



## China Environmental, Health, and Safety (EHS) Roundtable

## 中国环境、健康和安全圆桌会议

**Regulatory and Policy Report** 

October 2018 Report

Beveridge & Diamond, P.C.

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This report provides EHS-related policy and regulatory developments and enforcement actions at the national and local levels in China from October 1 to October 31, 2018. The report also covers the regulations taking effect and those being proposed in October 2018.

## **Policy Documents**

#### Highlights

- On October 31, 2018, National Medical Products Administration issued a Guiding Opinion on Construction of a Drug Traceability System [国家药监局关于药品信息 化追溯体系建设的指导意见] ("Guiding Opinion"). This Opinion guides implementation of Opinions on Accelerating to Promote Key Products <u>Traceability System</u> issued by the State Council. The <u>Opinions on Accelerating to</u> Promote Key Products Traceability System specifies the key products that would be subject to the traceability system: edible agricultural products, food, drugs, agricultural production materials (e.g. pesticide, fertilizer, seed and etc.), special equipment, dangerous goods and rare earth products. This Guiding Opinion shaped the traceability system for drugs and might provide reference for the establishment of traceability system for other key products. Per the Opinion, drug license holders, drug production enterprises, operating enterprises and users (e.g. hospitals) are required to establish a complete drug system by themselves or through a third information technical companies based on the relevant laws and technical standards. All the relevant activities associated with product management must be recorded and provided to the relevant authority. Further, the drug license holder and producers are required to provide a unique traceable label to the sales packaging units of the products, render relevant traceability information to the downstream enterprises or medical institutions, and obtain timely and accurate information on the entire process of circulation and use of the manufactured drugs.
- On October 24, 2018, the Enforcement Oversight Group of the Standing Committee of the National People's Congress submitted a report called Inspecting the Implementation Status of the Law on Quality and Safety of Agricultural Products [全国人民代表大会常务委员会执法检查组关于检查《中华人民共和国农产品质量安全法》实施情况的报告]. The report recalled the implementation situation of the Law on Quality and Safety of Agricultural Products. It also pointed out the following main issues in the Law on Quality and Safety of Agricultural Products:
  - 1. the basis to ensure quality and safety of agricultural products is still weak;
  - 2. the environmental pollution of agricultural products is guite severe;
  - 3. the management of agricultural inputs is not regulated effectively;

- 4. the supervision and management mechanism is required further improvement;
- 5. the enforcement is not effective;
- 6. some of agricultural products standards are still missing (e.g. more than three-quarters of pesticide residues in agricultural products lack uniform national and industry standards).

The report had multiple suggestions to address these issues: improve social awareness of the quality and safety of agricultural products, stringent enforcement on production and sale of agricultural products, revision or drafting of a series laws and regulations (e.g. revisions of Law on Quality and Safety of Agricultural Products, Veterinary Drug Management Regulation, Feed and Feed Additives Management Regulation, Fertilizer and Agricultural Film Management Regulation, drafting regulations on quality traceability of agricultural products and etc. )

- On October 16, 2018, the State Administration of Market Regulation issued a Circular on Relevant Affairs to Implement the State Council Decision on Further Reducing the Products Subject to the Regulation by Industrial Product Manufacturing Permit and Streamlining the Review Process [ 关于贯彻落实《国务 院关于进一步压减工业产品生产许可证管理目录和简化审批程序的决定》有关事项 的通知]. From December 1, 2018, the approval of four types of products, (internal combustion engines, friction materials and sealing products, highway bridge bearings, and anti-counterfeiting technology products) will be decentralized to the quality supervision department at the provincial level. The Circular removed the product testing requirement for the application; instead, applicants can immediately submit a conformity testing report issued by qualified inspection institutions within one year the for the 24 types of products subject to certification system. The testing report can be either the entrusted product test report or the government supervision inspection report. The enforcement actions will be strengthened focusing on the enterprises with the certifications and qualified inspection institutions. For example, the relevant product quality department will release, for public supervision, the commitment letters and testing report of products of the enterprises with the certificates to the public.
- On October 8, 2018, the Ministry of Ecology and Environment (MEE) issued a series of policy documents on the MEE institutional settings and functions [生态环境部机构设置和职能]. Each policy document specifies the main responsibilities and functionalities of each department/bureau. Under current settings and functions, the MEE will set up the following departments or bureaus:

