

Prop 65 enforcement action poised to grow in 2023, experts say

Chemical Watch

01.23.2023

Environmental practice co-leader and litigation partner Jeff Parker spoke with *Chemical Watch* magazine on how private enforcement efforts under California's Proposition 65 could expand in 2023, spurred by recent chemical listings and a rise in entities analyzing products for possible violations, according to industry experts.

Chemical Watch indicates that the past few years have brought more notices of violation (NOVs), lawsuits and settlements, including a focus on ortho-phthalates, under a provision of the right-to-know statute allowing private individuals to initiate enforcement actions. Experts predict those trends will continue, as these 'private enforcers' increasingly target newer additions to the scheme, such as per- and polyfluoroalkyl substances (PFASs).

Prop 65's listing of new substances – PFOA, PFOS and PFNA, for example – and the emergence of additional private enforcers "is likely to generate more notices and litigation", said Sheppard Mullin's Jeff Parker.

Specifically, phthalate plasticisers constituted more than a quarter of the 3,169 notices filed in 2022, likely due to ease of detection. The alleged violations covered five of six listed phthalates – DBP, DEHP, DIDP, DINP and DnHP – largely in various plastic containers like bags and cases.

Parker commented, "There has always been a focus on phthalates because they are used in many products. Phthalate notices frequently take aim at small, cheap items private enforcers can obtain in great quantities to investigate for listed compounds."

Compared to 2022, Prop 65 activity this year "will mostly affect the same types of products because the private enforcers often have their favorite targets" for which they have established strategies to tackle, Parker added. "However, with new chemicals added to the Prop 65 list – including some that are garnering a lot of attention in the press such as PFASs –I would expect that we will start seeing notices for new products."

The full article can be found on [ChemicalWatch.com](https://www.chemicalwatch.com) and requires a subscription.

Attorneys

Jeffrey J. Parker

Practice Areas

Environmental

Environmental Litigation

Litigation

Proposition 65