#### THE INTERNATIONAL CADMIUM ASSOCIATION

**REGULATORY UPDATE**

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

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**FEDERAL ISSUES**

**CERCLA ISSUES**

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

EPA filed its response brief in the U.S. Court of Appeals for the District of Columbia Circuit on November 14, 2018, stating that it determined that financial responsibility regulations were not appropriate for classes of facilities in the hardrock mining industry because modern regulation of this industry and other factors “demonstrate significantly reduced risk at current hardrock mining operations.” *Idaho Conservation League v. Pruitt*, No. 18-1141. EPA argues that its experience in “these highly technical matters warrants substantial deference.” According to EPA, it did not ignore the risks posed by the mining facilities it evaluated in the proposed rule. Instead, in response to the “numerous detailed comments that criticized the examples and descriptions of mining facilities EPA referenced” in the proposed rule, EPA reevaluated the record and agreed with many of the criticisms in the public comments.

On November 21, 2018, ten state mining trade associations and the American Exploration & Mining Association filed a motion for leave to file an *amici curiae* brief. The associations “represent thousands of mining companies, consultants, vendors, suppliers, and individuals from the states in which most hardrock mining occurs. A significant portion of the Associations’ members are also small businesses, and as such, the Associations offer a unique perspective on the proposed rule and on EPA’s decision not to promulgate it.” The associations filed an *amici curiae* brief on November 21, 2018, in support of EPA’s brief defending its decision not to promulgate financial assurance requirements for hardrock mining operations pursuant to CERCLA Section 108(b). According to the associations, EPA’s decision not to proceed with its proposed rulemaking reflected its recognition and correction of its errors in the proposed rule. EPA “acknowledged it had failed to consider the risk-reducing impacts of existing federal and state regulations and financial assurance obligations (despite its earlier commitment to do so), and concluded that the record does not support imposition of CERCLA financial assurance requirements on hardrock mines.” The associations ask the court to “defer to EPA’s reasoned basis for not moving forward with the regulation.”

**MINING AND MINERAL ISSUES**

**Interior Department Withdraws 30,000 Acres Of Federal Lands From Mining For 20 Years**

On October 8, 2018, Secretary of the Interior Ryan Zinke announced the withdrawal of more than 30,000 acres of federal lands in southwest Montana from mining for 20 years, subject to valid existing rights. According to the Department of the Interior’s October 9, 2018, [press release](https://www.doi.gov/pressreleases/secretary-zinke-announces-historic-mineral-withdrawal-north-yellowstone-iconic), “[t]his is the longest period possible under the Secretary’s authority.” The area covered is generally known as the historic Emigrant Gulch and Crevice mining districts in a region known as the Paradise Valley at the northern gates of Yellowstone National Park.

**SEC Adopts Rules To Modernize Property Disclosures Required For Mining Registrants**

The SEC [announced](https://www.sec.gov/news/press-release/2018-248) on October 31, 2018, that it voted to adopt amendments to modernize the property disclosure requirements for mining registrants, and related guidance, under the Securities Act of 1933 and the Securities Exchange Act of 1934. According to the SEC, the amendments will provide investors with a more comprehensive understanding of a registrant’s mining properties, helping them make more informed investment decisions. The amendments also will more closely align the SEC’s disclosure requirements and policies for mining properties with current industry and global regulatory practices and standards. Under the final rules, a registrant with material mining operations must disclose specified information in its Securities Act and Exchange Act filings concerning its mineral resources, in addition to its mineral reserves. Current SEC rules and guidance permit the disclosure of non-reserve estimates only in limited circumstances. Requiring the disclosure of mineral resources in addition to mineral reserves will provide investors with important information concerning the registrant’s operations and prospects. The final rules provide a two-year transition period so that a registrant will not be required to begin to comply with the new rules until its first FY beginning on or after **January 1, 2021**.

