

# The new Catalogue of Hazardous Chemicals: a regulatory progress

Further to the publication of China's new Catalogue of Hazardous Chemicals, and prior to the announcement of the official guidance, Mayer Brown's Heng Li argues that there remains some room for improvement in the CHC regulatory process and she outlines some steps that companies can take now to fulfil their responsibilities under the regulation.

On 9 March 2015, ten Chinese ministries jointly published the long-awaited new Catalogue of Hazardous Chemicals (CHC 2015). The CHC 2015 will enter into force on 1 May. It replaces the CHC and the Catalogue of Acute Toxic Chemicals, both adopted in 2002.

The draft of the CHC 2015 was published on 26 September 2013 for public consultation (2013 draft). The ten ministries (including the State Administration of Work Safety (SAWS), Ministry of Environmental Protection (MEP), Ministry of Public Security (MPS), Ministry of Agriculture (MOA), National Health and Family Planning Commission (NHFPC), etc.) which regulate the hazardous chemicals have taken 1 year and half to deliberate and finally reach a consensus on the chemicals that should be included in the CHC 2015.

## The new CHC 2015 versus the 2013 draft

The CHC 2015 contains 2,828 chemicals and looks very similar to the 2013 draft which contained 2,936 chemicals. Chemicals falling under any of the 28 hazard classes as specified in the CHC 2015 are included. These hazard classes are identical to those included in the 2013 draft which are in line with the GHS (Rev.4). According to the Interpretations on the CHC 2015 issued by SAWS on 31 March 2015 (SAWS Interpretations), the CHC 2015 includes 81 hazard categories out of the 95 hazard categories of the GHS (Rev.4). Categories such as Explosives Cat 1.5 and 1.6, Acute toxicity Cat.4 and 5 have not been included in the CHC 2015.

The structure of the CHC 2015 is same as the 2013 draft except for one change. The CHC 2015 includes the chemical names and alias in Chinese as well as the CAS numbers. The 'remark' column remains to identify those chemicals considered to be 'acute toxic'. However, the asterisk (\*) symbol included in the 2013 draft has been removed. Under the 2013 draft, chemicals marked with this symbol, when they are used as pesticides, would only be subject to the registration of hazardous chemicals with the MEP for environmental management and would be exempted from other licensing requirements. As this symbol has been removed, the listed chemicals when used as pesticides should still comply with the requirements applicable to a listed chemical provided by Decree 591 and its subordinate measures.

## CHC 2015: a regulatory process with room to improve

Save the concerns described below, the release of the CHC 2015 indeed clarifies the chemicals that, if listed, will trigger the application of the Decree 591 and its subordinate measures. Essentially, listed chemicals will be subject to both the registration and licensing requirements. More specifically, they will need a registration with SAWS for a registration certificate of hazardous chemicals, a registration with MEP for the registration certificate for environmental management of hazardous chemicals (Environmental Registration) and various licenses to cover different activities along the supply chain {see: *The draft new Catalogue of Hazardous Chemicals: what does it mean for your business?* (12.11.2013)}.

However, these legal requirements do not appear straightforward for chemicals that fall outside the CHC. The SAWS Interpretations provide that chemicals that are not included on the CHC 2015 might also meet

the “criteria for identifying hazardous chemicals”. These chemicals should also be regulated by the “relevant regulations” if they have been “identified and classified as hazardous”.

More specifically, non-listed chemicals are not subject to the licensing requirements but might still be subject to the registration.

Various SAWS regulations (SAWS Order 41, SAWS Order 51 and SAWS Order 57) and the SAWS Interpretations have expressly specified that the manufacture, operation (such as purchase and sale) and use of a chemical listed on the CHC must be licensed. In other words, chemicals that are not included in the CHC do not need to comply with these licensing requirements.

It has become more complicated for the registration of chemicals that are not included in the CHC. The SAWS Order 53 on registration of hazardous chemicals with SAWS provides that it applies to the “registration and management of chemicals listed on the CHC”. Likewise, the MEP Order 22 on Environmental Registration prescribes that the “hazardous chemicals” referred to by this Order means “the acute chemicals and other chemicals that are listed on the CHC”.

However, in practice, the registration of hazardous chemicals has not been limited to those listed on the CHC. Industry has been confused as to which of their products should be registered as there has been no clear guidance on this. The SAWS Interpretations, being the latest written guidance from SAWS, specify that, for the purpose of collecting data on the hazardous properties of hazardous chemicals used in China, “mixtures as well as chemicals that are not included in the CHC” should be registered under the SAWS Order 53 if they have been identified and classified as hazardous pursuant to the SAWS Order 60 and other relevant regulations.

The SAWS Interpretations appear to say that there is no escape from registration for chemicals that are not listed on the CHC. Nevertheless, further clarifications would still be needed, for example, on:

- » the “criteria for identifying hazardous chemicals” applicable to chemicals that are not listed (i.e., whether these are same as the criteria for inclusion in the CHC 2015);
- » whether a company could rely on its own classification rather than going through the identification and classification procedures provided by the SAWS Order 60.

SAWS is expected to issue guidelines on the implementation of the CHC 2015. It remains unclear whether the concerns mentioned above would be clarified by these guidelines. The MEP is also expected to adopt a guidance document on the Environmental Registration, which will clarify the scope of this type of registration and set forth detailed rules on the registration of substances and mixtures.

## **How will the new CHC 2015 affect your business?**

Companies should verify the listing of their products against the CHC 2015 immediately. If their products are no longer listed, they will be relieved from certain legal obligations such as the licensing requirements. If their products, which were not listed on the 2002 CHC nor the 2013 Draft, are now included in the CHC 2015, they should ensure their compliance with the Decree 591 and its subordinate measures as of 1 May 2015. They may also consider adjusting their portfolio if the compliance for certain products would be unreasonably burdensome.

Importantly, as the guidelines of the SAWS and MEP are still under preparation, companies should express their concerns and expectations on these guidelines to these authorities as soon as possible so that the final guidelines could hopefully be legally appropriate and practically helpful for the industry. Of course, for specific questions, enquiries with legal counsels and authorities on a case-by-case basis are always important for doing business in China.

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