Governor Phil Scott (R) vetoed S. 103, a bill that will establish an Interagency Committee on Chemical Management “to evaluate chemical inventories in the State and identify potential risks from the inventories.” The bill will amend Act 188, which requires manufacturers who use chemicals designated as chemicals of high concern to children to disclose when those chemicals are present in children’s products. The list of chemicals of high concern to children includes **cadmium** and **cadmium compounds**. Scott issued a [press release](http://governor.vermont.gov/press-release/governor-phil-scott-vetoes-s103-highlights-concerns-over-economic-impact-and-outlines) announcing his veto, which states: “Vermont has among the most comprehensive regulations in the U.S. for chemicals of high concern in children’s products through the requirements of Act 188 of 2014, which ensure the safety and well-being of Vermont families, while satisfying the concerns of businesses and consumers.” Scott notes that he created an Interagency Committee on Chemical Management by executive order in summer 2017. On April 19, 2018, the Senate voted 22-8 to override the Governor’s veto. Senate president (pro tempore) Tim Ashe stated: “Current law is bureaucratically cumbersome and the legislature believes the commissioner [of health] should be allowed to act quickly to protect our children from exposure to harmful chemicals.” The bill moved to the House where it failed to win the two-thirds majority needed to override the veto.

**INTERNATIONAL ISSUES**

**AUSTRALIA**

**Australia Updates HCIS, Including Amended Classifications For A Number Of Cadmium Compounds**

Safe Work Australia [announced](http://hcis.safeworkaustralia.gov.au/News) on May 9, 2018, that it completed an update of HCIS, a web-based system that provides information on GHS classifications, as well as workplace exposure standards. The update incorporates classification information published in tranches 8 to 20 of the IMAP Program run by NICNAS. The update comprises the addition of 755 new chemicals and amendments to classifications for 672 listed chemicals. To see new and amended chemicals, use the [advanced search feature](http://hcis.safeworkaustralia.gov.au/HazardousChemical) to show chemicals that were revised the week of May 7, 2018. A search for **cadmium** results in 26 hits.

**CANADA**

**Canadian Government Will Not Fund Transportation Corridor In Nunavut**

Transport Canada informed the Nunavut territorial government and the Kitikmeot Inuit Association that their Grays Bay Port and Road Project will not receive funding from the C$400 million National Trade Corridors Fund, which is aimed at easing trade bottlenecks, threats from climate change, and transportation issues specific to northern Canada. Nunavut and the Kitikmeot Inuit Association asked Ottawa to fund 75 percent of the Project, or C$416 million. Without funding from Transport Canada, the Kitikmeot Inuit Association has postponed the Project. A spokesperson for the Mining Association of Canada stated: “It’s really unfortunate that we continue to stall and not enable this project to go forward.” The Project would bring cheaper transportation options to a region with diamond, gold, and other metal projects at varying degrees of development.

**Canada Amends Hazardous Products Regulations To Protect CBI**

On April 18, 2018, Canada published a [notice](http://www.gazette.gc.ca/rp-pr/p2/2018/2018-04-18/html/sor-dors68-eng.html) in the *Canada Gazette* amending the Hazardous Products Regulations. Under the amendment, if the concentration of a material or substance in a hazardous product must be provided on the SDS and the material or substance is always present at the same concentration, the SDS must provide:

* The actual concentration of the material or substance in the hazardous product; or
* One of the concentration ranges within which the actual concentration of the material or substance in the hazardous product falls.

If the concentration of a material or substance in a hazardous product is not always present at the same concentration, the SDS must provide:

* The actual concentration range of the material or substance in the hazardous product;
* One of the concentration ranges within which the actual concentration range of the material or substance in the hazardous product falls entirely; or
* If the actual concentration range of the material or substance in the hazardous product is equal to or greater than 0.1 percent but less than or equal to 30 percent, and the actual concentration range does not fall entirely within any of the concentration ranges, a concentration range that is created by combining two consecutive ranges, provided that the combined concentration range does not include any range that falls entirely outside the actual concentration range in which the material or substance is present in the hazardous product.

If the SDS provides a concentration range, it must also provide a statement that the actual concentration range is withheld as a trade secret.