**New Chair Of House Natural Resources Committee Could Introduce Bill Updating Mining Law**

Representative Raul Grijalva (D-AZ), currently Ranking Member of the House Committee on Natural Resources, is expected to become Chair of the House Committee on Natural Resources in **2019**. Grijalva stated that when Democrats assume control of the House, “[w]e get to set the template, we get to set the table, for the future.” To do this, Democrats will introduce bills either to draw attention to an issue or to establish a marker for a future session of Congress. This includes an update of the Mining Law of 1872, which does not charge hardrock miners any royalty fees on the minerals they extract. Grijalva wants to set a 12.5 percent royalty on new mines and an eight percent royalty on existing mines, then use that money for abandoned mine cleanup, as is done with coal mines. As reported in our July 28, 2018, Update, on May 10, 2018, Grijalva and Representative Alan Lowenthal (D-CA), Ranking Member of the House Natural Resources Subcommittee on Energy and Mineral Resources, introduced a bill (H.R. 5753) that would make those changes, but the bill does not have any Republican co-sponsors. Republican opposition means that even if the House passes the bill, the Republican-controlled Senate is unlikely to do so.

**BLM Seeks Nominations For Grand-Staircase-Escalante National Monument Advisory Committee**

BLM published a [*Federal Register* notice](https://www.federalregister.gov/documents/2018/11/19/2018-25168/call-for-nominations-for-the-grand-staircase-escalante-national-monument-advisory-committee-utah) on November 19, 2018, requesting public nominations for 15 members to the Grand Staircase-Escalante National Monument Advisory Committee. According to the notice, the Committee provides information and advice regarding the development and implementation of management plans for the Grand Staircase, Kaiparowits, and Escalante Canyons Units and, as appropriate, management of the Monument. Nominations are due **December 19, 2018**.

**TSCA ISSUES**

**EPA Releases Working Approach For Identifying Potential Candidate Chemicals For Prioritization Under TSCA, Opens Docket for Cadmium And Cadmium Compounds**

As reported in our October 11, 2018, e-mail, on September 28, 2018, EPA [released](https://www.epa.gov/newsreleases/epa-takes-first-steps-identifying-next-group-chemicals-risk-evaluation-under-tsca) the approach it will use to identify chemicals that could be included in the next group of risk evaluations under TSCA. EPA notes that it will seek public comment on which chemicals should be prioritized for risk evaluation and which chemicals may be low priorities under TSCA. The document, [*A Working Approach for Identifying Potential Candidate Chemicals for Prioritization*](https://www.epa.gov/sites/production/files/2018-09/documents/preprioritization_white_paper_9272018.pdf), lays out EPA’s near-term approach for identifying potential chemicals for prioritization, the initial step in evaluating the safety of existing chemicals under TSCA. The approach document includes a longer-term risk-based strategy for managing the larger TSCA chemical landscape that, according to the TSCA Inventory, is composed of more than 40,000 active chemicals. According to EPA, the longer-term approach proposes parsing chemicals into “bins” that can be used to inform multiple activities and priorities throughout EPA, including within the TSCA Program. 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 approach document. 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**. More information regarding the approach document is available in B&C®’s October 3, 2018, memorandum, “[EPA Releases Working Approach for Identifying Potential Candidate Chemicals for Prioritization under TSCA](http://www.lawbc.com/regulatory-developments/entry/epa-releases-working-approach-for-identifying-potential-candidate-chemicals).”

**EPA Promulgates Final TSCA Fees Rule**

As reported in our September 28, 2018, Update, on September 27, 2018, EPA issued a final fees rule under TSCA. EPA published the [final rule](https://www.federalregister.gov/documents/2018/10/17/2018-22252/fees-for-the-administration-of-the-toxic-substances-control-act) in the *Federal Register* on October 17, 2018. As amended by the Lautenberg Act, TSCA provides EPA the authority to require payment from manufacturers and processors who:

* Are required to submit information by test rule, test order, or ECA (TSCA Section 4);
* Submit notification of or information related to intent to manufacture a new chemical or significant new use of a chemical (TSCA Section 5); or
* Manufacture or process a chemical substance that is subject to a risk evaluation, including a risk evaluation conducted at the request of a manufacturer (TSCA Section 6(b)).

