

# The draft new Catalogue of Hazardous Chemicals: what does it mean for your business?

The draft new Catalogue of Hazardous Chemicals has implications for companies' activities at all points in the supply chain. Mayer Brown's Li Heng details what businesses need to be aware of in the run up to adoption of the regulation.

On 26 September the Chinese State Administration of Work Safety (SAWS) published a draft of a revised new version of the Catalogue of Hazardous Chemicals (CHC), soliciting public comments by 31 October 2013.

The draft new catalogue was established under the revised Regulation on the Safety Management of Hazardous Chemicals, commonly referred to as Decree 591, of 2 March 2011. Once adopted, it will consolidate and replace the current catalogue (CHC), as well as the Catalogue of Acute Toxic Chemicals (CATC), both of which were adopted by SAWS in 2002 pursuant to the repealed Decree 344 (also entitled the Regulation on the Safety Management of Hazardous Chemicals), which was the predecessor of the Decree 591.

Companies carrying out activities throughout the whole supply chain of a chemical substance or mixture are recommended to check whether their chemicals are listed in the draft new catalogue, as such listing in the final adopted version will trigger legal obligations under Decree 591, as well as under the relevant implementing rules of this Decree, as described in this article.

## 1. Changes introduced by the draft new catalogue

### (a) Number of entries

*The current catalogues*

There are 3,823 chemicals in the current CHC and 335 chemicals in the current CATC.

*The draft new catalogue*

Surprisingly, this contains only 2,936 chemicals, which is less than industry has expected. This is probably because several entries of the current CHC and CATC are grouped into generic entries.

### (b) Which chemicals are listed?

*The current catalogues*

The hazardous chemicals listed in the current CHC are divided into eight hazard classes, including explosives, flammable liquid, flammable solids and self-heating substances.

The current CATC contains acute toxic chemicals that are defined as "chemicals posing severe toxic harm, including synthetic chemical substances and their mixtures (including pesticides) and natural toxins", and provides the criteria for identifying an acute toxicant.

Both the CHC and CATC include substances and mixtures.

### *The draft new catalogue*

This contains a list of chemicals falling under 28 hazard classes as specified therein, including acute toxicants and chemicals that are corrosive, explosive, flammable, combustible or having other properties, and which pose harm to humans, facilities and the environment.

In broadening the hazard classes, SAWS appears to align the criteria for determining hazardous chemicals with the UN globally Harmonized System (GHS).

Indeed, on 10 October the Standardisation Administration published 28 mandatory national standards (GB 30000.2-29 – 2013) which establish rules for the classification and labelling of chemicals falling under 28 hazard classes. These standards, including two new ones on aspiration hazard and hazards to the ozone layer, are fully in line with GHS Revision 4. They become effective on 1 November 2014 and will replace the current 26 GHS implementing standards (GB 20576-20602 – 2006). These 28 hazard classes are identical to those listed in the draft new catalogue.

Likewise, the draft new catalogue provides a definition on acute toxic chemicals which is similar to that laid down in the current CATC. However, the scope of the new list is limited to include chemicals posing "severe acute toxic harm", including acute toxicants that may easily cause harm to public security. It is further specified that chemicals classified as acute toxicity category 1, are acute toxic chemicals. Certain chemicals, such as DDVP (CAS No. 62-73-7), which are currently considered as acute toxicants, will no longer be classified as acute, although they will still be listed as hazardous chemicals if the draft new catalogue is adopted as such.

Acute toxic chemicals will be subject to additional requirements of Decree 591 that do not apply to other hazardous chemicals (see Section 3 below for more details on requirements applicable to other hazardous chemicals under the Decree 591). For example, companies selling and purchasing acute toxicants must report the name and quantities of these chemicals sold/purchased to the local police office within five days of the deal. Furthermore, consignors of acute toxicants transported by road must apply to the police office of the place of origin, or destination, for a permit.

In addition, the new definition on acute toxic chemicals excludes the reference to pesticides. It is further specified that certain chemicals when used in pesticides, will not be subject to various licensing requirements but only to registration for environmental management under the Decree 591 (see section 3 below for more details on licensing requirements under Decree 591).

As with the current CHC and CAHC, the draft new catalogue contains both substances and mixtures.

### **(c) Structure of the catalogue**

#### *The current catalogues*

In the current CHC, each hazardous chemical is listed under the relevant hazard category of each of the eight hazard classes. This means classification in each hazard class is determined in the catalogue itself. This catalogue also indicates the 'dangerous goods number' designated by the standard GB12268-1990 (List of Dangerous Goods), chemical names and aliases (if any, such as its usual name) in Chinese and the corresponding UN number as provided in the UN's 'Recommendations on the Transport of Dangerous Goods'. However, neither English names nor CAS numbers are provided.

The current CAHC provides more detailed information on the listed chemicals, including their chemical names and aliases in Chinese and English, the molecular formula, the CAS number and the UN number, but no classification is provided. The catalogue also indicates whether a listed chemical is prohibited from use in China or from use as a pesticide.

