May 28, 2010

Lisa Jackson, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Inez Tenenbaum, Commissioner
U.S. Consumer Products Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Citizen Petition to CPSC and EPA Regarding Cadmium in Consumer Products, Especially Toy Metal Jewelry

Dear Commissioner Tenenbaum and Administrator Jackson:

It is happening again! After the Consumer Product Safety Commission spent most of the previous decade reacting to a rising tide of lead tainted children's products from China, Congress passed the Consumer Product Safety Improvement Act in 2008. The CPSIA set strict limits for lead and put in place a certification program to ensure compliance with CPSC standards.

Now we are experiencing a rising tide of cadmium in children's products. CPSC warned China's exporters in December 2009 to watch for cadmium. On January 29, 2010, it issued a recall notice. On March 11, 2010, it issued another warning. And on May 10, 2010, it issued a second recall. Like lead, it is starting with toy metal jewelry – most likely as a cheap, unregulated alternative to lead.

We, the petitioners listed below, appreciate that CPSC has issued several recalls and used its bully pulpit to warn importers about cadmium. But – like lead – it is insufficient. Sierra Club warned CPSC in its March 28, 2008 letter calling for CPSC to act. CPSC's August 4, 2008 response showed it was aware of the errors in its test methods but failed to use the regulatory options it had available. Therefore, we are submitting this petition.

Congress gave CPSC the authority and the resources to act. It is time for regulatory action before a child dies or is seriously injured. CPSC needs to act now to set standards to restrict cadmium in children's products, especially toy metal jewelry. If CPSC does not act, EPA needs to act in its place. In addition, both agencies need to require companies to submit information on cadmium testing they have done and the cadmium levels they found. And the regulations should preserve existing state law.

Petition to U.S. Consumer Product Safety Commission:
In this letter, we petition the Consumer Products Safety Commission pursuant to 5 U.S.C. § 553(e) to issue regulations to ban cadmium in all toy jewelry using its authorities under the Federal Hazardous Substances Act. Specifically, we ask the CPSC act with utmost speed to:

1. **Classify Toy Jewelry Containing Cadmium as Banned Hazardous Substance**
Adopt regulations declaring that any toy metal jewelry containing more than trace amounts of cadmium by weight for which there is a reasonably foreseeable possibility that children could ingest be declared a banned hazardous substance pursuant to Section 2(q)(1)(B) and Section 3. CPSC should begin by immediately issuing an advanced notice of proposed rulemaking pursuant to Section 3(f).

If CPSC believes that it lacks sufficient information to determine the appropriate level of cadmium in the products, we recommend that, as an interim step, CPSC adopt the maximum levels that Congress established for lead. While cadmium and lead dissolve in the stomach and threaten different organs, the amounts that pose a danger are comparable. In CPSC's November 21, 1997 staff report on lead and cadmium in children's polyvinylchloride products, CSPC staff stated that "Chronic cadmium ingestion results in kidney damage which is indicated by the presence of specific proteins in the urine. Using the EPA reference dose of 1 microgram per kilogram of body weight per day (μg/kg/day), CPSC staff suggests that chronic ingestion of cadmium not exceed 9.2 μg/day for a 1 year old, 13.5 μg/day for a 3 year old, and 20.2 μg/day for a 6 year old." In the same report, staff stated that it sought "to limit chronic ingestion of lead to not more than 15 μg of lead per day from consumer products." CPSC's analysis indicates that it takes less cadmium to cause injury than lead.

The petitioners believe that toy metal jewelry is any item that serves a decorative but no or minimal functional purpose that is valued at less than $20 per item. People are less likely to store such low-cost jewelry in secure containers or out of reach from children. It also includes metal jewelry that is a children's product.

Classifying cadmium in toy metal jewelry as a banned hazardous substance is important since it will establish a cadmium standard for the products. With a standard in place, processors, manufacturers and importers will be obligated to test and certify the products pursuant to the CPSIA. Instead of reacting to complaints filed by consumer protection organizations such as Empire State Consumer Project, CPSC and the importers can prevent the problem from growing worse than it is already.

2. **Revise Test Method to Reflect Real Scenarios**
The standard should use total cadmium to simplify compliance. If CPSC determines that the standard should be based on the amount of cadmium that can be extracted from toy metal jewelry, CPSC must revise the test method to prevent manufacturers from "gaming" the system by coating the metal jewelry with a coating of plastic that can withstand the weak acid for the short duration of the test. At a minimum, CPSC must require that the toy metal jewelry that can be swallowed be cut in half to damage the coating and simulate a child chewing the jewelry before swallowing. The test must also be extended to at least 24 hours consistent the analysis by CPSC staff on lead jewelry indicating that six hours was inadequate.