In its [press release](https://www.epa.gov/newsreleases/epa-meets-important-tsca-milestone-finalizing-last-four-chemical-safety-framework-rules), EPA states that the fees collected from chemical manufacturers “will go toward developing risk evaluations for existing chemicals; collecting and reviewing toxicity and exposure data and other information; reviewing Confidential Business Information (CBI); and making determinations in a timely and transparent manner with respect to the safety of new chemicals before they enter the marketplace.” Small businesses will be eligible to receive a substantial discount of approximately 80 percent on their fees. More information on the final rule is available in B&C’s September 28, 2018, memorandum, “[EPA Issues Final TSCA Fees Rule](http://www.lawbc.com/regulatory-developments/entry/epa-issues-final-tsca-fees-rule).”

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

On October 11, 2018, NRDC, EPA, and Vermont filed a joint motion to consolidate NRDC’s case with *Vermont v. EPA*, No. 18-2670. *NRDC v. EPA*, No. 18-2121. Petitioners also requested, and EPA did not oppose, an extension for NRDC to file its opening brief so that briefing may proceed simultaneously in both cases. On October 15, 2018, the court granted the joint motion to consolidate the cases and extend the deadline for NRDC’s opening brief to **December 7, 2018**.

As reported in our July 28, 2018, Update, the final rule applies to any person who manufactures (including imports) mercury or mercury-added products, or otherwise intentionally uses mercury in a manufacturing process (including processes traditionally not subject to TSCA, such as for the manufacture of pharmaceuticals and pesticides). The list of examples of mercury compounds includes **cadmium mercury sulfide** and **cadmium mercury telluride ((Cd,Hg)Te)**. 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). More information on the final rule is available in B&C’s July 28, 2018, Update, and June 25, 2018, memorandum, “[EPA Publishes Final Reporting Requirements for TSCA Mercury Inventory](http://www.lawbc.com/regulatory-developments/entry/epa-publishes-final-reporting-requirements-for-tsca-mercury-inventory).”

**MISCELLANEOUS ISSUES**

**EPA Rulemaking To Strengthen Transparency In Regulatory Science Is A Long-Term Action**

In its fall 2017 Regulatory Agenda, EPA classified its rulemaking entitled “Strengthening Transparency in Regulatory Science” as a long-term action. As reported in our May 28, 2018, Update, 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. According to the Regulatory Agenda, EPA intends to promulgate a final rule in **January 2020**. More information regarding the proposed rule is available in our May 28, 2018, Update.

**DOJ Memorandum Limiting Consent Decrees Has Unclear Impact On EPA**

During a November 13, 2018, ABA forum on environmental enforcement, Susan Bodin, OECA Assistant Administrator, addressed EPA’s response to a November 8, 2018, memorandum signed by former Attorney General Jeff Sessions on his last day in office. The memorandum imposes new restrictions on consent decrees that are likely intended to limit DOJ’s agreements with police departments to remedy systemic civil rights violations. It discourages DOJ from imposing consent decrees on state or local governments with a term of more than three years; sets a high bar to impose third-party compliance monitoring; and forbids decrees that aim to achieve “general policy goals,” instead requiring that agreements be “narrowly tailored to remedy the injury caused by the alleged legal violation.” The memorandum explicitly exempts decrees intended to pay for “a specific environmental removal action” under CERCLA, leaving CWA settlements as the most significant environmental arena where it is likely to have an effect.

