

Alert | Products Liability & Mass Torts



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Claims of Benzene in Dry Shampoo: New Citizen Petition on Products Poses Significant Litigation Risk

Go-To Guide:

- A recent Citizen Petition claims various dry shampoos contain benzene, a human carcinogen.
- Citizen Petitions in general pose a significant threat of future litigation, including class action lawsuits and multidistrict litigations (MDLs).
- This Citizen Petition may recruit plaintiffs' firms to initiate lawsuits against cosmetic manufacturers of select dry shampoo products.

On Oct. 31, 2022, Valisure LLC submitted a Citizen Petition to the U.S. Food and Drug Administration (FDA) requesting, *inter alia*, a recall of dry shampoo products containing benzene. Valisure claims to have tested and detected high levels of benzene in certain dry shampoo products. This Citizen Petition is likely the opening step in recruiting plaintiffs' firms to launch class action and product liability multidistrict litigations (MDLs) against select hair-product manufacturers. This GT Alert summarizes the Valisure Citizen Petition and highlights other Petitions that have led to significant litigation, including those now among the largest MDLs in the county.

Valisure claims it found “multiple dry shampoo products contain levels of benzene that significantly surpass the ... conditional FDA restriction for drugs.” However, because dry shampoos are not pharmaceuticals for therapeutic purpose, Valisure asserts that “any significant detection of benzene could be deemed unacceptable.” Further, Valisure claims sampling air after spraying dry shampoo products “suggests potential for short- and long-term inhalation exposure to high levels of benzene,” which it claims increases the risk of developing cancer in humans.

The Citizen Petition requests that the Commissioner of Food and Drugs take multiple actions in response to its claims, including a recall of identified batches of dry shampoos, an update to regulations for cosmetic products to include limitations on various impurities that pose known risks to human health, information to the public regarding these products, and development of guidance documents defining the mass of a standard daily total application of dry shampoo, so a daily exposure of benzene can be calculated for dry shampoo products. The FDA has previously announced recalls of various products with benzene, including body sprays and other dry shampoos.

The FDA will undertake its own evaluation of the Citizen Petition, which evaluation will include independent review and analysis of all available data regarding purported high levels of benzene in dry shampoo products. Citizen Petitions of this type are known to carry a significant risk of future litigation. Other Citizen Petitions have launched waves of class action and MDLs against product manufacturers, including *In Re: Valsartan N-Nitrosodimethylamine (NDMA) Contamination Products Liability Litigation* (MDL 2875) and *In Re: Zantac (Ranitidine) Products Liability Litigation* (MDL 2924). These MDLs are among the largest in the country. Indeed, in the days since Valisure submitted its Citizen Petition, numerous lawsuits already have been filed against manufacturers of dry shampoo products.

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