

**NOT YET SCHEDULED FOR ORAL ARGUMENT
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

FABRICLEAN SUPPLY; TECHNICAL
CHEMICAL COMPANY; OLIN CORPORATION;
AMERICAN CHEMISTRY COUNCIL; GEORGIA
CHEMISTRY COUNCIL; OHIO CHEMISTRY
TECHNOLOGY COUNCIL; CENTER FOR
ENVIRONMENTAL HEALTH,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY
and LEE ZELDIN, Administrator of the U.S.
Environmental Protection Agency,

Respondents.

Case No. 25-60006

OPPOSED MOTION TO CONTINUE ABEYANCE BY 90 DAYS

Respondents United States Environmental Protection Agency (“EPA”) and Administrator Lee Zeldin respectfully move the Court for an order continuing to hold this case in abeyance while EPA conducts a rulemaking to reassess the challenged rule. EPA is currently reconsidering the challenged rule and recently published a notice in the Federal Register accepting public comments on the rule through August 29, 2025. EPA requests that the Court extend the abeyance of this matter by an additional 90 days. Counsel for EPA requested Petitioners’ positions to include in this motion. Counsel for Petitioner Center for Environmental Health

advised that it opposes an additional 90-day abeyance. Petitioners FabriClean Supply, Technical Chemical Company, and Olin Corporation do not oppose an additional 90-day abeyance. Petitioners American Chemistry Council, Georgia Chemistry Council, and Ohio Chemistry Technology Council take no position on EPA's request.

1. In December 2024, EPA published a new regulation under the Toxic Substances Control Act entitled, "Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA)." 89 Fed. Reg. 103560 (Dec. 18, 2024) ("the PCE Rule").

2. Petitioners filed petitions for review of the PCE Rule in this Court and the Sixth, Eighth, Ninth, and Eleventh Circuits. The United States Judicial Panel on Multidistrict Litigation subsequently ordered that the various petitions for review be consolidated in this Court pursuant to 28 U.S.C. § 2112(a)(3).

3. On February 12, 2025, Respondents moved this Court to hold this case in abeyance for 60 days to allow new leadership to review the PCE Rule. ECF No. 41.

4. On March 12, 2025, the Court granted Respondents' motion and stayed this matter for 60 days. ECF No. 54.

5. On May 12, 2025, EPA moved for an open-ended abeyance, advising that EPA intends to reconsider the PCE Rule through notice-and-comment

rulemaking, and expects that this process, including any regulatory changes, will take between 12-18 months. *See* ECF Nos. 56-1; Beck Decl.¹ ¶¶ 8-9. Petitioners FabriClean Supply, Technical Chemical Company, and Olin Corporation opposed an open-ended abeyance, citing concerns regarding certain compliance deadlines in the PCE Rule, but advised that they did not oppose a 90-day abeyance. *See* ECF No. 61 at 3-6. Although Petitioner Center for Environmental Health advised that it intended to oppose EPA’s May 12 motion, the Center ultimately declined to file any opposition.

6. On May 23, 2025, this Court denied EPA’s request for an open-ended abeyance but granted a 90-day stay of proceedings. ECF No. 69-2. The Court advised that by August 21, 2025, it “expects the parties to have resolved the matter or be prepared to proceed with the appeal.” *Id.*

7. Since the Court granted the 90-day stay, EPA has taken meaningful steps to complete its reconsideration of the PCE Rule. Consistent with EPA’s previously-filed declaration expressing its intent to solicit early stakeholder input prior to issuing a proposed rule, EPA published a notice in the Federal Register on July 30, 2025, seeking public comment to inform its reconsideration of the PCE

¹ References to “Beck Decl.” refer to the previously filed Declaration of Nancy Beck, dated May 12, 2025, which EPA has reattached to this motion for the Court’s convenience. The same declaration is also available at ECF No. 56-1.

Rule. *See* 90 Fed. Reg. 35858 (July 30, 2025); Beck Decl. ¶ 9. EPA invited public comment “on all aspects” of the PCE Rule, including but not limited to implementation issues and additional or alternative approaches to address unreasonable risk, and specifically requested input on the Existing Chemical Exposure Limit promulgated under the PCE Rule, on conditions of use that commenters believe should be subjected to a Workplace Chemical Protection Program as opposed to a prohibition, and on the use of PCE in industrial dry cleaning processes including workplace controls that reduce exposure to PCE and the performance of alternatives to PCE in these operations. *See id.* at 35859. The comment period will run until August 29, 2025.

8. As EPA explained in the attached, previously filed declaration, EPA next intends to issue a proposed rule seeking public comment on potential changes to the PCE Rule and finalize a new rule based on public input. Beck Decl. ¶ 9. EPA stated in that declaration that it expected this process, including any regulatory changes, to take between 12-18 months from when it decided to reconsider the PCE Rule in May 2025. *Id.*

9. In light of EPA’s concrete steps reconsidering the PCE Rule and the timeframe necessary to complete that reconsideration, EPA respectfully submits that a further 90-day extension of the abeyance in this matter is appropriate.