**Trump Intends To Nominate Wheeler As Permanent EPA Administrator**

On November 16, 2018, President Donald Trump stated that Acting EPA Administrator Andrew Wheeler is “going to be made permanent. He’s done a fantastic job and I want to congratulate him.” Wheeler has been Acting Administrator since former EPA Administrator Scott Pruitt resigned in July 2018. Once formally nominated, the Senate Environment and Public Works Committee would likely hold a confirmation hearing before the full Senate considered the nomination. According to Senator Tom Carper (D-DE), Ranking Member of the Senate Environment and Public Works Committee, “[i]f the President intends to nominate Andrew Wheeler to be the Administrator of EPA, then Mr. Wheeler must come before our committee so that members can look at his record as Acting Administrator objectively to see if any improvements have been made at the agency since he took the helm.”

**OIRA Seeks Comment On How To Reduce Regulatory Differences Between The U.S. And Canada**

OIRA published an [RFI](https://www.federalregister.gov/documents/2018/10/09/2018-21765/request-for-information) on October 9, 2018, seeking comment on how the federal government, under the auspices of the RCC, may reduce or eliminate unnecessary regulatory differences between the U.S. and Canada. According to the RFI, this information may inform agencies’ development of regulatory reform proposals to modify or repeal existing agency requirements to increase efficiency related to economic activity with Canada, reduce or eliminate unnecessary or unjustified regulatory burdens, or simplify regulatory compliance, while continuing to meet agency missions and statutory requirements. OIRA also seeks public comment to identify ongoing or emerging areas for which cooperation could reduce the risk of divergence between U.S. and Canadian regulations. OIRA states that it has identified some key topics on which stakeholder insights would be “most helpful,” although it welcomes input on opportunities for international regulatory cooperation beyond these topics:

(1) Particular sectors or issues for which the RCC should consider future regulatory cooperation or further regulatory alignment to reduce burden or other cost, including for emerging technologies that are not yet regulated;

(2) Particular forms, surveys, or other information collections that exist in both the U.S. and Canada where consolidation could reduce burden or increase practical utility;

(3) The appropriate role for stakeholders in furthering international regulatory cooperation and how stakeholders can best engage with Canadian and U.S. regulators on regulatory cooperation opportunities;

(4) Cooperative mechanisms or arrangements such as co-development, co-funding, or co-piloting that can be used to promote future international regulatory alignment;

(5) Potential alternatives to direct regulation or innovative and flexible approaches to regulation, including for emerging technologies; and

(6) Whether the RCC should continue the existing set of work plans and/or whether activities in the work plans should be revised better to reflect developments in the relevant sectors.

Comments are due **December 10, 2018**.

**OSHA Intends To Publish Proposed Update To HCS In March 2019**

According to an item in OSHA’s fall 2018 Regulatory Agenda, OSHA is conducting a rulemaking to harmonize the HCS to the latest edition of the GHS and to codify a number of enforcement policies that have been issued since the 2012 standard. OSHA intends to publish an NPRM in **March 2019**.

**STATE ISSUES**

***California***

**NGO Finds Retailers Selling Jewelry “Loaded With Cadmium”**

CEH issued a press release on October 11, 2018, entitled “[Toxic Fashion: New Testing Finds Major Retailers Selling Jewelry Loaded with **Cadmium**](https://www.ceh.org/news-events/press-releases/content/toxic-fashion-new-testing-finds-major-retailers-selling-jewelry-loaded-cadmium/).” According to the press release, independent testing found 31 jewelry items sold at major national retailers, including Ross, Nordstrom, and Walgreens, containing between 40 percent to 100 percent **cadmium**, with many containing more than 90 percent. CEH states that it sent legal notices to 17 companies for violating Proposition 65 by failing to warn customers. CEH also sent legal notices to the distributors of **cadmium**-laced jewelry products, such as American Dream Clothing, Inc.; JCMC Collections, Inc.; Fashion Magazine, Inc.; La Main Connection Inc.; Line SK, Inc.; Mark-Edwards Apparel, Inc.; SJS Apparel, Inc.; That’s My Girl, Inc.; The Skate Group, Inc.; and Trend Textile Inc. CEH states that its goal “is to set a strict, legally binding standard that will protect consumers, especially women of childbearing age, from the health risks posed by **cadmium**. CEH also supports a more rigorous regulatory approach on the presence of **cadmium** in jewelry.” According to CEH, the current lack of regulation of adult jewelry by state and federal agencies “represent[s] significant loopholes that leave both adults and children vulnerable to this dangerous toxic exposure.”

