

Pitfalls to Avoid when Testing Products or Relying on Previous Consent Judgments

Moderator:

James Wheaton, President, Environmental Law Foundation

Speakers:

Sarah Esmaili, Counsel, Arnold & Porter

Rene Kalms, Principal, Exponent

Leslie Krasny, Partner, Keller Heckman

Stan Landfair, Partner, Dentons

Pitfalls to Avoid when Testing Products or Relying on Previous Consent Judgments

- The Nature of the Problem with Prop 65 Settlements
- Who can (and cannot) solve these problems
 - Are they baked into the structure of Prop 65?
 - Can government agencies take action?
 - Consistency of and reliance on past settlements (*Not!*)
- Reliance on prior settlements: why you can't
 - Testing labs
 - Critical commissions and omissions in settlements
- What can Defendants do
 - When they settle
 - Incentives of enforcers
 - Urge government agencies to take a role
 - Other outside actors

Pitfalls to Avoid when Testing Products or Relying on Previous Consent Judgments

Consumer Product: Phthalate Example

Numerous de facto phthalate settlements 1,000 ppm (0.1%)

Basis – CPSIA ?

Relevance to adult low contact consumer products?

OEHHA has issues Safe Use Determinations (SUDs)
9-25% DiNP

Is having 0.1% de facto level helpful?

Phthalate	Safe Harbor Level
BBP	1,200 µg/day
DBP	8.7 µg/day
DnHP	2,200 µg/day
DEHP	410 µg/day
DiNP	146 µg/day
DIDP	2,200 µg/day

Exponent