3. **Request EPA to Adopt Immediate Testing and Reporting Requirements**

If CPSC believes that it does not have sufficient information on the extent of cadmium in children's products or needs additional information to determine the appropriate limit for cadmium in these products, CPSC must exercise its authority under the federal Interagency Testing Committee (ITC) to obtain this information. Through the Toxic Substances Control Act (TSCA), Congress established the ITC to provide a federal agency such as CPSC with an effective and efficient means to obtain the information it needs to make a sound decision. Within months of a chemical's addition to an ITC semiannual report, CPSC should begin receiving information through EPA. Specifically, CPSC use a similar approach to the one the ITC used for lead and lead compounds in ITC's 60th Report. But CPSC should:

- Specifically include metal jewelry in the scope of the listing for TSCA Section 8(d) reporting. Metal jewelry was exempted from the ITC for lead because CPSC had sufficient information on that issue.
- Require importers and processers to test toy metal jewelry for cadmium. Many importers are routinely testing products for lead using an X-ray fluorescent (XRF) device. By changing a setting in the device, an XRF can quickly record the results for cadmium as well. There would be minimal additional cost.

Petition to U.S. Environmental Protection Agency:
We also petition the U.S. Environmental Protection Agency pursuant to Section 21 of the Toxic Substances Control Act ("TSCA") to take action in coordination with CPSC to protect children from cadmium in toy metal jewelry. Specifically, the petitioners ask that EPA adopt regulations as follows:

1. **Require TSCA Section 8(d) Health and Safety Data Reporting for Cadmium and Cadmium Compounds**
In CPSC's December 22, 1998 Codification of Guidance Policy on Lead in Consumer Products, CPSC stated that "to avoid the possibility of a Commission enforcement action, a manufacturer who believes it necessary to use lead in a consumer product should perform the requisite analysis before distribution to determine whether the exposure to lead causes the product to be a "hazardous substance." If the product is a hazardous substance and is also a children's product, it is banned. If it is a hazardous household substance but is not intended for use by children, it requires precautionary labeling.

We believe this same type of analysis also should be performed on materials substituted for lead like cadmium. CPSC identified the following factors as critical to determining whether a potential hazard exists and whether the product may be a banned hazardous substance:

a. The total amount of lead contained in a product;
b. The bioavailability of the lead;
c. The accessibility of the lead to children;
d. The age and foreseeable behavior of the children exposed to the product;
e. The foreseeable duration of the exposure; and
f. The marketing, patterns of use, and life cycle of the product.

Obtaining the information will enable EPA and CPSC to take more effective action to protect children from cadmium in consumer products.

EPA must at utmost speed require producers, importers, and processors of cadmium and cadmium compounds that are reasonably likely to be incorporated into consumer products to provide EPA with lists and/or copies of ongoing and completed unpublished health and safety studies related to the six factors identified by CPSC. The health and safety studies include:

a. Epidemiological or clinical studies;
b. Studies of occupational exposure;
c. Health effects studies;
d. Ecological effects studies; and
e. Environmental fate studies (including relevant physicochemical properties).

2. **Issue Section 6 Rule Setting Limits on Cadmium in Toy Jewelry**
EPA should work with CPSC to identify manufacturers or processors to adopt a Section 6 rulemaking to limit cadmium and cadmium compounds in metal toy jewelry.

The existing recalls by CPSC and CPSC's warning to importers make it clear that cadmium presents an unreasonable risk to children's health. The 74,000 items already recalled demonstrate that these products can result in significant and substantial human exposure to cadmium. Yet, these products may only be the tip of the iceberg and a sign of a dangerous new trend. Without a systematic requirement for testing and standards to limit cadmium, the problem will only get worse.

Conclusion
We, the petitioners listed below, request that CPSC and EPA act in the manner described above to protect children from cadmium poisoning from consumer products. The current system is not working. EPA and CPSC must take stronger action regarding cadmium in toy metal jewelry and other products which may be ingested by children.

There has to be a better way.

We look forward to your response to this petition as required by the law.

Sincerely,

Judy Braiman
Empire State Consumer Project

Ed Hopkins
Sierra Club

Caroline Cox
Center for Environmental Health

Audrey Newcomb
Rochesterians Against the Misuse of Pesticides