**Canada Publishes Proposed CMP Approach For Subset Of Inorganic And Organometallic Substances**

Canada announced on April 20, 2018, a proposed [CMP Approach for a Subset of Inorganic and Organometallic Substances](https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/subset-inorganic-oganometallic-substances.html). The approach addresses 59 inorganic and organometallic substances that were identified as priorities for assessment as they met the categorization criteria under CEPA Section 73(1), were considered a priority based on other human health concerns, or were identified for further consideration following prioritization of the Revised In Commerce List. The approach identifies the inorganic and organometallic substances for which assessment activities can be considered as having already taken place under CEPA, and proposes that these substances not undergo further assessment at this time. Canada states that addressing these substances in this way will facilitate focusing attention on those substances or groups that have not yet been subject to assessment. Canada may undertake additional assessment or management activities if new hazard or exposure information becomes available that may impact previous risk analyses for these substances. The approach provides the following information regarding **cadmium**:

The [first Priority Substances List (PSL1)] assessment of “**Cadmium and its compounds**” focused on inorganic **cadmium compounds** (EC, HC 1994a). Additionally, the CDW has established a drinking water guideline for **cadmium** (Health Canada 2017a).

One **cadmium**-containing substance identified as a priority during categorization (CAS RN 2420-98-6, **hexanoic acid, 2-ethyl-, cadmium salt**) is considered within the scope of the PSL1 assessment of “**Cadmium and its compounds**” and will therefore not undergo further assessment at this time.

Comments are due **June 19, 2018**.

**Canada Enacts Cadmium Limit For Children’s Jewelry**

On May 2, 2018, Canada published a [*Canada Gazette* notice](http://gazette.gc.ca/rp-pr/p2/2018/2018-05-02/html/sor-dors82-eng.html) amending the Children’s Jewelry Regulations to add a 130 mg/kg total **cadmium** limit for children’s jewelry items small enough to be swallowed by a child and to amend the total lead limit for all children’s jewelry items. The notice provides the following summary of the issues regarding **cadmium**:

Historically, use of **cadmium** in consumer products has been limited to a few special applications. However, following the introduction of stringent lead limits, Health Canada discovered that children’s jewellery items containing high levels of **cadmium** were available on the Canadian marketplace.

As a result of the discovery of children’s jewellery items with very high **cadmium** content on the Canadian marketplace during Health Canada’s 2009-2010 survey in October 2010, the former Minister of Health called on industry to voluntarily stop the production, import, and sale of children’s jewellery items containing **cadmium**. It was also indicated that if there was no improvement, regulatory measures might be put in place. The results of follow-up marketplace surveys by Health Canada in 2011, 2012 and 2013 showed that children’s jewellery items containing high **cadmium** levels were still available on the Canadian marketplace.

Health Canada toxicologists carried out a risk assessment in 2011 to identify a **cadmium** limit for children’s jewellery which would sufficiently protect children against **cadmium** exposure if they swallowed a children’s jewellery item. A limit of 130 mg/kg total **cadmium** was identified as being sufficiently protective of children under the worst-case exposure scenario in which a child swallowed a children’s jewellery item which became lodged in the stomach over an extended period.

Prior to introducing these amendments, Health Canada could take action against children’s jewellery containing **cadmium** only by use of the general prohibition (GP) in the [Canada Consumer Product Safety Act] which prohibits the manufacture, import, advertisement or sale of consumer products that pose a danger to human health or safety. Health Canada wanted to formalize **cadmium** requirements for children’s jewellery in CJR while updating the lead limits to collate applicable restrictions on metals used in children’s jewellery.

The Regulations will come into force on **November 2, 2018**. According to Health Canada’s May 2, 2018, [press release](https://www.canada.ca/en/health-canada/news/2018/05/new-government-of-canada-regulations-protect-children-from-exposure-to-lead-and-cadmium.html), once in force, manufacturers, retailers and importers will only be able to sell products that comply. Until then, Health Canada “will continue to use its existing authorities to take corrective action if children’s products containing high levels of lead or **cadmium** are found in the Canadian marketplace.”

**CHINA**

**NGOs Publish Report Calling For China To Establish A PRTR**

On May 8, 2018, IPE and IPEN jointly published a report entitled [*PRTR: Establishing a Pollutant Release and Transfer Register in China*](http://www.ipen.org/news/right-know-about-electronics-industry-emissions-china). The report reviews how industrialized nations have established PRTRs, as well as the key role they play in controlling and managing hazardous chemicals. According to the NGOs, in the U.S., “which established the first PRTR system in the form of its Toxics Release Inventory (TRI), after ten years of disclosure, emissions of 340 chemicals reported on the TRI had dropped by 45.5 percent.” The report recommends learning from the best practices of international experience and mechanisms developed in China, and to leverage strong legislation as support for establishing a PRTR in China. It urges the government to add PRTR to the legislative agenda as soon as possible; for different subsets of the public to monitor the construction of a PRTR; and for major international and domestic brands, as well as financial institutions, to adopt green procurement and green finance as a means of promoting the implementation of relevant disclosure requirements in China’s Environmental Protection Law and the Water Pollution Prevention and Control Law.

