

## Feds Bungle Kid Jewelry Cadmium Crackdown

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LOS ANGELES (AP) — Federal regulators failed to pursue recalls after they found cadmium-tainted jewelry on store shelves, despite their vow to keep the toxic trinkets out of children's hands, an Associated Press investigation shows.

Officials at the U.S. Consumer Product Safety Commission also have not warned parents about the contaminated items already in their homes.

More than two years after the AP revealed that some Chinese factories were

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substituting cadmium for banned lead, the CPSC still hasn't determined the extent of the contamination.

Contaminated jewelry is surely less prevalent in the U.S. than before its widespread presence was first documented. However, rings, bracelets and pendants containing cadmium and marketed for preteen girls were purchased over the last year. The AP and representatives of two consumer groups were able to buy the items in Los Angeles, suburban San Francisco, central Ohio and upstate New York.

Despite touting its work as a model of proactive regulation, the agency tasked with protecting Americans from dangerous everyday products often has been reactive — or inactive.

Take a "children's jewelry sweep" the CPSC conducted at stores nationwide. Testing showed that six different items on shelves — including one referred to as a "baby bracelet" — were hazardous by the agency's guidelines. Yet the agency neither pursued recalls nor warned the public about the items, records and interviews show.

In addition, the CPSC allowed Wal-Mart Stores Inc. and Meijer, a smaller Midwest chain, to pull from shelves jewelry that flunked safety testing without telling parents who had previously purchased such items. And it did not follow through on evidence it developed that cadmium jewelry remains on sale in local shops.

Agency staffers have consistently sided with firms that argued their high-cadmium items shouldn't be recalled — not because they were safe in the hands of kids, but because they were deemed not to meet the legal definition of a "children's product." Also, the CPSC trusted retailers and jewelry importers to self-police their inventories for cadmium, but did not check whether they had done so for at least a year.

In response to AP's reporting, the CPSC said it did all it could given limited resources. A spokesman credited the agency's focus on intercepting jewelry before it got onto shelves as the reason that cadmium did not become the widespread scourge that lead was several years ago.

To be sure, the CPSC does have challenges.

Though the agency's resources have been growing, by federal standards the CPSC is a minnow — a \$115 million budget supports just 545 full-time employees responsible for regulating thousands of products.

And, under agency rules, it is difficult to mandate that a firm recall an item.

While CPSC Chairman Inez Tenenbaum has claimed credit for reducing the presence of cadmium in children's jewelry, in fact, faster and more forceful efforts have come from elsewhere.

For example, major retailers including Wal-Mart and Target Corp. began requiring

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safety testing — not the CPSC.

And new laws in six states and national legal settlements — not the CPSC — created strict, binding limits on cadmium in jewelry.

There are no known injuries or deaths due to cadmium in children's jewelry, but contaminated jewelry can poison in two ways: slow and steady through habitual licking and biting, or acutely through swallowing. The CPSC estimates that several thousand kids are treated annually at U.S. emergency rooms for accidentally ingesting jewelry.

Once in the body, cadmium stays for decades. If enough accumulates, it can cripple kidneys and bones — and cause cancer.

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To examine the agency's performance on the cadmium issue, the AP conducted three rounds of testing, analyzed hundreds of agency test results and reviewed hundreds of pages of internal documents obtained under the federal Freedom of Information Act. Dozens of regulators, scientists, members of industry, or consumer advocates were interviewed.

National chain stores — which closely manage their public images and invest in product testing — appear to have cleaned up their inventories. Shops that sell discount jewelry are a different story.

The AP made three visits to a dozen small shops in Los Angeles' jewelry district during a 19-month period ending in March. A reporter bought bracelets, necklaces and charm bracelets that salespeople said would make a good gift for a kindergartner.

Twenty of 64 items purchased were at least 5 percent cadmium, and often much higher, according to tests using an Olympus Innov-X X-ray fluorescence gun that estimates what metals are in jewelry. Subsequent lab testing showed that several pendants were hazardous based on CPSC guidelines. One was 85 percent cadmium.