**Biomonitoring California SGP Discusses Community Exposures To Metals**

The [November 8, 2018, meeting](https://biomonitoring.ca.gov/events/biomonitoring-california-scientific-guidance-panel-meeting-november-2018) of the Biomonitoring California SGP included the presentations on “Community Exposures to Metals -- Findings from the Biomonitoring Exposures Study (BEST) and the Asian/Pacific Islander Community Exposures (ACE) Project.” Expanded BEST is measuring environmental chemical exposures, including **cadmium**, in 341 adult Kaiser Permanente Northern California members living in California’s Central Valley. According to the [Biomonitoring California website](https://biomonitoring.ca.gov/projects/biomonitoring-exposures-study-best-2expanded), “Expanded BEST places a special emphasis on sampling of Hispanics and Asian/Pacific Islanders.”

***Montana***

**Voters Fail To Pass Initiative To Impose New Restrictions On Mining**

During the November 6, 2018, election, Montana voters failed to pass an initiative that would have required new hardrock mines to prove their operations will not require permanent water treatment before obtaining a permit. The initiative would have required MDEQ to deny a permit for any new hardrock mine unless the mine’s reclamation plan “provided clear and convincing evidence” it would not require perpetual treatment of water polluted by acid mine drainage or other contaminants.

**INTERNATIONAL ISSUES**

**CANADA**

**Audit Reviews Canada’s Enforcement Of CEPA Regulations To Control Toxic Substances**

On October 2, 2018, the Commissioner of the Environment and Sustainable Development [tabled its audit](http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201810_01_e_43145.html) of whether ECCC enforced CEPA regulations to control the risks of toxic substances. The audit included an examination of six substances -- lead, mercury, PCBs, dioxins and furans, DCM, and PBDEs -- to determine whether ECCC and HC had evaluated their progress in meeting objectives for reducing risks to the environment and human health. The audit also examined whether ECCC and HC communicated the risks of toxic substances to the public. Overall, the audit found that ECCC and HC still had significant work to do in selected areas to control effectively the risks of toxic substances and to inform Canadians about those risks. According to the audit, ECCC has improvements to make in some aspects of its approach to enforcing toxic substance regulations under CEPA. ECCC conducted inspections and other enforcement activities to ensure that businesses complied with regulations on toxic substances, but in most cases, the audit states, it did not base its enforcement priorities on risks to human health and the environment. For example, some 2,200 of the more than 10,000 inspections carried out during FYs 2014-15 to 2016-17 targeted a single toxic substance used by dry cleaners. There was no documented evidence that this substance presented a higher risk to human health or the environment than other substances, however. In addition, the audit notes that ECCC has not fully addressed selected recommendations from previous audits. ECCC lacked timely access to information about which businesses were regulated, had not yet set time frames to follow up on violations, and had not addressed all of the enforceability issues it had identified in regulations. Furthermore, according to the audit, ECCC and HC have not completed work to address the 2009 recommendation to assess whether they were meeting their overall objectives to reduce the risks of toxic substances to human health and the environment.