#### *The draft new catalogue*

The structure of the draft new catalogue has been further simplified. Chemicals are listed in alphabetical order as per their Chinese names, but are no longer listed according to hazard category and class. This means the classification is no longer determined in the catalogue and companies must make their own classification, in accordance with the criteria laid down in the relevant standards. Only the Chinese chemical names and aliases are given, accompanied by the CAS numbers. A 'remark' column has been added to identify those chemicals considered to be 'acute toxic' chemicals.

## 2. Links between the Catalogue of Hazardous Chemicals and chemical laws

Listing in the Catalogue of Hazardous Chemicals triggers the application of the requirements of Decree 591 and its subordinate regulations.

Decree 591 is the overarching legislation on the safety management of hazardous chemicals. Essentially, it requires the licensing of activities through the supply chain of a hazardous chemical by various authorities and the registration of such chemicals with SAWS' National Registration Centre for Chemicals (NRCC). SAWS remains the principal authority for implementing Decree 591 and has issued ministerial measures that lay down detailed rules, for example, on the licensing of operation and use of hazardous chemicals, and on the registration of hazardous chemicals.

Decree 591 also clarifies that hazardous chemicals are subject to requirements on environmental management, including the registration of hazardous chemicals for environmental management with the Ministry of Environmental Protection (MEP) or a local environmental protection authority.

More specifically, companies within the supply chain of a chemical listed in the Catalogue of Hazardous Chemicals will have the following main obligations:

### **Manufacturers must:**

- » apply for a Safe Production Licence with the provincial work safety bureau or SAWS, prior to manufacturing;
- » apply to the quality supervision and inspection authority for an Industrial Product Production if the produced chemical is also included in the Catalogue of Industrial Products subject to the Production Permit;
- » register with the NRCC to obtain a Registration Certificate of Hazardous Chemicals; and
- » register with the competent local environmental protection authority for a Registration Certificate for Environmental Management of Production of Hazardous Chemicals.

### **Importers are required to:**

- » register with the NRCC to obtain a Registration Certificate of Hazardous Chemicals, prior to the first import; and
- » if the imported chemical is included in the List of Chemicals subject to Strict Restriction for Importation and Exportation (which refers to the UN Rotterdam Convention on the prior informed consent (PIC) procedure and includes some of the chemicals listed under this Convention), register with the MEP's Chemical Registration Centre (CRC) for a Registration Certificate for Environmental Management of Importation of Hazardous Chemicals.

### **Users must:**

- » apply for a Safe Use Licence with the municipal work safety authority, if the quantities of the chemical used exceed the limits as specified; and
- » register with the competent local environmental protection authority for a Registration Certificate for Environmental Management of Use of Hazardous Chemicals.

Distributors must apply for a Safe Operation Licence with the work safety authority at or below the municipal level. Companies transporting a listed chemical must apply for a Transportation Permit with the relevant authority responsible for transportation and register with the Industrial and Commercial Bureau.

## 3. How will the new catalogue affect your business?

Companies that have already dealt with the hazardous chemicals listed in the current CHC and CATC are probably aware of their obligations under Decree 591. However, they should closely monitor the adoption of the final new catalogue, because they might be relieved from the aforementioned obligations if their chemicals are excluded from the new catalogue or from certain obligations, for example, if they use a listed chemical as the active ingredient of a pesticide.

Companies which suspect their substance or mixture is a hazardous chemical, as per the criteria set out in the draft new catalogue, should check its listing as soon as possible. If it is listed, they should prepare to ensure compliance with Decree 591, or substitute the listed chemicals if applying for various licences and registrations and complying with other requirements of the Decree 591 would be unreasonably burdensome and costly.

*Mayer Brown JSM (formerly known as Johnson Stokes & Master) is one of the leading law firms in Asia, with offices in Hong Kong, Mainland China, Singapore, Thailand and Vietnam. Li Heng joined JSM's Beijing office in October 2013 having worked since 2011 in the REACH team of Mayer Brown Brussels office, focusing on regulatory issues in the fields of EU REACH and Chinese chemical laws. <http://www.mayerbrown.com>*

## **CW+** AsiaHub **China**

*brought to you by CW+ AsiaHub, your regionally focused source for regulatory news, official documents, events and expert briefings.*

 [www.chemicalwatch.com/china](http://www.chemicalwatch.com/china)

 [asiahub@chemicalwatch.com](mailto:asiahub@chemicalwatch.com)

 +44 (0)1743 818101

***DISCLAIMER:** Content on CW+ AsiaHub shall not be regarded as professional advice and is not intended as such. CW Research Ltd does not accept liability for inaccuracies in published material. Customers are advised to take appropriate professional advice to inform business decisions.*

***COPYRIGHT:** Documents and web pages downloaded from CW+ AsiaHub are for the use of registered users only. Such documents and web pages must not be distributed or republished without consent from CW Research Ltd (email [enquiries@chemicalwatch.com](mailto:enquiries@chemicalwatch.com)). Copyright in original legal texts and guidance remains with the government authorities in China.*