10. This Court has “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). An abeyance is prudent “if the public welfare or convenience will thereby be promoted.” *Landis v. N. Am. Co.*, 299 U.S. 248, 256 (1936).

11. Courts have long recognized that agencies may generally reassess and, if appropriate, revise their past decisions. *See, e.g., Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 42 (1983) (“[R]egulatory agencies do not establish rules of conduct to last forever [and] an agency must be given ample latitude to adapt their rules and policies to the demands of changing circumstances.”) (citations omitted); *ConocoPhillips Co. v. EPA*, 612 F.3d 822, 832 (5th Cir. 2010) (“Embedded in an agency’s power to make a decision is its power to reconsider that decision.”); *Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (explaining that an agency’s “reevaluation of which policy would be better in light of the facts” is “well within” its discretion and that a change in administration is a “perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations”) (citation omitted).

12. Further abeyance would preserve resources of both the Court and the parties. EPA’s reassessment of the rule may replace some or all of the challenged

portions of the PCE Rule that petitioners intend to challenge and thus obviate the need for judicial resolution of some or all the disputed issues. Moreover, even if some issues remain, EPA's solicitation and consideration of additional stakeholder input and public comment through its reconsideration of the PCE Rule will impact the new administrative record in support of the anticipated rule. Accordingly, any record-based challenge to the PCE Rule that proceeds in this matter may need to be relitigated based on the new record. Good cause thus exists for the requested abeyance. *See Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1013 (5th Cir. 2019) (“[W]e granted EPA’s motion to sever and hold in abeyance the Industry Petitioners’ and Water Company Petitioners’ challenges to the final rule”);² *Anchor Line Ltd. v. Fed. Mar. Comm’n*, 299 F.2d 124, 125 (D.C. Cir. 1962) (“[W]hen an agency seeks to reconsider its action, it should move the court to remand or to hold the case in abeyance pending reconsideration by the agency.”); *cf. Ctr. for Biological Diversity v. EPA*, 56 F.4th 55, 70-71 (D.C. Cir. 2022) (courts “routinely stay [their] hand when parties identify developments that are likely to render judicial resolution unnecessary”).

² In *Southwestern Electric Power Company*, EPA similarly moved for an abeyance of proceedings on challenges to certain regulations where the Administrator had “decided that it is appropriate and in the public interest to conduct a rulemaking to potentially revise” those regulations, *see Sw. Elec. Power Co. v. EPA*, No. 15-60821, ECF No. 201 at 6 (Aug. 14, 2017), which this Court granted, ECF No. 00514126308 (Aug. 22, 2017).

13. An additional 90-day abeyance is further warranted because the majority of the petitioners in this matter, and all petitioners that are directly regulated by the PCE Rule, either do not oppose EPA's request or take no position with respect to it.

14. If, however, the Court determines that a further abeyance is not appropriate, EPA is "prepared to proceed with the appeal." ECF No. 69-2. Because of the number of petitioners, EPA requests the Court afford the parties two weeks from the Court's order to confer and propose a briefing schedule for merits briefing in this matter.

WHEREFORE, EPA respectfully request that the Court issue an order holding this case in abeyance for an additional 90 days. In the alternative, EPA requests the Court order the parties to confer and submit a proposed briefing schedule within two weeks of the Court's order.

Date: August 21, 2025

Respectfully submitted,

ADAM R.F. GUSTAFSON
Acting Assistant Attorney General

/s/ Alexander M. Purpuro
ALEXANDER M. PURPURO
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 353-5230
Alexander.Purpuro@usdoj.gov
Counsel for Respondents

CERTIFICATE OF COMPLIANCE

I hereby certify this document complies with the length limit of Federal Rule of Appellate Procedure 27(d)(2)(A), because it contains 1414 words according to the count of Microsoft Word, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f).

I further certify that this document complies with the requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)–(6), because it has been prepared in 14-point Times New Roman, a proportionally-spaced font, and is double-spaced, except for headings and footnotes.

Dated August 21, 2025

/s Alexander M. Purpuro
Alexander M. Purpuro

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

FABRICLEAN SUPPLY; TECHNICAL
CHEMICAL COMPANY; OLIN
CORPORATION; AMERICAN
CHEMISTRY COUNCIL; GEORGIA
CHEMISTRY COUNCIL; OHIO
CHEMISTRY TECHNOLOGY COUNCIL;
CENTER FOR ENVIRONMENTAL
HEALTH,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY and LEE ZELDIN, Administrator
of the U.S. Environmental Protection Agency,

Respondents.