Additional proof that cadmium jewelry was being sold comes from testing by two advocacy groups, the California-based Center for Environmental Health and Michigan-based Ecology Center. Lab results indicated that trinkets bought at Halloween costume stores last fall in the San Francisco Bay area and discounters in New York and Ohio over the winter were between 20 and 30 percent cadmium.

While the items would appeal to kids, they weren't recalled, apparently because the CPSC did not consider them children's products. If jewelry isn't "primarily intended" for kids 12 and under, it's an adult product — and adult products have no cadmium restrictions.

Results of the testing by AP and the advocacy groups reinforce ongoing reporting on the larger question — whether the CPSC has kept its word on taking the strongest

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steps possible to clean up store shelves and children's jewelry boxes.

In fact, the CPSC has been aware that cadmium jewelry was being sold in some discount shops since at least September 2010. That's when the agency's lab reported hazardous readings from a children's pendant bought at a small shop in New York City. As with jewelry AP bought in Los Angeles, there were no manufacturer markings on the packaging — and that made it difficult to track the pendant to its source.

The agency's investigator bought all the samples at the shop, but didn't look to see whether the pendant was sold elsewhere, CPSC spokesman Scott Wolfson said.

"We've got to make some tough decisions with our investigators in terms of when they stay on the trail," Wolfson said. "There needs to be a rationale for it."



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In January 2010, Tenenbaum mobilized her agency in reaction to AP's initial investigation. She told parents to toss cheap metal trinkets and promised to investigate all high-cadmium jewelry the agency learned about.

While five jewelry recalls followed, none began at the agency's initiative. The first three covered products AP highlighted; the last two came after companies approached the CPSC. All the recalls were voluntary.

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Then the recalls stopped, though not because the CPSC thought cadmium was gone from the marketplace.

Instead of clearing contaminated products from store shelves, the agency focused on a policy of restricting future flow. At first, that meant warning Asian manufacturers to stop substituting cadmium for lead. Later, the agency started scattered cargo checks at U.S. ports and pressed a private-sector group led by the jewelry industry to adopt voluntary cadmium limits.

It took nearly two years for those standards to be enacted. And while several cadmium jewelry shipments were intercepted, with just 19 inspectors at 15 ports, the agency touches a minuscule fraction of the billions of consumer goods that enter the U.S. each year.

At a product safety conference in March, Tenenbaum claimed victory: "The proactive steps we have taken in China, at the ports, and in the standards environment have stopped cadmium from being the next lead."

But it wasn't until early 2011, a full year after AP's original report, that the agency had begun seriously checking children's jewelry on store shelves. Even then, the scale of sampling was not great enough to draw broad conclusions.

Tenenbaum said in an interview that inspectors didn't check store shelves earlier because agency scientists had not decided what cadmium levels would qualify a piece of jewelry as hazardous. And they haven't checked more since 2011 due to other priorities, particularly items that children have died using, such as faulty cribs and ATVs.

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Before 2010, the consumer agency ignored scattered reports of cadmium-contaminated jewelry. Emails obtained under FOIA show an agency working in the days immediately following AP's initial report to turn revelations about past indifference into a success story. But a reconstruction of the ensuing events suggests an agency that started out strong soon began to back off.

Just six months in office in early 2010, Tenenbaum found in cadmium an opportunity to contrast herself with her predecessor, who was cast as weak and ineffective during the 2007-08 Chinese product scares.

"These are a priority for the Chairman, so they are to be given priority," a senior official in CPSC's compliance division emailed testing lab colleagues about samples of bracelet charms on Jan. 14, 2010.

Two weeks later, the agency announced the first-ever cadmium-related recall — 55,000 "The Princess and The Frog" movie-themed pendants sold at Walmarts.

Almost immediately, Tenenbaum was shaping the narrative the agency would tell and retell — that fast action allowed it to "get ahead" of the cadmium problem.

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By early 2011, the CPSC had finally done a national "children's jewelry sweep" to gauge what was on store shelves. That February, CPSC chemists reported a troubling analysis of three jewelry samples bought by agency inspectors. Testing showed that hazardous amounts of cadmium would dissolve into the stomach acid of a child who swallowed the jewelry.