Catherine McKenna, Minister of Environment and Climate Change, and Jonathan Wilkinson, Minister of Fisheries, Oceans and the Canadian Coast Guard, [issued a statement](https://www.newswire.ca/news-releases/ministers-mckenna-and-wilkinson-respond-to-the-fall-2018-reports-of-the-commissioner-of-the-environment-and-sustainable-development-694923831.html) on October 2, 2018, in response to the tabling of the fall 2018 reports of the Commissioner of the Environment and Sustainable Development. According to the statement, Canada is putting in place an action plan to address the specific issues identified by the audit related to enforcement, performance measurement, and communications on toxic substances. As part of the plan, Canada is developing a more systematic approach to understand better the effectiveness of its risk-management measures and how it prioritizes enforcement activities. The third phase of the Chemical Management Plan will address the remaining priority chemicals by **2020**. During discussions, stakeholders have begun to plan the future direction of chemical management in Canada. Through these discussions, Canada intends to identify what worked well and what can be improved, and states that it will examine potential areas of focus for a **post-2020** program.

**NGOs Urge Introduction Of CEPA Amendments In Fall 2018 Session Of Congress**

A number of NGOs sent the Minister of Environment and Climate Change and Minister of Health draft legislation to amend CEPA to protect better human health and the environment from toxic substances. As reported in our July 28, 2018, Update, on June 29, 2018, the Ministers submitted the [*Follow-Up Report to the House of Commons Standing Committee on Environment and Sustainable Development on the Canadian Environmental Protection Act, 1999*](https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/review/standing-committee-report-cepa-2018.html). The Follow-Up Report describes the many areas where the government is committed to taking further action in the near-term. To address recommendations that require legislative reform, the ECCC stated that it would conduct a thorough review and consult widely with Canadians as it works toward updating the CMP and overhauling CEPA through amendments in a future Parliament. The NGOs state that CEPA has not been amended in 20 years and urge that the legislation be introduced in the **fall 2018** session of Parliament. According to the October 16, 2018, Canadian Environmental Law Association [press release](https://www.cela.ca/newsevents/citizens-across-canada-urge-ministers-adopt-federal-toxics-law-changes), the amendments presented to the Ministers address five areas of concern: (1) control over endocrine disrupting substances; (2) establishment of enforceable national ambient air quality standards; (3) protection of vulnerable populations from toxic substances; (4) substitution of safer alternatives to toxic substances; and (5) civil enforcement of CEPA by the public in the courts.

**Canada Begins Consultation On Vulnerable Populations**

On November 22, 2018, HC announced the availability of a [consultation document](https://www.canada.ca/en/health-canada/programs/consultation-defining-vulnerable-populations.html) on the proposed definition of vulnerable populations within the context of chemicals management. According to HC, “[t]his is a first step towards the development of a policy framework focused on enhancing the protection of vulnerable populations through the assessment and management of risks associated with certain chemicals, in particular under” CEPA. For the assessment and management of chemicals, HC is proposing to define vulnerable populations as “a group of individuals within the general Canadian population who, due to either greater susceptibility and/or exposure, may be at greater risk than the general population of experiencing adverse health effects from exposure to chemicals.” Comments are due **January 21, 2019**.

**CHINA**

**Standard On Safety Requirements For Hazardous Chemicals In Consumer Products Expected To Be Released In 2019**

China intends to release in **2019** a national standard on safety requirements for hazardous chemicals in consumer products. The standard is currently undergoing the final approval process. As reported in our May 28, 2017, Update, a draft recommended national standard, “[Safety Requirements for Hazardous Chemicals in Consumer Products (Draft for Public Comments)](http://www.cnis.gov.cn/wzgg/201703/t20170330_22259.shtml),” was issued on March 28, 2017. The draft standard included limit values for 103 chemical substances in consumer products such as toys, textiles, coatings, and furniture. Under the draft standard, restricted substances would include heavy metals, including **cadmium**, and hazardous chemicals. The draft standard was based on EU REACH Annex 17 and other Chinese national standards related to consumer products.

