



Analytical Testing of Your Product: What Companies Need to Know Before and After They Get a 60-Day Notice

9:30 to 10:30am

Today's Moderator and Speakers

Moderator



Greg Sperla

DLA Piper LLP

Speakers



Holly Foley

Scientist
Keller & Heckman



Justin Burmeister

Director of Chemistry and
Business Innovation
ATS Labs



Margaret Whittaker

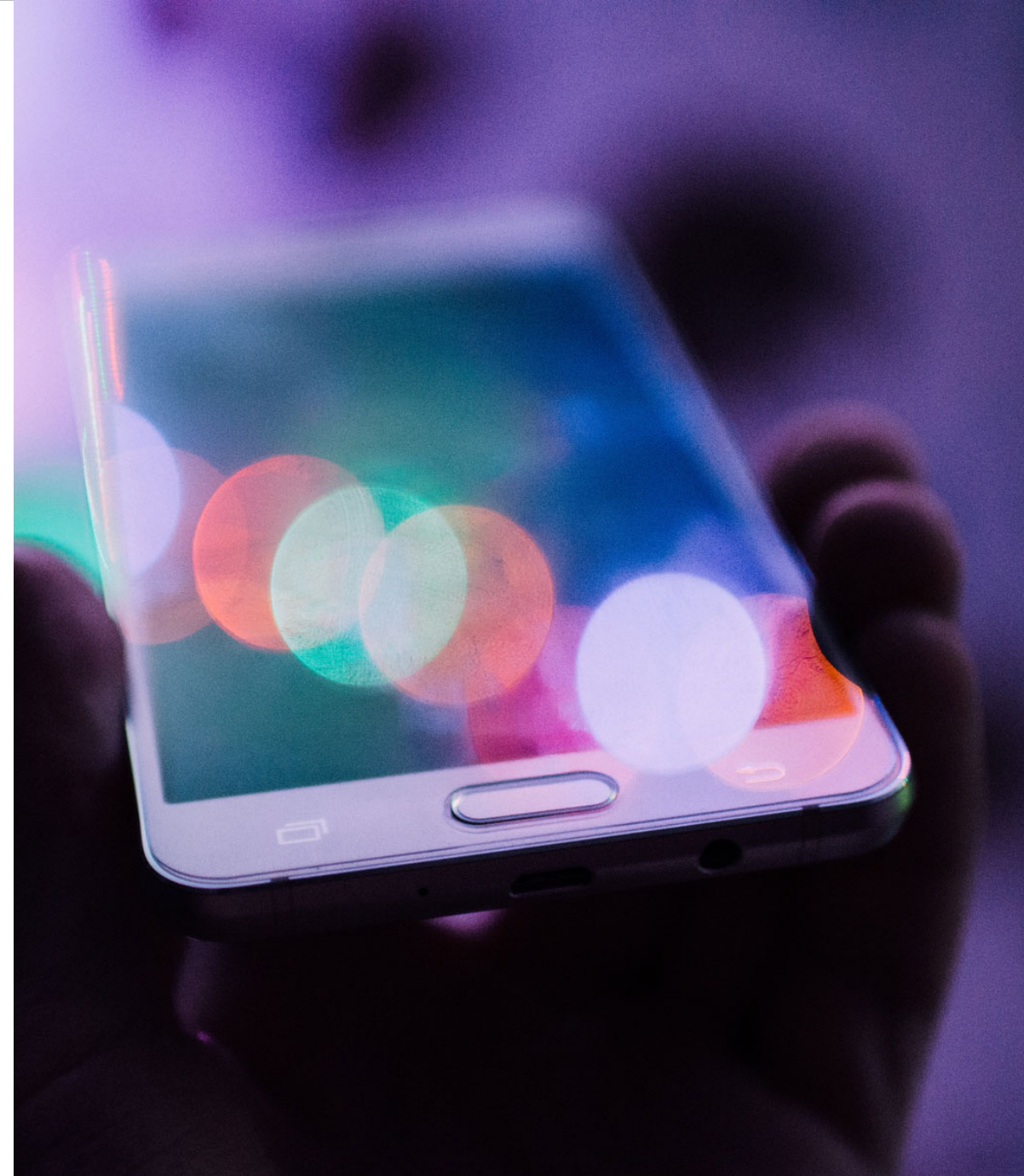
Managing Director and
Chief Toxicologist
ToxServices



Tom Lewandowski

Principal
Gradient

1. Who you gonna call?
It depends!



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Activity	Who to Call
Product development, reformulation	Laboratory and/or Consultant
Received Notice of Violation	Attorney
Establishing Safe Harbor Levels for chemicals without public OEHHA NSRLs/MADLs	Ask your industry association to fund creation of a shared NSRL or MADL Hire a Consultant who has published NSRLs/MADLs



2. How do I be smart about hiring a lab?



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Before hiring, look into -

- Credentials – accreditation - experience
- Analytical capabilities suited to the purpose
- Ability to handle complex matrices
- Prior Prop 65 Experience
- Communications
- Data reporting practices



3. Managing risks with testing: prioritizing materials, ingredients, and products.



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To minimize risks under Prop 65:

- Know your products and what materials they contain (polymers, paints, metals)
- Prioritize products for evaluation based on their materials
- Prioritize evaluation based on past 60-day notices
- Keep organized records of product composition, testing, volumes, etc.