Department of Law, Regulation and Standard

Department of Ecological and Environmental Monitoring

<u>Department of Environmental Impact Assessment and Emission Permits</u>

**Department of Solid Waste and Chemicals** 

**Department of Soil Ecology and Environment** 

**Department of Addressing Climate Change** 

<u>Department of Air Environment (Bureau of Air Environmental Management for Jing-Jin-Ji and the Surrounding Area)</u>

Bureau of Ecological and Environmental Enforcement

Department of Natural and Ecological Conservation (Office of Biodiversity

<u>Protection Office of National Biological Security Management</u>

**Department of Water Ecology and Environment** 

Department of Marine Ecology and Environment

Office of Central Ecological and Environmental Supervisory Inspections
Department of International Cooperation.

### **New Laws and Regulations**

### Highlights

On October 30, 2018, the Supreme People's Court issued <u>nine typical cases of administrative lawsuits with review of normative documents</u> [最高人民法院发布行政诉讼附带审查规范性文件典型案例] with the same effective date in order to strengthen judicial supervision on normative documents and better protect the citizens' rights and interests. Generally, China is not a case law country, the rulings in the cases neither creates any precedent nor has any binding effect on further court decisions; however, any rulings of the cases published in the Supreme People's Court Gazettes can be used as reference for future court decisions.

These nine typical cases suggest that in the administrative lawsuit, a request to review the legality of relevant normative documents will be granted. Such review will determine: whether the administrative authorities have the authority to issue the normative documents; whether the legislative procedure of those normative documents are the laws and regulations; whether the content of the normative

documents is legal; whether the normative document is in conflict with the superior law or contradictory to the other normative documents. However, it is worth noting that the request for review of a normative document must be brought along with the administrative action and the court would only review the provisions of a normative document associated with the administrative action in question. The review request must be submitted before the trial in the first instance and may be raised in the court investigation for justified reasons.

- On October 26, 2018, the Standing Committee of the National People's Congress issued a <u>decision on amending fifteen laws</u> including but not limited to, Law on Protection of Wild Animals, Law on Air Pollution Prevention and Control, Law on Energy Conservation, Law on Promotion of Agricultural Mechanization, Law on Circular Economy Promotion, Law on Environmental Protection Tax and etc. [全国人民代表大会常务委员会关于修改《中华人民共和国野生动物保护法》等十五部法律的决定] with the same effective date. The amendments to Law on Air Pollution Prevention and Control, Law on Energy Conservation, Law on Circular Economy Promotion and Law on Environmental Protection Tax are intended to reflect the name changes and function shifts of the administrative authorities following the government reorganization.
- On October 25, 2018, the Ministry of Ecology and Environment (MEE), the Ministry of Finance and the State Administration of Taxation jointly issued a Circular on Clarifying Several Issues on Application of Taxable Pollutants under Environmental Protection Taxation [关于明确环境保护税应税污染物适用等有关问题的通知] with the same effective date. Per the Circular, the particulate matter in the exhaust gas generated by combustion will be levied as smoke, and particulate matter emitted by industrial dust except those defined as smoke, asbestos dust, glass wool dust and carbon black dust, will be levied as general dust. Further, the taxpayer will not be entitled to enjoy any tax reduction if the concentration value of taxable air pollutants and water pollutants discharged at any outlet or the concentration value of taxable atmospheric pollutants emitted without outlets exceeds the national and local standards for pollutant discharge. In addition, the Circular specifies the monitoring and calculation issues on the volume of taxable pollutants.
- On October 24, 2018, MEE issued a <u>Circular on Printing and Publishing Working Handbook Series for Land Use Investigation for Entities in Key Industries</u> [关于印 发重点行业企业用地调查系列工作手册的通知] ("Handbooks"). The Handbooks are intended to use for quality control of information collection, correction of the

