

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN CHEMISTRY COUNCIL, INC.,
Plaintiff,

v.

NATIONAL ACADEMY OF SCIENCES;

U.S. ENVIRONMENTAL PROTECTION AGENCY;

MICHAEL S. REGAN, in his official capacity as
Administrator of U.S. Environmental Protection Agency,

Defendants.

Case: No. 23-cv-2113

MOTION FOR PRELIMINARY OR PERMANENT INJUNCTIVE RELIEF

Plaintiff American Chemistry Council (“ACC”) moves under LCvR 65(c) for an injunction barring Defendant EPA from publishing, republishing, citing, relying upon, or otherwise using the report (“Report”) issued in pre-publication form on August 9, 2023 by the National Academy of Sciences (“NAS”) committee (“Committee”) reviewing EPA’s 2022 draft formaldehyde assessment (“Assessment”). ACC also moves for an injunction requiring NAS to add to the Report a disclaimer that the Report was generated in a manner that did not comply with the Federal Advisory Committee Act (“FACA”), and that federal agencies should not use the Report.

In the course of its review of the Assessment, the Committee repeatedly violated the provision of FACA that applies to NAS, 5 U.S.C. § 1014. The Committee’s FACA violations include violating FACA’s requirement that the Committee be fairly balanced; failing to disclose Committee members’ conflicts of interest, including close connections with the EPA Integrated Risk Information System (“IRIS”) program office and the formaldehyde IRIS Assessment the Committee reviewed; failing to publish Committee members’ biographies, written materials

presented to the Committee, summaries of Committee meetings, and other information for public review; limiting the public's ability to comment on Committee nominations; and failing to exercise independent judgment. Defendant EPA, for its part, controlled the Committee in violation of FACA, including by proposing specific Committee members, prohibiting an independent assessment, and constraining the scope of the Committee's review. NAS and EPA's violations of FACA are described at greater length in the accompanying Memorandum of Law.

Because the Committee's review did not comply with FACA, FACA prohibits EPA's use of the Report. 5 U.S.C. § 1014(a) (agency "may not use" advice or recommendation that does not comply with applicable FACA requirements). It also would be arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2), for EPA to rely on the resulting report—which it is clear EPA intends to do. Absent near-term relief, the Report will be used by EPA, including to set a final "IRIS value" for formaldehyde, and then by EPA, DOJ, and other federal and state regulators, causing irreparable harm to ACC and its members that produce or use formaldehyde. ACC therefore respectfully requests that the court preliminarily or permanently¹ enjoin EPA from citing, incorporating, relying on, or otherwise using the Committee's Report.

As required by LCvR 7(m), counsel for ACC reached out to counsel for Defendants NAS and EPA, who informed undersigned counsel that they oppose the relief requested in this motion.

¹ If the Court concludes that it has all the information it needs to determine that NAS and EPA violated FACA, the Court could enter summary judgment and a permanent, rather than preliminary, injunction in ACC's favor. *See Ready for Ron v. FEC*, No. 22-3282, 2023 WL 3539633, at *6 (D.D.C. May 17, 2023) (treating preliminary injunction motion as a motion for summary judgment and a permanent injunction); *Morris v. Dist. of Columbia*, 38 F. Supp. 3d 57, 62-63 (D.D.C. 2014) (treating motion for preliminary injunction as summary judgment motion because "the Court's resolution of the legal issue . . . resolves the merits of the case. . . . Therefore, the Court will decide this case on the merits.").

Respectfully submitted,

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