



The FYI Column: December 2021

FYI COLUMN, CHEMICALS OF INTEREST, PRODUCTS OF INTEREST, US FDA, LITIGATION, APPELLATE CASES

By FIONA SMITH, December 16, 2021

Personal Care Products

Well, this stinks — Procter & Gamble Co. has voluntarily recalled many of its Old Spice and Secret brands of aerosol antiperspirant and deodorant due to the potential presence of the carcinogen benzene, writes **Advance Local Media**¹⁾ and Blistex, Inc., maker of OdorEaters® foot spray, also recalled some of its aerosol foot sprays over benzene concerns, **reports the Daily Hornet**²⁾.

There has also been a major recall of several types of breathing assistance machines made by Philips Respironics—ventilators, CPAP and BiPAP machines—due to "potential health risks related to the polyester-based polyurethane foam used in the devices to make them quieter," **writes Ohio News Time**³⁾.

In better news, the federal Food and Drug Administration (FDA) has issued its final results of sampling it conducted to test for the presence of asbestos in cosmetics, reports Keller & Heckman The FDA tested cosmetics containing talc, and found no detectable asbestos in all 50 samples, according to the article.

Congress has also turned its attention to the risks of chemicals in cosmetics—introducing not one, but four bills, to the U.S. House of Representatives that tackle various aspects of the issue. **Hunton Andrews Kurth breaks down**⁴⁾ the details of the "Safer Beauty" bill package.

Businesses selling and marketing cosmetics should be prepared for increased reporting requirements as the California Fragrance and Flavor Ingredient Right to Know Act of 2020 kicks in on January 1, **writes the Global Advertising Lawyers Alliance (GALA)**⁵⁾.

Food

Just in time for holiday cooking, **Consumer Reports has turned its attention to**⁶⁾ chemicals in dried herbs and spices. It released results of its testing of several major brands, finding "roughly one-third of the tested products, 40 in total, had high enough levels of arsenic, lead, and cadmium combined, on average, to pose a health concern for children when regularly consumed in typical serving sizes," according to its announcement. "Most raised concern for adults, too."

Trader Joe's is facing a Prop. 65 lawsuit from Ecological Alliance LLC alleging five of its products contain elevated amounts of lead, **as covered by Insider**⁷⁾ and **SheFinds**⁸⁾.

Chemicals

The EPA has signaled a big shift in its chemicals policy approach under the Toxic Substances Control Act (TSCA)—moving toward regulating not just chemicals, but products containing those chemicals, writes Crowell & Moring LLP. The firm discusses a recent speech by EPA's assistant administrator for chemical safety and pollution prevention on TSCA as well as two recently proposed rulemakings by EPA involving phenol, isopropylated phosphate (3:1) (PIP) and per- and polyfluoroalkyl substances (PFAS).

A recent study **published in Environmental Health Perspectives**⁹⁾ involving zebrafish embryos provides insight into how researchers can better understand how cocktails of chemicals affect the human genome. The researchers used a "concentration- and time-dependent response (CTR) model" to predict "the effects of chemical mixtures based on known toxicities from single compounds," according to the article. Researchers "found toxicogenomic predictions to be accurate even when mixture components belonged to different chemical classes or differed in their pharmacological mode of action (MOA)," according to the article.

Another story on cocktails—this time the cocktail of chemicals found in drinking water around the country. **Environmental Working Group has released**¹⁰⁾ its 2021 report on drinking water quality, which collates data reported by more than 50,000 water utilities around the country, broken down by state and zip code, and featuring lists of the contaminants detected at above federal and state health guidelines, according to EWG.

A bowling alley operator who would cut custom-sized holes in bowling balls for customers was, unbeknownst to him, cutting through asbestos. The man contracted pericardial mesothelioma and later died, and the 2nd District Court of Appeal has now upheld a \$4.4 million jury verdict in a case his family brought against Honeywell International Inc., **writes Goldberg Segalla LLP**¹¹⁾.