**PHILIPPINES**

**Philippines Holds Public Consultation On Draft Chemical Control Order For Cadmium And Cadmium Compounds**

As reported in our November 7, 2018, e-mail, the Philippines Department of Environment and Natural Resources began a public consultation on a [draft Chemical Control Order for **cadmium** and **cadmium compounds**](http://chemical.emb.gov.ph/?attachment_id=436). The draft Order includes the following objectives:

* Develop the framework for proper implementation of appropriate prevention based programs to reduce and eliminate risks from the use of **cadmium** and **cadmium compounds**;
* Implement regulatory control through a system for registration and licensing and reporting on the management and use of **cadmium** and **cadmium compounds**;
* Provide guidelines on handling and storage management; and
* Increase awareness about the toxicity of **cadmium** and **cadmium compounds**.

The [Philippines website](http://chemical.emb.gov.ph/) does not provide a due date for comments.

**SOUTH KOREA**

**K-REACH Proposals Concerning CMR Substances And Designation Of Priority Substances Include Cadmium And Certain Cadmium Compounds**

As reported in our October 19, 2018, e-mail, on October 16, 2018, South Korea submitted the following notifications to the WTO:

* CMR substances to be registered under K-REACH by **2021**: The notification includes a [proposed list](http://www.lawbc.com/uploads/docs/00253785.pdf) of existing chemical substances that cause or may cause harm to humans and animals due to their CMR properties that should be registered under K-REACH by **December 31, 2021**. Persons who intend to manufacture or import a listed substance in an amount over one ton per year would be required to register the substance by **December 31, 2021**. The proposed date of adoption is **January 1, 2019**, and the proposed date of entry into force is also **January 1, 2019**.
* Designation of priority substances: The [notice](http://www.lawbc.com/uploads/docs/00253786.pdf) would designate chemical substances that have any of the following hazards as priority substances under K-REACH: (a) chemical substances that cause or may cause any harm to humans or animals due to their CMR properties; (b) chemical substances that cause or may cause endocrine disorders; (c) chemical substances that are highly bio-accumulative in humans or animals, and long-persistent in the environment; (d) chemical substances that may cause harm to human organs such as the lung, liver, and kidney through exposure; or (e) chemical substances that may cause harm equivalent to the abovementioned or may cause more severe damage. According to the WTO notification, the proposed date of adoption is **January 1, 2019**, and the proposed date of entry into force is also **January 1, 2019**.

While the notices are in Korean, the chemical names are in English and CAS numbers are provided. The notices include **cadmium** and a number of **cadmium compounds**. Comments to MOE were due November 1, 2018. Comments to WTO were due November 5, 2018.

**THAILAND**

**Supreme Court Awards Compensation To Cadmium-Sickened Villagers**

On November 13, 2018, the Supreme Court ordered two mining companies to pay compensation worth 16 million baht to 114 villagers suffering as a result of **cadmium** being used in mining activities in Tak province. The court ruled that Padaeng Industry and Tak Mining Company were guilty of causing **cadmium** contamination in a way that has negatively affected local villagers and polluted the Mae Sot district. The court upheld previous rulings, ordering both companies to pay damages within 30 days.

**UN**

**UNEP Working To Highlight Benefits Of Biodiversity-Sensitive Best Practices In Mining Sector**

UNEP published an October 3, 2018, article entitled “[Moving the global mining industry towards biodiversity awareness](https://www.unenvironment.org/news-and-stories/story/moving-global-mining-industry-towards-biodiversity-awareness).” According to UNEP, poorly managed mining operations can pollute the environment and damage the biodiversity that underpins economies, provides food, fuel, building materials, and freshwater, and helps to mitigate the impacts of climate change and natural disasters. The article states that sustainable mining requires companies to understand and appreciate the value of biodiversity both to their long-term operations and to local communities. UNEP and partners are working with the Convention on Biological Diversity to highlight the value of preserving biodiversity. Leading extractives companies and the UN Environment World Conservation Monitoring Center are collaborating under the Proteus Project “Improving global data and strengthening business approaches for biodiversity management” to provide companies with the biodiversity information needed for better-informed decisions.