**HONG KONG**

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

Hong Kong published a [*Gazette* notice](http://www.info.gov.hk/gia/general/201804/06/P2018040600277.htm) on April 6, 2018, amending Schedules 1 and 2 of the Toys and Children’s Products Safety Ordinance. Under the Ordinance, a person may not manufacture, import, or supply a toy or Schedule 2 product unless it complies with the applicable requirements specified in Schedules 1 and 2. Schedule 1 is amended to update the current standard for toy safety from ASTM F963-11 to ASTM F963-17. Schedule 2 is amended to update the current standard for babies dummies/children’s paint from ASTM F963-11 to ASTM F963-17. The amended Schedules will take effect **August 1, 2018**.

**NORTH AMERICA**

**CEC Report Includes Analysis Of Pollutant Reporting By North American Mining Sector**

CEC released a report on April 24, 2018, entitled [*Taking Stock: North American Pollutant Releases and Transfers*](http://www.cec.org/islandora/en/item/11781-taking-stock-15). The report examines the 2013 pollutant data reported by industrial facilities in Canada, Mexico, and the U.S. to their national PRTRs. CEC states that the goal of the report is to enhance the understanding of the sources, locations, and handling of industrial substances “to promote pollution prevention and support the integration of PRTR data into an overarching framework for managing pollutants in North America.” The report features a special analysis of reporting from the North American mining industry. The report describes the processes involved in the extraction of a variety of minerals, as well as the potential risks associated with the substances generated during these activities. According to the report, Canada is the world leader in production of potash and among the top five producers for an additional 13 commodities: uranium, niobium, cobalt, aluminum, tungsten, platinum group metals, nickel, salt, sulfur, titanium, diamonds, **cadmium**, and gold. Mexico leads in silver production, accounting for 19 percent of the world’s silver production in 2013. Mexico is among the top five producers of fluorspar, bismuth, wollastonite, **cadmium**, lead, and molybdenum. In 2013, the U.S. was among the top five producing countries for several metals, including gold, molybdenum, lead, copper, and zinc. Key findings of the report include:

* More than five billion kilograms of pollutant releases and transfers were reported by approximately 27,000 industrial facilities across North America in 2013;
* Approximately 25 pollutants, from a relatively small number of industry sectors, accounted for at least 90 percent of total reported North American releases and transfers. Due to differences among national PRTR reporting requirements, there are important data gaps across the region for a number of key industry sectors and pollutants (*e.g*., water and wastewater treatment plants, criteria air contaminants);
* Data from the mining sector reveal that, in 2013, the industry accounted for about 1.67 billion kilograms, or almost one-third of the region’s total releases and transfers -- with about 99 percent consisting of releases or disposals to land; and
* Most of the available data from the mining sector were reported in Canada and the U.S. -- a finding that further highlights differences among national PRTR reporting requirements.

**PHILIPPINES**

**NGO Calls For Political Candidates To “Go Easy” On Tarpaulins Containing Cadmium**

In April 2018, EcoWaste Coalition posted a blog item entitled “[Barangay and SK Candidates Told to Go Easy on Tarpaulins Containing Toxic **Cadmium**](http://www.ecowastecoalition.org/2018/04/28/barangay-and-sk-candidates-told-to-go-easy-on-tarpaulins-containing-toxic-cadmium/).” According to Thony Dizon, Chemical Safety Campaigner, EcoWaste Coalition, “[t]arpaulins such as those made of polyvinyl chloride (PVC) plastic often contain **cadmium**, a chemical that is deemed extremely harmful to human health and the environment.” EcoWaste Coalition purchased ten new campaign tarpaulins from different sign makers and tested each for the presence of **cadmium**. EcoWaste Coalition states that of the ten tarpaulins, ten “yielded **cadmium** in the range of 1,028 to 1,536 parts per million (ppm), way beyond the European Union’s limit of 100 ppm for **cadmium** in plastics.”

