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23 *Association*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

24 CLEAN AIR COUNCIL;
25 COMMUNITIES FOR A BETTER
26 ENVIRONMENT; and NATURAL
27 RESOURCES DEFENSE COUNCIL,
28 INC.,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; LEE ZELDIN, in his official
capacity as Administrator; and NANCY
BECK, in her official capacity as Principal
Deputy Assistant Administrator for the

Case No. 8:25-cv-01473-MWF-DFMx
Assigned to Hon. Michael W. Fitzgerald

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
WESTERN STATES PETROLEUM
ASSOCIATION’S MOTION TO
DISMISS PLAINTIFFS’ FIRST
AMENDED COMPLAINT**

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Office of Chemical Safety and Pollution
Prevention,

Defendants.

Hearing Time: 10:00 a.m.
Hearing Date: June 8, 2026
Courtroom: 5A

Action Filed: July 8, 2025
Trial Date: Not set

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 21 *Refining Under §§ 21, 6(a) of the Toxic Substances Control Act,*
 22 *Petition to EPA, Docket No. EPA-HQ-OPPT-2025-0102-0002* (Feb.
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1 **I. INTRODUCTION**

2 Proposed Intervenor-Defendant Western States Petroleum Association
3 (“WSPA”) respectfully requests that this Court dismiss Plaintiffs’ amended complaint
4 for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim.
5

6 What Plaintiffs seek remains extraordinary—no less so for having been
7 repackaged in an amended pleading. They ask this Court to conscript a narrow and
8 inapplicable statutory provision of the Toxic Substances Control Act (“TSCA”) into a
9 *de facto* national accident-prevention mandate, compelling the Environmental
10 Protection Agency (“EPA”) to ban a chemical substance that is critical to the nation’s
11 fuel supply, and one which Congress has long permitted and extensively regulated.
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14 Hydrofluoric acid (“HF”)—a substance whose properties and risks have been
15 studied for decades—is used by roughly one-third of American refineries to produce
16 alkylate, a high-octane, low-sulfur gasoline blend stock essential to the modern fuel
17 supply. For more than forty years, federal and state lawmakers, working alongside
18 technical experts, have constructed a dense and comprehensive regulatory framework
19 governing HF’s manufacture, transport, storage, use, and emergency response
20 (including use at refineries). That framework exists precisely to address the risks
21 Plaintiffs now invoke, and it has been supplemented by substantial risk mitigation
22 measures across the refining industry.
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26 Plaintiffs urge the Court to sweep all of that aside. But their First Amended
27 Complaint (“FAC”) does not come close to addressing the central defect in their case.
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1 It still attempts to convert TSCA into a roving mandate to regulate and/or eliminate
2 any chemical substance if a plaintiff hypothesizes a catastrophic accident, regardless
3 of how extensively the substance is already regulated or how many precautions are
4 in place. That defect is dispositive for several reasons.

6 First, Article III does not permit federal courts to entertain generalized
7 anxieties about what *might* happen in an uncertain world. Plaintiffs do not allege
8 that any member faces a concrete, imminent injury traceable to HF’s foreseeable
9 conditions of use at refineries. Instead, Plaintiffs continue to rely on historical,
10 infrequent, accidental HF releases that are not representative of the concocted
11 parade of horrors Plaintiffs claim *might* affect them. That is not standing. It is
12 precisely the kind of speculative fear the Constitution forbids from supporting a
13 lawsuit like this. The FAC confirms dismissal is appropriate under Rule 12(b)(1).