- risk screening results and review of sampling plans for enterprises engaging in land investigation in key industries.
- On October 19, 2018, MEE issued a <u>Circular on Prohibiting the Production of Refrigerators and Freezers, Freezing Containers, and Electrical Water Heaters with HCFC-141b as the Foaming Agent [关于禁止生产以一氟二氯乙烷(HCFC-141b)为发泡剂的冰箱冷柜产品、冷藏集装箱产品、电热水器产品的公告] with the same effective date. According to the Circular, from January 1, 2019, no enterprise shall use HCFC-141b as the foaming agent to manufacturer refrigerators, freezers, freezing containers and electrical water heaters.
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- On October 19, 2018, the Ministry of Commerce and other seven agencies jointly issued a <u>Circular on Publishing the Name lists of Pilot Cities and Enterprises for National Supply Chain Innovation and Application</u> [关于公布全国供应链创新与应用试点城市和试点企业名单的通知] with the same effective date. The lists include 55 pilot cities (e.g. Beijing, Shanghai, Nanjing, Wuhan, Hangzhou and etc) and 266 pilot enterprises (e.g. TCL, Alibaba, GE[China] and etc.)
- On October 18, 2018, National Health Commission issued a <u>Circular on Explaining Relevant Situations of a Series of Standards for Determination of Toxic Substances in the Workplace</u> [关于对工作场所空气有毒物质测定系列标准有关情况进行说明的通知] with the same effective date. The Standards for Determination of Toxic Substances in the Workplace (GBZ/T160) are under the revision stage. New testing methods will be added to the standards and the standards will be recoded as GBZ/T300 and issued in batches. Prior to the issuance and implementation of new testing methods in the GBZ/T300, the testing methods in the GBZ/T160 are still effective.
- On October 16, 2018, MEE issued a <u>Circular on Publishing the National Environmental Protection Standard: Technical Guidelines for Environmental Risk Assessment on Projects</u> (HJ 169-2018) [关于发布国家环境保护标准《建设项目环境风险评价技术导则》的公告] with the same effective date. The Technical Guidelines will take into effect on March 1, 2019. The Standard sets out the general principles, contents, procedures and methods on environmental risk assessment for construction projects, and it is applicable to the environmental risk assessment of hazardous or toxic and flammable or explosive substances production, use and storage construction projects with possible accidents.
- On October 15, 2018, MEE issued a <u>Reply Letter on Storing Radioactive Waste in Hunan Province</u> [关于湖南省放射性废物(源)收贮工作中有关问题的复函] with the

same effective date. According to the Letter, the entities using Class IV and Class V radioactive sources shall pack and prepare the Class IV and Class V waste radiation to deliver to qualified storage entities (including production units) or relevant government-run radioactive waste storage. Further, Hunan Environmental Protection Bureau is required to continue to provide the collection and storage of Class IV and Class V waste radioactive sources on a free basis.

#### **Other Measures**

- Announcement on Unified Management of Defective Products Recall [市场监管总局、海关总署关于统一管理缺陷产品召回工作的公告] (jointly issued by State Administration of Market Regulation October 30, 2018 and effective the dame date).
- <u>Public Announcement on Announcement on the Classification Table of Personal Imports of the People's Republic of China and the Table of Dutiable Values of Personal Imports of the People's Republic of China [关于《中华人民共和国进境物品归类表》和《中华人民共和国进境物品完税价格表》的公告] (issued by General Administration of Customs October 25, the tables take into effect Nov. 1 2018).</u>
- Announcement on Relevant Matters after the Pre-classification Decision Made by the Customs [关于海关预归类决定后续有关事项的公告] (issued by GAC October 23, 2018 and effective the same date).
- <u>Guidance for Establishing the Model National Safety Industrial Parks</u> [国家安全产业示范园区创建指南(试行)] (issued by Min. Indus. & Info. Tech., Min. Emerg. Mgmt. on Oct. 18, 2018; effective on Oct. 18, 2018).
- Reply Letter on the Timeframe for Approving Transfer of Radioactive Medicines [ 关于放射性药品转让审批有关时限问题的复函] (issued by Min. Ecol. & Envt. on Oct. 17, 2018, effective the same date).