And finally, the debate continues over the question of how beneficial Prop. 65 has been since it was approved by voters in 1986. Custodio & Dubey, a Prop. 65 plaintiff's law firm, writes that Prop. 65 has done what it intended—"checked corporate behavior and made consumers safer." In a very different take on matters, the **Napa Valley Register ran a commentary**¹²⁾ about the legacy of Prop. 65 and private attorneys general acts, and how conservative politicians are taking a page from the Prop. 65 playbook in the new Texas anti-abortion law.

Prop. 65 at the U.S. Supreme Court? **Law Street Media writes**¹³⁾ about a certiorari petition filed by Hotze Health & Wellness Center International One, LLC and other companies tangled in litigation with the Environmental Research Center regarding Prop. 65 warnings for nutritional supplements. The petition asks the court to "provide clarity on when an appeal from a remand order is precluded under statute."

Resources for this article

1. Advance Local Media

<https://www.al.com/news/2021/11/secret-old-spice-antiperspirant-sprays-recalled-due-to-possible-cancer-causing-agent.html>

2. reports the Daily Hornet

<https://dailyhornet.com/2021/odor-eaters-foot-sprays-recalled-for-toxic-benzene/>

3. writes Ohio News Time

<https://ohionewstime.com/toxic-trouble-millions-of-cpap-bipap-and-ventilators-recalled/294779/>

4. reports Keller & Heckman

https://www.lexology.com/library/detail.aspx?g=513b883d-7019-456f-9cc5-8b2cc88322d3&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+++Body++General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-10-29&utm_term=

5. Hunton Andrews Kurth breaks down

https://www.lexology.com/library/detail.aspx?g=58a9bafb-162c-41ae-8a2c-2061e5b89c1c&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+++Body++General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-10-28&utm_term=

6. writes the Global Advertising Lawyers Alliance (GALA)

https://www.lexology.com/library/detail.aspx?g=568c9e18-8e98-4f82-8d5e-384f8ba72095&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+++Body++General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-11-17&utm_term=

7. Consumer Reports has turned its attention to

https://www.consumerreports.org/food-safety/your-herbs-and-spices-might-contain-arsenic-cadmium-and-lead/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Top+news%3A&utm_campaign=ATF+Daily

8. as covered by Insider

<https://www.insider.com/lawsuit-5-trader-joes-meals-contain-high-lead-levels-2021-11>

9. SheFinds

<https://www.shefinds.com/collections/trader-joes-lead-content-products-lawsuit/#slide-1>

10. writes Crowell & Moring LLP

https://www.lexology.com/library/detail.aspx?g=9b04e307-fe74-41fb-b1d5-2dcabac288bc&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+++Body++General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-11-02&utm_term=

11. published in Environmental Health Perspectives

https://ehp.niehs.nih.gov/doi/10.1289/EHP9931?utm_medium=email&utm_campaign=Monthly+TOC+Alert&utm_source=SendGrid

12. Environmental Working Group has released

<https://www.ewg.org/news-insights/news-release/2021/11/epa-still-failing-act-widespread-toxic-chemical-contamination-us>

13. writes Goldberg Segalla LLP

https://www.lexology.com/library/detail.aspx?g=a5427ba0-25bb-4ed9-9dd4-75800387bc68&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+++Body++General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-10-27&utm_term=

14. Custodio & Dubey

<https://news.bloomberglaw.com/environment-and-energy/californias-proposition-65-continues-to-save-lives-35-years-later>

15. Napa Valley Register ran a commentary

https://napavalleyregister.com/opinion/editorial/private-enforcement-in-texas-abortion-law-flips-liberal-california-playbook/article_98ff0ef4-1efd-5408-82ef-85fcaa34921f.html

16. Law Street Media writes

<https://lawstreetmedia.com/news/agriculture/petition-for-certiorari-filed-with-scotus-in-supplements-case/>