Over the next few weeks, three more items failed the test, including the baby bracelet.

While the number of jewelry pieces with hazardous readings was not great — 711 samples were screened — some of the six items had even more alarming cadmium readings than jewelry that had been recalled. One was 27 times higher than the agency's acceptable limit.

Yet the CPSC neither informed consumers nor initiated recall efforts. Instead, the agency asked a distributor where two of the items were found to destroy its inventory. For another item, the inspector only rounded up all samples in the store.

Spokesman Wolfson gave several reasons why the agency took no further action. Two of the items were discontinued in 2005, according to the distributor, which meant "a recall was not warranted" — despite the 2011 purchase. One had packaging that didn't identify the manufacturer or distributor. And in the three other cases, field inspectors had picked up jewelry that they thought was for children but that agency headquarters decided was actually for adults.

"We firmly believe that we took the right action based upon the work we did and the information we gathered," Wolfson said.

Because there were no recalls, the agency can't reveal what the products were or where they were bought.

Aside from the jewelry sweep, in at least two cases the agency let major retailers avoid informing the public that they had pulled jewelry after their testing turned up cadmium.

In May 2010, Wal-Mart announced it had removed "the few products" that failed checks it started doing on children's jewelry; it did not identify the items. The retailing giant had started running a European Union safety test that was similar to the stomach-acid test the CPSC used.

Wal-Mart spokesman Lorenzo Lopez said that despite failing a safety test, the items were not dangerous. He would not share the results.

"We're talking about components within these items that just didn't rise to the level where it posed a safety risk," he said.

Because Wal-Mart unilaterally yanked the products, no public notification was required by CPSC — and Wal-Mart gave none.

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The agency never pressed for a recall of items that had already been sold.

A similar scenario occurred at the Midwest retailer Meijer.

The CPSC learned of jewelry with hazardous test readings but, despite a pledge to follow any leads about cadmium jewelry, didn't open an investigation until AP began asking about the items six months later.

The agency never pressed for a recall because it decided the jewelry was primarily intended for teens or adults, not children.

Yet on the sales receipt, the items were listed as "girls jewelry" and "girls accessories" and a Meijer spokesman described them as "children's jewelry." He said they were briefly removed from store shelves, then returned, then pulled again when AP began inquiring.

Nowhere were the agency's conclusions more curious than the biggest recall of 2010 — 12 million drinking glasses sold by McDonald's to promote the animated movie "Shrek Forever After." Cadmium used in red decorations on the glass could rub onto a child's hand, and eventually get into the mouth.



Months after the recall, the agency said the glasses shouldn't have been pulled because they were not mainly for kids.

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And then there was the agency's assessment of brightly colored bracelet charms shaped like flip flops. Sold exclusively by Wal-Mart, the charms were 90 percent cadmium.

"Before you decide for certain that you want to recall the Flip Flop Charms, take a look at the image of the product in the attached email," Wal-Mart's then-director of product safety and compliance, Kyle Holifield, wrote the CPSC in January 2010. "There just isn't anything about the product itself or its packaging to indicate that it was designed or intended primarily for use by children."

Holifield's email only included the front of the packaging. The back of the packaging says the charms are "For ages 3 and over."

According to guidelines drafted by Wal-Mart's own product safety staff and endorsed by the jewelry industry, such labeling statements make jewelry a children's product.

That should have made the charms subject to cadmium limits — and eligible for a recall.

In a written statement, Wal-Mart said: "When CPSC asked us about this item, we considered it an adult jewelry item because it was displayed alongside other adult jewelry-making items, and not intended for use by children."

Even CPSC field investigators who collected items for sale during the "children's jewelry sweep" were confused by what qualifies as children's jewelry under agency guidelines. At headquarters, CPSC experts decided some of the products were not for children after all.

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*Click on an interactive that allows readers to determine whether everyday items are considered "children's products" under U.S. law:*

<http://hosted.ap.org/interactives/2012/cadmium/> [1]

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