- <u>Circular on Printing and Publishing Three-year Action Plan for Improving Quality in Raw Materials Industry (2018–2020)</u> [关于印发《原材料工业质量提升三年行动方案(2018—2020 年)》的通知] (issued by Min. Indus & Info. Tech, Science; Commerce and SAMR Oct. 25, 2018; effective the same date).
- Normative Conditions on Constructing Projects Relating to Chromium Compounds [ 铬化合物项目建设规范条件 ] (issued by Min. Indus. & Info. Tech. on Oct. 15, 2018; effective on Dec. 1, 2018).
- <u>Circular on Publishing Documents Accessory to the Measures of Public Participation in Environmental Impact Assessments</u> [ 关于发布《环境影响评价公众参与办法》配套文件的公告 ] (issued by Min. Ecol. & Envt. on Oct. 12, 2018; effective on Jan. 1, 2019).
- Announcement of Relevant Affairs on the Paperless Process for Import License Application and Customs Clearance [公布货物进口许可证件申领和通关无纸化作业有关事项] (issued by Gen. Admin. Customs, Min. Commerce on Oct. 9, 2018; effective on Oct. 15, 2018).
- <u>Technical Guidelines for Environmental Impact Assessment Urban Rail Transit</u> [ 环境影响评价技术导则 城市轨道交通 ] (issued by Min. Ecol. & Envt. on Oct. 9, 2018; effective on Mar. 1, 2019).
- <u>Circular on Publishing the National Environmental Protection Standard: Technical Guidelines for Environmental Impact Assessment Surface Water Environment [ 关于发布《环境影响评价技术导则 地表水环境》国家环境保护标准的公告 ] (issued by Min. Ecol. & Envt. on Sep. 30, 2018; effective on Mar. 1, 2019).
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#### **Enforcement Actions and Policies**

## Highlights

On October 27, 2018, MEE reported <u>the Environmental Administrative Sanction</u>
 Cases and Implementation of the Relevant Measures under Environmental
 Protection Law from January to September 2018 [ 生态环境部通报 2018 年 1-9 月
 环境行政处罚案件与《环境保护法》配套办法执行情况 ]. According to the report local environmental authorities issued 129,804 administrative orders nationwide

from January to September 2018, for a total amount of administrative penalties over 10.6 billion Chinese Yuan. Guangdong, Jiangsu, Hebei and Shandong are the top four provinces with severe administrative penalties. Five types of significant cases, (daily consecutive fines, seizure, production suspension, administrative detention, and criminal investigation) constituted more than 29,847 cases, a 4.0% year-by-year increase. 2,052 criminal cases were reported.

On October 17, 2018, the Ministry of Industry and Information Technology, National Development and Reform Committee and other six agencies joint issued a Circular on Carrying Out the Targeted Inspections of the Rare Earth Industry [八部门关于组织开展稀土行业秩序整顿专项督查的通知]. According to the Circular, this targeted inspection started on October 30 and will be completed on November 30 and covers Inner Mongolia, Jiangsu, Fujian, Jiangxi, Hunan, Guangdong, Guangxi and Sichuan Provinces. The inspection focuses are: implementation of reorganization work (e.g. whether the approved rare earth projects are in violation of laws and regulations, whether the sanctions on illegal activities concerning rare earth are not effective); implementation of rare earth policies, rare earth mines (including rare earth resources recycling projects), smelting separation, resource recycling and trading enterprises are subject to random inspections; and enforcement based on the whistleblower's report.

#### **Other National Enforcement Actions & Reports**

- MEE requests further opening of environmental protection facilities and municipal wastewater and waste treatment facilities to the public [生态环境部要求进一步做好全国环保设施和城市污水垃圾处理设施向公众开放工作] (reported by Min. Ecol. & Envt. on Oct. 28, 2018).
- The Third Supervisory Inspection Group provided feedback to Heilongjiang Province on the "Look Back" campaign and targeted inspections [中央第三环境保护督察组向黑龙江省反馈"回头看"及专项督察情况] (reported by Min. Ecol. & Envt. on Oct. 23, 2018).
- The Sixth Supervisory Inspection Group provided feedback to Yunnan Province on the "Look Back" campaign and targeted inspections [中央第六环境保护督察 组向云南省反馈"回头看"及专项督察情况] (reported by Min. Ecol. & Envt. on Oct. 22, 2018).
- MEE and Ministry of Housing and Urban-Rural Development launched joint targeted enforcement campaign against black and odorous water bodies in

<u>urban areas</u> [生态环境部、住房城乡建设部联合开展 2018 年城市黑臭水体整治专项行动] (reported by Min. Ecol. & Envt. on Oct. 21, 2018).

