

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| AMERICAN CHEMISTRY COUNCIL, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. 1:23-cv-02113-JDB |
| v. |) | |
| |) | |
| NATIONAL ACADEMY OF SCIENCES, |) | |
| <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| |) | |

FEDERAL DEFENDANTS' RESPONSE
TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff's Notice of Supplemental Authority (ECF No. 28) brings to the Court's attention a recent Federal Register notice in which EPA solicited nominations of experts to assist the Science Advisory Committee on Chemicals ("SACC") with its forthcoming peer review of EPA's evaluation of the risks from formaldehyde, which is being conducted to inform risk management decisions under two statutory programs. *See* 88 Fed. Reg. 88,910 (December 26, 2023). The Federal Register notice does not bolster Plaintiff's claims or request for preliminary injunctive relief in any way. It makes clear that the SACC peer review is wholly separate from the peer review conducted by the National Academy of Sciences ("NAS") committee and its report that are the subject of this lawsuit. *Id.* at 88,911 ("The Agency will be seeking SACC review of its data analyses and methodologies relevant to human health hazard and exposure analyses that have not been previously peer reviewed.").

Plaintiff claims that the Federal Register notice shows that EPA is already using the NAS report at issue in this case because it states that EPA “intends to defer” to the draft IRIS assessment and NAS report “[f]or chronic inhalation exposure and the cancer inhalation unit risk,” *id.* at 88,911, and that EPA is “leveraging these peer reviews to support further development of the risk evaluation of formaldehyde,” *id.* at 88,910. Plaintiff then concludes that harm, presumably to Plaintiff, “is imminent.” ECF No. 28 at 2. But as Federal Defendants have already explained, the Agency’s mere use of the NAS report in its multi-step process for developing and revising human health assessments does not harm, or imminently harm, Plaintiff or its members, nor does it constitute final agency action. *See* ECF No. 22 at 6, 16–20, 27–29, 34–36; ECF No. 26 at 5–6, 8–9, 13–14. The Federal Register notice does not, therefore, advance Plaintiff’s argument.

Dated: January 29, 2024

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/s/ Ally Scher
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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2024, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ Ally Scher
Ally Scher