4. The test report: the “must haves” versus “would be nice.”



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Must haves:

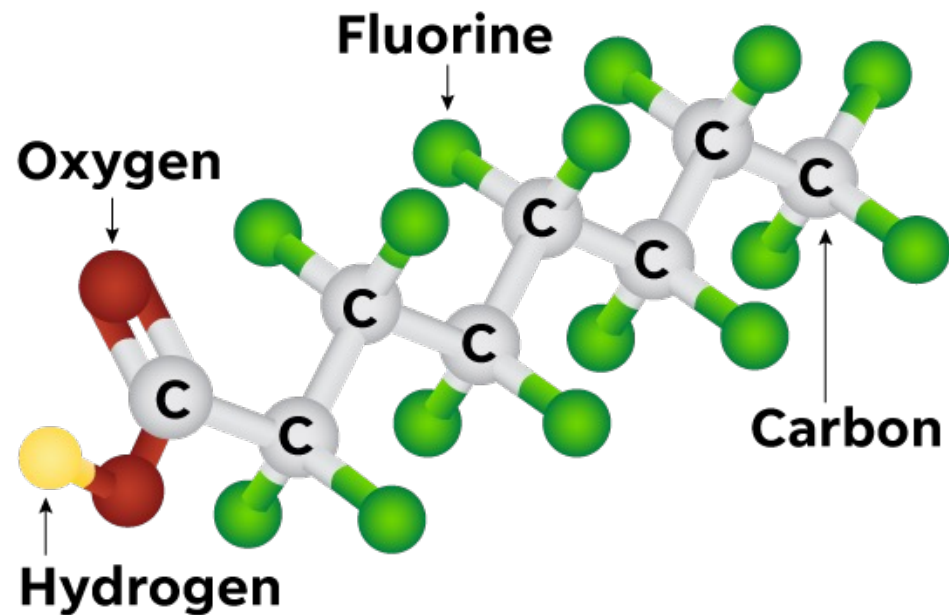
- Sample identification
- Sample preparation procedures
- Analytical method description
- Tabulated results (weights, units)

Would be nice:

- Raw data – peak areas, chromatograms, etc.
- Calibration curve and supporting data
- Validation – spike recoveries



5. Assessing PFAS and other newly regulated substances.



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- Current listed compounds: PFOA, PFOA, and PFNA
- PFHxS and PFUnDA
- EPA's "PFAS Strategic Roadmap
- Research, Restrict, Remediate.
- Health Advisory Level (HALs)



6. Best practices for disclosures between suppliers and customers.



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Manage your supply chain:

- Use knowledgeable suppliers, with an established track record when possible
- Require notice of any change in the product production process (new suppliers, materials, or equipment)
- Have a written compliance plan detailing what suppliers must do
- Trust and verify with periodic product testing



7. Optimizing your testing for a safe harbor defense



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- Representative samples
- Sample treatment/extraction relevant to end use
- Appropriate analyte(s)
- Adequate method sensitivity
- Use of internal standards to prove method works



8. Adapting your testing to an ever-changing environment: new listings, new methods, & new regulations.



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Stay informed -

- Monitor substances added to Prop 65 list
- Establishment of safe harbor level could impact prior assessment
- New endpoint listing could influence safe harbor (NSRL vs. MADL)



Key Takeaways

- Get the right support: lawyer, consultant, lab, etc.
- Understanding and communicating your testing goals: dose vs. concentration vs. intake etc.
- One size does NOT fit all.
- Know your “must haves.”
- The perfect is not the enemy of the good.
- Trust but verify.
- Be aware of past trends and forward-looking.



Resources

Who to Call:

Prop. 65 on-line Expert Directory lists law firms, labs, and consultants active in Prop 65

Stay Informed:

Sign up for OEHHA List Serv (Prop 65 News/Updates/Warnings) email lists: <https://oehha.ca.gov/about/listserv>

Smart Lab Hiring Tips:

Lab selection is influenced by product type!

- Ask the lab to describe their expertise analyzing products like yours for Prop 65 chemical(s) in question

Engage with Your Suppliers...Earlier than Later:

The presence of a Prop. 65 chemical in your product shouldn't be a surprise

Consider upfront testing to screen for Prop 65 chemicals and have a consultant prepare a safe harbor assessment prior to product launch



Questions?

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