- MEE reported the nationwide statistics for surface water environmental quality for January to September of 2018 [生态环境部通报 2018 年 1—9 月全国地表水环境 质量状况] (reported by Min. Ecol. & Envt. on Oct. 20, 2018).
- The First Supervisory Inspection Group provided feedback to Henan Province on the "Look Back" campaign and targeted inspections [中央第一环境保护督察组向河南省反馈"回头看"及专项督察情况] (reported by Min. Ecol. & Envt. on Oct. 20, 2018).
- MEE reported recent air quality statistics in the Jing-Jin-Ji area [ 生态环境部通报 京津冀地区近期空气质量形势 ] (reported by Min. Ecol. & Envt. on Oct. 19, 2018).
- The Fifth Supervisory Inspection Group provided feedback to Guangdong Province on the "Look Back" campaign and targeted inspections [中央第五环境保护督察组向广东省反馈"回头看"及专项督察情况] (reported by Min. Ecol. & Envt. on Oct. 19, 2018).
- The First Supervisory Inspection Group provided feedback to Hebei Province on the "Look Back" campaign and targeted inspections [中央第一环境保护督察组向河北省反馈"回头看"及专项督察情况] (reported by Min. Ecol. & Envt. on Oct. 18, 2018).
- MEE released a <u>report</u> on national air quality statistics for September 2018, and from January to September 2018 [生态环境部通报 2018 年 9 月和 1-9 月全国空 气质量状况] (issued by Min. Ecol. & Envt. on Oct. 18, 2018).
- The Second Supervisory Inspection Group provided feedback to Inner Mongolia Autonomous Region on the "Look Back" campaign and targeted inspections [中央第二环境保护督察组向内蒙古自治区反馈"回头看"及专项督察情况] (reported by Min. Ecol. & Envt. on Oct. 17, 2018).

- The Fourth Supervisory Inspection Group provided feedback to Jiangsu Province on the "Look Back" campaign and targeted inspections [中央第四环境保护督察组向江苏省反馈"回头看"及专项督察情况] (reported by Min. Ecol. & Envt. on Oct. 17, 2018).
- The Fourth Supervisory Inspection Group provided feedback to Jiangxi Province on the "Look Back" campaign and targeted inspections [中央第四环境保护督察组向江西省反馈"回头看"及专项督察情况] (reported by Min. Ecol. & Envt. on Oct. 16, 2018).
- MEE reported a <u>summary statistics of Phases 1 to 9 of consolidated inspections</u>
   for key areas under the 2018-2019 "Protecting the Blue Sky" campaign [生态环境
   部通报 2018-2019 年蓝天保卫战重点区域强化监督第 1-9 轮次工作进展 ]
   (reported by Min. Ecol. & Envt. on Oct. 16, 2018).
- MEE investigated a case of illegal production of CFC in Henan [生态环境部查获一起非法生产消耗臭氧层物质案件] (reported by Min. Ecol. & Envt. on Oct. 15, 2018).
- MEE released the list of grids with air quality alerts in key areas [生态环境部通报 2018年9月重点区域城市预警网格名单] (issued by Min. Ecol. & Envt. on Oct. 15, 2018).
- <u>Circular on Strengthening the Regulation of Paraquat</u> [ 关于切实加强百草枯监督管理的通知 ] (issued by Min. Agri. & Rural Aff'rs on Oct. 12, 2018).
- MEE issued a <u>notification to praise environmental protection bureaus in An'hui, Fujian and Guangxi for their cooperation to handle illegal transferring and dumping wastes and protect the environment [关于表扬安徽、福建、广西等 3 省 (区) 环保部门查办跨省非法转移倾倒废物污染环境案件的通报] (issued by Min. Ecol. & Envt. on Oct. 10, 2018).
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### **Other Local Enforcement Actions & Reports**

• Qingdao Customs seized 61 tons of illegally imported solid waste [青岛海关查获禁止进境固体废物 61 吨] (reported by Gen. Admin. Customs on Oct. 30, 2018).