**SOUTH KOREA**

**Ministry Recalls Children’s Products That Contain Hazardous Substances, Including Cadmium, In Excess Of Permitted Levels**

In its annual safety survey of children’s and infants’ products in South Korea, the Korean Agency for Technology and Standards checked 884 products and found 35 (four percent) of them had hazardous substances such as phthalates, lead, and **cadmium** that exceeded the permitted levels. On May 4, 2018, MTIE [ordered](http://files.chemicalwatch.com/Motie%20press%20release%20%281%29.pdf) the products to be removed from the market. The removed products include:

|  |  |  |
| --- | --- | --- |
| **Product type** | **Number of products** | **Substances found in excess of permitted levels** |
| Children’s clothes | 11 | phthalates and lead |
| Infants’ clothes | 5 | phthalates and lead |
| Toys | 10 | phthalates, lead, and **cadmium** |
| Children’s bicycles | 4 | phthalates, lead, and **cadmium** |
| Infants’ cycles | 1 | phthalates, lead, and **cadmium** |
| Children’s textile products, including footwear | 3 | phthalates |
| Children’s kickboard | 1 | phthalates |

MTIE also recalled several household and electric products for breaches of various safety standards.

**TAIWAN**

**MOL Holds Public Consultation On Changes To Regulation Regarding Labeling Of Hazardous Chemicals**

On March 29, 2018, MOL began a public consultation on proposed changes to Article 18 of the Regulation of Labeling and Hazard Communication of Hazardous Chemicals. The changes would require companies applying for confidentiality to provide more information, including the CAS number(s), which would also be required on the SDSs. The proposed changes would apply to chemical manufacturers, importers, and suppliers of hazardous chemicals, including mixtures. The proposed changes would also require that containers be labeled in Chinese and include the key content of the SDS. Comments are due **May 30, 2018**.

**Taiwan EPA Begins Consultation On Proposed Revisions To Registration Regulations**

On March 31, 2018, Taiwan EPA began a [public consultation](http://gazette2.nat.gov.tw/EG_FileManager/eguploadpub/eg024059/ch07/type3/gov60/num33/images/Eg01.pdf) on proposed revisions to the regulations regarding registration of new and existing chemical substances. Taiwan EPA’s WTO notification states that the major amendments include:

1. Clarifying the scope of application of the regulations. The regulations shall not apply to toxic chemical substances, as defined by TCSCA;

2. Harmonizing the information requirement between Taiwan EPA and MOL regarding hazard assessment and exposure assessment;

3. Issuing the registration number, instead of the registration document for the registration approved;

4. Clarifying the quantity that triggers the obligation for the existing chemical substance phase 1 registration. For an existing chemical substance manufactured or imported in the annual volume of 100 kg or more, the phase 1 registration must be made within six months. Also a voluntary phase 1 registration may be made for the existing chemical substance manufactured or imported in the annual volume less than 100 kgs;

5. Designating the first stage of 106 chemical substances subject to the standard registration of existing chemical substances;

6. Clarifying the period of the information confidentiality of chemical substances included in the inventory of existing chemical substances, and ensuring consistency in the period of the information confidentiality and the validity of registration approval;

7. Requiring an annual report of the new and existing chemical substances registered and approved. For chemical substances registered and approved, an annual report shall be completed from April to September each year;

8. Indicating the calculation of the review period, so that the review period is calculated anew upon the registrant’s supplementation or modification of the registration application;

9. Extending the limit on the time period and the number of times that a supplementation and correction may be made for a registration application, by taking into account the scientific and technical feasibility assessed by Taiwan EPA;

10. Accepting written appeals with stated reasons for which the registrant may have concerns over the review result; and

11. Deleting outdated provisions.

The list of 106 PECs is available in the [English translation](http://www.lawbc.com/uploads/docs/TPKM291_rev_1%28english%29.pdf) submitted to WTO. **Cadmium** is not included. A TCSB spokesperson stated: “The prime criteria for judging whether to include substances in the first PEC list were the degree of potential risk and the availability of data. After receiving more information on some substances, it was decided that their degree of risk was not so serious and, in other cases, there is inadequate data for a clear determination.” The second list of PECs is scheduled to be released in **2021**. Comments are on the proposed revisions are due **May 29, 2018**. Once the consultation is complete, TCSB will hold public hearings and then decide whether the draft needs any revision. If not, it will be submitted to Taiwan EPA for approval by the Minister and promulgation.

**Taiwan Promulgates Regulation On Residue Limit For Cadmium In Cosmetics**

Taiwan notified WTO on April 4, 2018, that it promulgated on March 28, 2018, a regulation concerning the residue limit for **cadmium** contained in cosmetics. The regulation lowered the maximum level of **cadmium** from 20 ppm to five ppm. It took effect on March 28, 2018.