**UNEP Will Soon Publish Report On Mineral Resource Governance In The 21st Century**

On October 18, 2018, UNEP [published an interview](https://www.unenvironment.org/news-and-stories/story/mineral-resource-governance-21st-century-conversation-antonio-pedro) with Antonio Pedro, Director of the UN Economic Commission for Africa’s Sub-regional Office for Central Africa and one of the lead authors of soon to be published report entitled “Mineral resource governance in the 21st century: Gearing extractive industries towards sustainable development.” UNEP interviewed Pedro “to find out what mineral resource governance is and why it matters.” According to Pedro, the prospect of increased exploration and mining to meet future demand calls for a sharper focus on mitigating the impact of mining, especially as mining moves towards new frontiers where past experience in managing these externalities may not suffice. These resources will need to be produced more sustainably through responsible sourcing, sound mining practices, robust environmental management, and greater consumer awareness of the effects of consumption. Natural resources accounting needs to be mainstreamed to ensure proper valuation and costing of the earth’s assets, which should be reflected on how commodities are priced. Pedro states that the report will propose six measures on how best to ensure ecologically viable continuity of global mineral supply over the coming decades: (1) reach consensus on international targets for global mineral production; (2) monitor impacts of mineral production and consumption; (3) improve coordination of mineral exploration; (4) support investment and research into new mineral extraction technologies; (5) harmonize global best practices for responsible mineral resource development; and (6) develop maps and inventories showing the availability of recyclable metals. Pedro acknowledges that this “calls for a coordinated international effort and for the establishment of an international body that would have a similar role that the International Energy Agency has in the energy sector.”

**UNEP Publishes Report On Re-Thinking Production To Boost Circular Economies**

On October 23, 2018, UNEP [announced](https://www.unenvironment.org/news-and-stories/press-release/re-thinking-production-boost-circular-economies) the availability of a report entitled [*Re-defining Value -- The Manufacturing Revolution. Remanufacturing, Refurbishment, Repair and Direct Reuse in the Circular Economy*](http://www.resourcepanel.org/file/1105/download?token=LPqPM9Bo). UNEP states that:

* Value-retention practices such as remanufacturing, refurbishment, repair, and direct re-use could cut industrial waste by between 80 and 99 percent in some sectors;
* GHG emissions could fall by 79 to 99 percent across these sectors if value-retention practices were adopted; and
* Embracing a circular economy can lead to new jobs and markets.

While the report examined the automotive parts, heavy-duty offload machinery, and industrial printing equipment sectors, UNEP notes that “there is significant potential beyond these sectors for further reductions.”

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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

**ABA** -- American Bar Association

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

**BLM** -- Bureau of Land Management

**CAS** -- Chemical Abstracts Service

**CEH** -- Center for Environmental Health

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

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

**CMP** -- Chemicals Management Plan

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

**CWA** -- Clean Water Act

**DCM** -- Dichloromethane

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

**ECA** -- Enforceable Consent Agreement

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

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

**EU** -- European Union

**FY** -- Fiscal Year

**GHG** -- Greenhouse Gas

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

**HC** -- Health Canada

**HCS** -- Hazard Communication Standard

**ICdA** -- International Cadmium Association

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

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

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

**MOE** -- Ministry of Environment

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

**NGO** -- Non-Governmental Organization

**NPRM** -- Notice of Proposed Rulemaking

**NRDC** -- Natural Resources Defense Council

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

**OIRA** -- Office of Information and Regulatory Affairs

**OSHA** -- Occupational Safety and Health Administration

**PBDE** -- Polybrominated Diphenyl Ether

**PCB** -- Polychlorinated Biphenyl

**RCC** -- Regulatory Cooperation Council

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

**RFI** -- Request for Information

**SEC** -- Securities and Exchange Commission

**SGP** -- Scientific Guidance Panel

**TSCA** -- Toxic Substances Control Act

**UN** -- United Nations

**UNEP** -- United Nations Environment Program

**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)