Case No. 25-60006

**DECLARATION IN SUPPORT OF MOTION TO HOLD CASE IN
ABEYANCE**

1. I, Nancy B. Beck, declare under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief and that they are based upon my personal knowledge, information contained in the records of the United States Environmental Protection Agency (“EPA” or “the Agency”), or information supplied to me by EPA employees under my supervision at EPA Headquarters. *See* 28 U.S.C. § 1746.

2. I am the Principal Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (“OCSPP”) within EPA. I have held this

position since February of 2025; however, I held this position previously from December 2018 to January 2021, during which time I also served on detail as Senior Advisor to the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget from April 2020 to January 2021. Prior to rejoining EPA this year, I worked for a law firm as their Director of Regulatory Science. I hold a B.S. in Microbiology from Cornell University and an M.S. and Ph. D. in Environmental Health from the University of Washington.

3. The Office of Pollution Prevention and Toxics (“OPPT”) in OCSPP is responsible for the administrative development of the regulation entitled, “Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA),” 89 Fed. Reg. 103560 (Dec. 18, 2024) (“PCE Rule”), as well as for the underlying PCE risk evaluation and associated determination of unreasonable risk upon which the rule is based.

4. On February 12, 2025, Respondents United States Environmental Protection Agency and Administrator Lee Zeldin (“EPA”) filed an unopposed motion to hold this case in abeyance for 60 days to allow new Agency leadership to review the underlying rule that is the subject of the petitions for review. This Court granted that motion on March 12, 2025.

5. OCSPP has now completed that review and determined that the PCE Rule at issue in these consolidated petitions for review should be reconsidered

through further rulemaking. Accordingly, EPA, by and through OCSPP, believes that further abeyance of this action for Agency reconsideration of the challenged rule is appropriate.

6. This declaration is filed in support of EPA's motion for abeyance. The purpose of this declaration is to explain the considerations informing EPA's request for abeyance and EPA's rationale for requesting abeyance.

7. Statutory Background

a. The Toxic Substances Control Act ("TSCA") requires EPA to review chemical substances in commerce to determine whether they "present[] an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use." 15 U.S.C. § 2605(b)(4)(A).

b. In conducting a risk evaluation, TSCA requires, among other things, that EPA "integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance" to determine whether its use presents an unreasonable risk. *Id.* § 2605(b)(4)(F)(i). EPA conducts peer review activities on TSCA risk evaluations consistent with applicable peer review policies, procedures, and methods, see *id.* § 2625(h) and (o)(1)–(2), and must publish draft risk evaluations for public comment, *id.* § 2605(b)(4)(H). EPA

must respond to peer review analysis and public comments, including any data received, when finalizing the risk evaluation.

c. A determination of unreasonable risk triggers the next step in the process, risk management. *Id.* § 2605(a), (c). During the risk management phase, EPA goes through a public rulemaking process, selecting among various risk management tools laid out in § 2605(a) to “apply one or more . . . requirements . . . to the extent necessary so that the chemical substance . . . no longer presents” the unreasonable risk of injury to health or the environment, under the conditions of use, determined in the risk evaluation. *Id.* § 2605(a); see also *id.* § 2605(b)(4)(A).

d. In “selecting among prohibitions and other restrictions,” section 2605(c) requires EPA to “factor in, to the extent practicable,” several considerations, including the chemical substance’s effects on health and the environment, the magnitude of exposure to the chemical substance, its benefits for various uses, and “the reasonably ascertainable economic consequences of the rule.” *Id.* § 2605(c)(2)(A)-(B). Additionally, in deciding whether to prohibit or restrict a condition of use of a chemical substance (and in setting an appropriate transition period, *id.* § 2605(d)), EPA must “consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment, compared to the use so proposed to be prohibited or restricted,

will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect.” Id. § 2605(c)(2)(C).

e. Both the risk evaluation and subsequent risk management rulemaking must also meet statutory requirements that the actions be based on the best available science, the weight of the scientific evidence, and “information relating to a chemical substance or mixture, including hazard and exposure information, under the conditions of use, that is reasonably available to the Administrator.” Id. § 2625(h), (i), (k).

8. During abeyance, OCSPP intends to reconsider the PCE Rule through notice-and-comment rulemaking, including but not limited to the use of the Existing Chemical Exposure Limit (ECEL) of 0.14 ppm promulgated as part of the Workplace Chemical Protection Program for PCE, and whether the PCE Rule went beyond the extent necessary to eliminate unreasonable risk. Specifically, OCSPP will assess whether, consistent with the best available science, it would be appropriate to use a different value to inform risk mitigation needs.

9. OCSPP intends to solicit early stakeholder input, issue a proposed rule seeking public comment on potential changes to the PCE Rule, and finalize a new rule based on public input. EPA expects this process, including any regulatory changes, to take between 12-18 months.

I declare under penalty of perjury that the foregoing is true and correct.

NANCY
BECK

Digitally signed by
NANCY BECK
Date: 2025.05.12
14:48:29 -04'00'

Nancy B. Beck, Ph.D.
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency