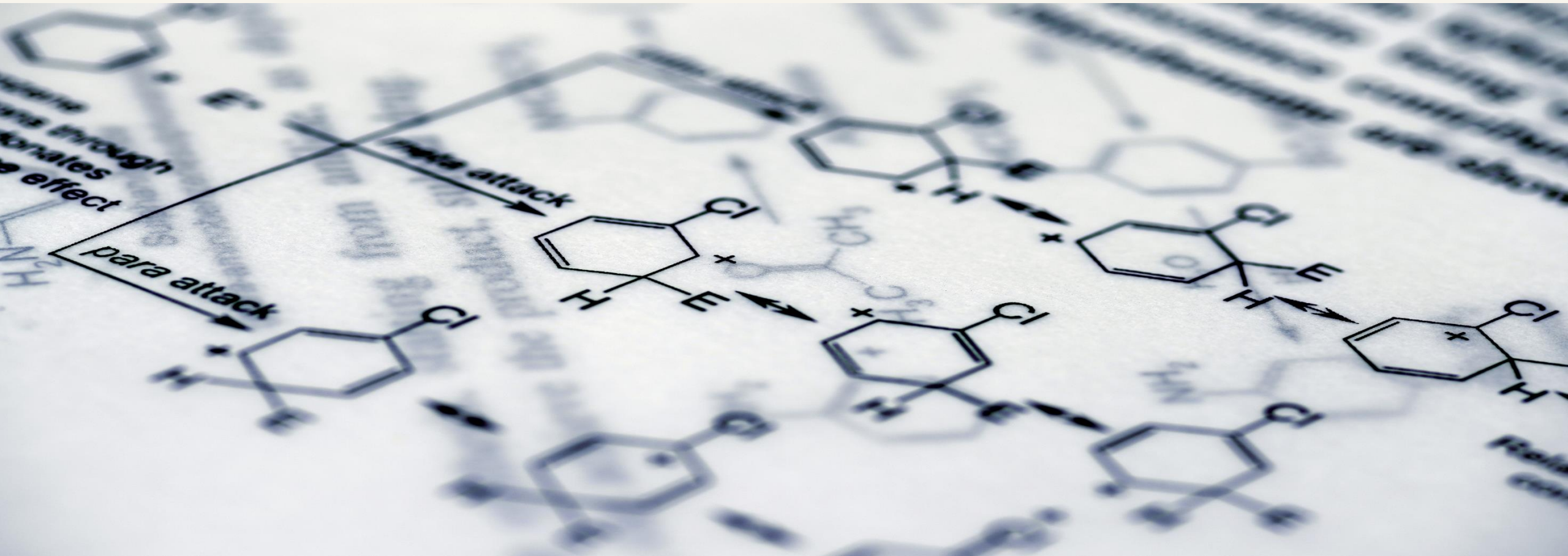


BPS and Regrettable Substitutions

When compliance changes the molecule but not the risk



Today's Panel

Rachel Doughty, Esq.
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Lexington Law Group



Justin Burmeister
Applied Technical Services



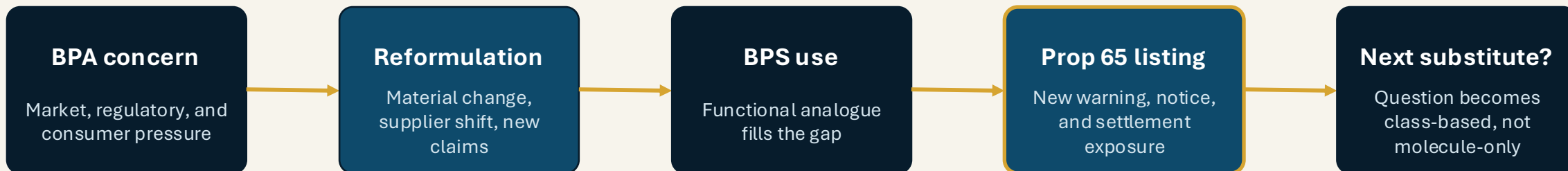
Jeff Margulies, Esq.
Norton Rose Fulbright



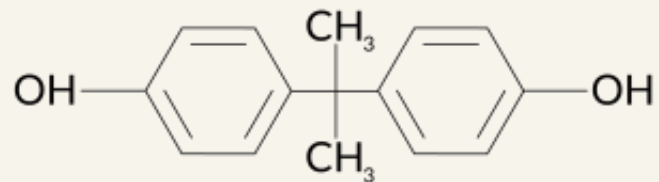
Will Wagner, Esq.
Greenberg Traurig LLP



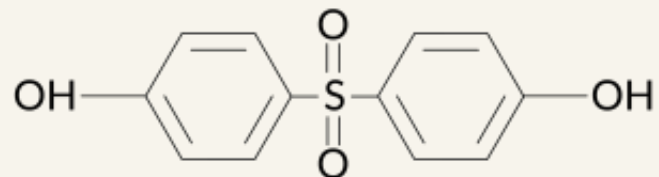
The substitution cycle: BPA to BPS, a short history



Bisphenol A



Bisphenol S



Can the state prohibit a substitution?

Litigation around the regrettable substitution – Pb and Cd

- Lead Containing Jewelry Law (Stats. 2006, ch. 415) - 2006
- Cadmium update (Health and Safety Code Section 25214.2(d)) – 2012

Implied or statutory obligation?

- Absent of statute, is there an implied duty?

“Known to cause cancer”

- How does the research and the wording of the law intersect?

How should companies think about reformulation?

The “Toxic Shell Game”

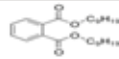
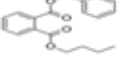
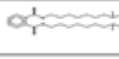
- What is safe and how do we know?
- Varying Toxicological Endpoints – Phthalates

Chemicals as a class

- SB 1266 and juvenile products – BPA
- Mercury and Mercury Compounds, Gasoline Engine Exhaust, Barbiturates, Aflatoxins, Beryllium and Beryllium Compounds, Nickel Compounds
- Washington state as a model
- PFAS?

Predicting the future chemicals of concern

- DARTIC (Developmental and Reproductive Toxicant Identification Committee)
 - *p,p'*- bisphenol chemicals – 27 including BPAF, BPAP, BPB, and BPZ

Chemical		Listed For	MADL	NSRL
Diisononyl Phthalate (DINP) ⁴³		Cancer		146 ug/d
Butyl Benzyl Phthalate (BBzP; BBP; n-butyl benzyl phthalate; Benzylbutylphthalate) ⁴⁴		Developmental Toxicity	1,200 ug/d	
Di-n-butyl Phthalate (DBP) ⁴⁵		Developmental Toxicity; Female Reproductive Toxicity; Male Reproductive Toxicity	8.7 ug/d	
Di-n-hexyl Phthalate (DnHP) ⁴⁶		Female Reproductive Toxicity; Male Reproductive Toxicity	2,200 ug/d	
Di-isodecyl Phthalate (DIDP) ⁴⁷		Developmental Toxicity	2,200 ug/d	

Substitution and the Negotiated Settlement

Realistic availability and the plaintiff's "carrot"

- Reformulation commitment and the consent judgement.
- The "carrot": agree to reformulate below a negotiated threshold – taking the warning obligation off the table.
- Class-level or non-substitution language

Predicting the next chemical(s) of concern

- OEHHA hazard identification materials and DARTIC agendas
- Structural analogues
- Today's substitute; Tomorrow's defendant?

Prop 65 Listing Mechanisms

1. Labor Code (LC)
2. State's Qualified Experts (SQE)
3. Authoritative Bodies (AB)
4. Formally Required to be Labeled (FR)

Q & A