- Xiamen Customs seized 16.8 tons of "foreign garbage" [ 厦门海关查获 16.8 吨 " 洋垃圾"] (reported by Gen. Admin. Customs on Oct. 23, 2018).
- MEE reported forgery of enforcement records by the water authority in Ruyang, Henan [河南省洛阳市汝阳县水利部门监管执法案卷造假] (reported by Min. Ecol. & Envt. on Oct. 20, 2018).
- MEE reported longtime illegal disposal of sludge by Guangzhou Haitao Company [广东省广州海滔环保科技有限公司长期非法倾倒污泥] (reported by Min. Ecol. & Envt. on Oct. 19, 2018).
- MEE reported illegal disposal of hazardous waste in an industrial park in Jieyang, Guangdong [广东省揭阳市产业转移工业园非法掩埋危险废物] (reported by Min. Ecol. & Envt. on Oct. 19, 2018).
- <u>The Supervisory Inspection Group reported inadequate correction actions at two industrial parks in Lianyungang, Jiangsu</u> [ 江苏省连云港市化工园区整改不到位 ] (reported by Min. Ecol. & Envt. on Oct. 17, 2018).
- The Supervisory Inspection Group found inadequate ecological restoration work for grassland areas occupied by mining operations in Inner Mongolia [ 内蒙古自治区矿山占用草原生态治理及验收工作不严不实 ] (reported by Min. Ecol. & Envt. on Oct. 17, 2018).
- The Supervisory Inspection Group criticized a city government in Jiangxi for the slow progress in constructing municipal wastewater and sludge treatment facilities [ 萍乡市污水处理及污泥处置工程久拖不决、整改"另辟蹊径"] (reported by Min. Ecol. & Envt. on Oct. 16, 2018).
- The Supervisory Inspection Group identified fraudulent activities of a city government in Jiangxi in reported corrective actions for ecological restoration work at rare earth mining sites [稀土矿山修复工作不严不实,编制综合治理规划 弄虚作假] (reported by Min. Ecol. & Envt. on Oct. 16, 2018).
- <u>Jiangyin Customs returned 194.5 tons of imported solid waste</u> [ 江阴海关退运出境 194.5 吨固体废物 ] (reported by Gen. Admin. Customs on Oct. 10, 2018).

- Hangzhou Customs seized 50 tons of import-restricted solid waste claimed as raw chemical materials [ 申报化工原料 实则为下脚料 杭州海关查获 50 余吨限制进口固废 ] (reported by Gen. Admin. Customs on Oct. 8, 2018).
- <u>Taicang Customs returned 50.4 tons of solid waste prohibited from import</u> [太仓海关退运禁止进口固体废物 50.4 吨] (reported by Gen. Admin. Customs on Oct. 8, 2018).
- <u>Huangpu Customs seized 104 tons of solid waste</u> [ 黄埔海关查获固体废物 104 吨 ] (reported by Gen. Admin. Customs on Oct. 8, 2018).

## **Proposed Laws and Regulations**

#### **Other Measures**

- <u>Circular on Soliciting Comments on Revisions of Customs-related Rules to Streamline the Import-Export Regulations</u> [ 关于《精简进出口环节监管证件所涉海关规章修订对照表(征求意见稿)》公开征求意见的通知 ] (issued by Gen. Admin. Customs on Oct. 12, 2018; comments due by Nov. 12, 2018).
- Solicitation for Comments on Drafting Plans for 7 Mandatory National Standards, Including Fireworks Safety and Quality (and Fuel Consumption for Passenger Vehicles Assessment Methods and Benchmarks) [公开征集对《烟花爆竹 安全与质量》等 7 项强制性国家标准计划项目的意见(乘用车燃料消耗量评价方法及指标)] (issued by Min. Indus. & Info. Tech. on Oct. 29, 2018; comments due by Nov. 28, 2018).

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Beveridge & Diamond helps companies identify, understand, and comply with the expanding body of international, national, and sub-national environmental laws in China. The China EHS Roundtable gives multinational companies with interests in China a forum through which the companies learn about China's rapidly expanding environmental, health, and safety (EHS) regulations; manage enforcement risks; and ultimately advance EHS compliance, supply chain management, and sustainable development in China. Please contact Weiwei Luo (wluo@bdlaw.com, 202-789-6005) with questions.

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