



## NGOs File Suit to Compel CPSC to Issue Final Phthalates Rule

PRODUCTS OF INTEREST, CHEMICALS OF INTEREST, LITIGATION, CPSC

By LANA BECKETT, January 30, 2017

**Sheila Millar<sup>1)</sup>** and **Nathan Cardon<sup>2)</sup>**, with Keller and Heckman law firm, **recently reported<sup>3)</sup>** that the Natural Resources Defense Council (NRDC), along with the Environmental Justice Health Alliance for Chemical Policy Reform and the Breast Cancer Fund, jointly filed suit [**NRDC v. CPSC Complaint<sup>4)</sup>**] in federal court in New York City on December 6, 2016, to compel the U.S. Consumer Product Safety Commission (CPSC) to issue a final rule on phthalates in children's products "as soon as possible."

Quoting from the complaint, Millar and Cardon said that the suit alleges that CPSC's delay in publishing a final rule "is causing continued human exposure to five phthalates that would be banned from children's products if the proposed rule were finalized as proposed."

In 2008, the Consumer Product Safety Improvement Act (CPSIA) imposed bans on certain phthalates in children's products (some banned pending evaluation, and some banned permanently). Congress further directed CPSC to investigate all phthalates and propose rulemaking after investigation by a Chronic Hazard Advisory Panel (CHAP). The CHAP's final report, issued in 2014, concluded that eight phthalates are unsafe for use in children's toys and child care articles at levels greater than 0.1% and recommended that they be banned from toys and child care products. For other phthalates, the report noted potential development hazards and significant data gaps which prevented the experts from drawing any conclusions with confidence. Following the CHAP report's release, CPSC proposed a rule in 2014 establishing permanent bans on some phthalates and lifting the bans on others. The CPSC has not yet published a final rule.

"This is not the first time NRDC has taken action against the CPSC to enforce a ban on phthalates or weigh in on how the Commission should regulate phthalates," Millar and Cardon pointed out. "In 2008, NRDC sued the CPSC after the CPSC's general counsel issued an opinion stating that products containing DEHP, DBP, and BBP manufactured prior to the effective date of February 9, 2009, were grandfathered and could continue to be sold. NRDC challenged this interpretation of CPSIA in the same federal court and prevailed, resulting in a permanent ban on children's toys and child care articles containing more than 0.1% of these phthalates. And in April 2015, in response to the CPSC's proposed rule, NRDC wrote to the Commission to recommend a permanent ban on DNOP and DIDP, and DIOP. NRDC supports maintaining the current ban on DBP, BBP, and DEHP, banning permanently four additional phthalates (DIBP, DPENP, DHEXP, and DCHP), and making the interim ban on DINP permanent."

## Resources for this article

### 1. Sheila Millar

[http://www.lexology.com/1115/author/Sheila\\_A\\_Millar/](http://www.lexology.com/1115/author/Sheila_A_Millar/)

### 2. Nathan Cardon

[http://www.lexology.com/1115/author/Nathan\\_A\\_Cardon/](http://www.lexology.com/1115/author/Nathan_A_Cardon/)

### 3. recently reported

[http://www.lexology.com/library/detail.aspx?g=5f3f6c08-8849-4b88-9aa2-9b0de8f6fdf2&utm\\_source=Lexology+Daily+Newsfeed&utm\\_medium=HTML+email+-+Body+-+General+section&utm\\_campaign=Lexology+subscriber+daily+feed&utm\\_content=Lexology+Daily+Newsfeed+2016-12-23&utm\\_term](http://www.lexology.com/library/detail.aspx?g=5f3f6c08-8849-4b88-9aa2-9b0de8f6fdf2&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2016-12-23&utm_term)

### 4. NRDC v. CPSC Complaint

<https://prop65clearinghouse.com/documents/19181>