**Cabinet Proposes To Create New Ministry, Elevate TCSB**

The Cabinet approved a package of draft organizational bills that would create a new Ministry of Environment and Natural Resources. TCSB would become the Toxic and Chemical Substances Administration under the new Ministry. This would elevate it from the fourth bureaucratic tier to the third tier, increasing its staff and budget allocation. Taiwan EPA would fall within the new Ministry, as well as the agencies for water conservation and forestry management from the Council of Agriculture, and the Central Weather Bureau from the Ministry of Transportation and Communications. The Parliament must still pass the package of bills. If approved, the number of central government ministries and agencies will be reduced from 37 to 29.

**Parliamentary Committee Proposes Board To Coordinate National Chemical Safety**

On May 21, 2018, the Parliament’s Social, Environmental and Health Affairs Committee revised draft changes to TCSCA to create a national chemical substance control board. The board would address chemical substance-related policy; decision-making; and cross-ministerial coordination. The board would include representatives of government agencies, academics, and professionals in related fields, as well as concerned civic organizations. Parliament’s proposal was prompted by an April 2018 fire at an industrial factory that killed two migrant workers and five firefighters. Several firefighters were injured by chemicals stored at the site. A TSCB spokesperson assured the Committee at an earlier hearing that TCSB had full access to the location of toxic chemicals provided by companies and that this was shared with local fire departments. Despite this assurance, a Committee member cited the risks of having the responsibility for chemical regulation divided between nine separate ministries or agencies and called for a “higher level of integration among disaster prevention and response plans.”

**RoHS Standard Will Apply To More Products As Of July 1**

As reported in our September 28, 2016, Update, BSMI is implementing CNS 15663, Taiwan’s RoHS-like regulation, by staggering the compliance deadlines. Effective **July 1, 2018**, CNS 15663 will apply to the following products:

* Air conditioners;
* General indoor lighting;
* Desk, table, bedside, or floor lamps;
* Stabilizers with built-in LED bulbs;
* Hot cathode fluorescent tubes;
* Christmas tree lights; and
* Lighting for shrines.

CNS 15663 restricts the same substances as EU RoHS -- lead, mercury, **cadmium**, hexavalent chromium, polybrominated biphenyls, and polybrominated diphenyl ethers.

\* \* \* \* \*

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

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

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

**CAS** -- Chemical Abstracts Service

**CBI** -- Confidential Business Information

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

**CDR** -- Chemical Data Reporting

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

**CEC** -- Commission for Environmental Cooperation

**CEO** -- Chief Executive Officer

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

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

**CFDA** -- China Food and Drug Administration

**C.F.R.** -- Code of Federal Regulations

**CMP** -- Chemicals Management Plan

**CNS** -- National Standard of the Republic of China

**EEU** -- Eurasian Economic Union

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

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

**EU** -- European Union

**FY** -- Fiscal Year

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

**HCIS** -- Hazardous Chemical Information System

**ICdA** -- International Cadmium Association

**IMAP** -- Inventory Multi-Tiered Assessment and Prioritization

**IPE** -- Institute of Public and Environmental Affairs

**IPEN** -- International POPs Elimination Network

**kg** -- kilogram

**LED** -- Light-Emitting Diode

**MDEQ** -- Montana Department of Environmental Quality

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

**MOL** -- Ministry of Labor

**MSHA** -- Mine Safety and Health Administration

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

**NAICS** -- North American Industry Classification System

**NGO** -- Non-Governmental Organization

**NICNAS** -- National Industrial Chemicals Notification and Assessment Scheme

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

**OHA** -- Oregon Health Authority

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

**OSH** -- Occupational Safety and Health

**OSRE** -- Office of Site Remediation Enforcement

**PEC** -- Priority Existing Chemical

**POP** -- Persistent Organic Pollutant

**ppm** -- Part Per Million

**PRTR** -- Pollutant Release and Transfer Register

**RoHS** -- Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment

**RoHS2** -- Administrative Measures for the Restriction of the Use of Hazardous Substances in Electrical and Electronic Products

**SAIC** -- State Administration for Industry and Commerce

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

**SDS** -- Safety Data Sheet

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

**TCSB** -- Toxic and Chemical Substances Bureau

**TCSCA** -- Toxic Chemical Substances Control Act

**TRI** -- Toxics Release Inventory

**TSCA** -- Toxic Substances Control Act

**WTO** -- World Trade Organization

1. This Update addresses significant federal, state, and international environmental and occupational safety and health regulatory issues and ongoing advocacy efforts pertinent to the ICdA member companies. A list of acronyms used in this Update is provided. [↑](#footnote-ref-1)