17 Second, Plaintiffs’ claims fail because the FAC now makes clear they seek
18 relief that they never petitioned EPA to consider. TSCA Section 21 authorizes
19 judicial review only of EPA’s refusal to initiate the specific rulemaking requested in
20 the underlying administrative petition (here, a total HF ban), but Plaintiffs now ask
21 this Court to compel a materially different regulatory action (specifically, an
22 undefined HF “rulemaking” to eliminate the risks of “current” HF use). Because the
23 relief Plaintiffs now seek was never requested from, or considered by, EPA, there is
24 no cognizable claim before this Court.
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1 Third, Plaintiffs’ factual allegations fail to meet the statutory inquiry posed by
2 Section 6 of TSCA. Section 6 is not a blank check authorizing EPA to eliminate any
3 use of a substance which could result in a harmful theoretical outcome—refinery
4 explosions, train derailments, or other disasters—that an inventive pleading can
5 imagine. Congress instead confined EPA’s authority to risks arising from a chemical
6 substance’s “conditions of use,” meaning the circumstances under which the
7 substance is used in the ordinary course. *See* 15 U.S.C. § 2602(4). Plaintiffs ask
8 EPA (and this Court) to do the opposite. The FAC seeks relief not based on HF’s
9 conditions of use, but on hypothetical accidents and subsequent disasters that
10 depend on a series of independent failures far outside the ordinary course. Unable to
11 anchor their theory in the statutory text, Plaintiffs resort to sweeping
12 pronouncements of irrelevant hypothetical scenarios. But such speculative
13 assertions cannot meet TSCA’s requirement that a petitioner “set forth the *facts*”
14 establishing that a rulemaking is “necessary.” 15 U.S.C. § 2620(b)(1) (emphasis
15 added). Absent these hypothetical scenarios—which EPA properly assigned no
16 weight—Plaintiffs have no factual support that the rare accidental release of HF is a
17 “condition of use” under TSCA, and TSCA provides no license for EPA to regulate
18 beyond its statutory scope.
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25 EPA was right to deny Plaintiffs’ petition, and this Court should not indulge
26 in transparent efforts to transform TSCA into a tool selectively targeting a crucial
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1 component of the refining industry. WSPA respectfully requests that this Court
2 dismiss the FAC with prejudice.

3
4 **II. BACKGROUND**

5 The regulatory backdrop illustrates why Plaintiffs' claims fail on the
6 pleadings. WSPA begins with a brief overview of HF regulation, the TSCA
7 Section 6 process, EPA's review and denial of Plaintiffs' petition, and how this
8 dispute arrived before this Court.

9
10 **A. HF Use in Oil Refining Is Heavily Regulated by Existing Federal**
11 **and State Law.**

12 HF transportation to and use at refineries is highly regulated and carefully
13 managed. Multiple federal programs address the potential risks associated with the
14 domestic refining industry's use and transport of HF. *See, e.g.*, 40 C.F.R. Part 68 (a
15 broad series of requirements for owners and operators of facilities, including
16 refineries, to prevent and mitigate impacts of accidental releases of substances such
17 as HF). And these federal programs were adopted—over the course of multiple
18 presidential administrations—to prevent the exact (albeit statistically anomalous)
19 concerns Plaintiffs now raise. Indeed, Plaintiffs' factual assertions regarding HF use
20 at refineries are known precisely because of the reporting requirements imposed by
21 the foregoing programs. And despite Plaintiffs' decision to ignore the regulatory and
22 industry shifts that transpired after the 1987 Texas City Refinery fire in their quest
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1 to creatively expand the scope of TSCA, Congress acted immediately after the 1987
2 fire, responding to the exact concerns Plaintiffs raise.

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4 Congress enacted the Clean Air Act (“CAA”) Amendments of 1990, to
5 update the existing regulatory framework to create an integrated approach intended
6 to prevent high-consequence chemical releases and accidents. *See* S. Rep. No. 101-
7 228, at 204, 208 (1989), *as reprinted in* 1990 U.S.C.C.A.N. 3385. Through the 1990
8 Amendments, Congress directed EPA to promulgate regulations—later known as
9 the Risk Management Program (“RMP”)—to prevent accidental releases of
10 extremely hazardous substances like HF and conduct a CAA Section 112(n) study
11 and make recommendations about whether Congress should further act. 42 U.S.C.
12 § 7412(r)(7), (n)(6). Congress also required EPA to coordinate with the
13 Occupational Safety and Health Administration (“OSHA”) and the Department of
14 Transportation (“DOT”) in carrying out this mandate. *Id.* § 7412(r)(7)(D). Congress
15 separately directed OSHA to promulgate chemical process safety standards
16 designed to reduce employee exposure to chemical accidents under the
17 Occupational Safety and Health Act of 1970. 29 U.S.C. § 655.

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22 The agencies acted accordingly. Two years after the 1990 Amendments,
23 OSHA promulgated its first Process Safety Management (“PSM”) regulations. *See*
24 OSHA, *Process Safety Management of Highly Hazardous Chemicals; Explosives*
25 *and Blasting Agents*, 57 Fed. Reg. 6,356, 6,356 (Feb. 24, 1992). And one year later,
26 EPA concluded its mandated 112(n) study, recommending no “legislative action
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1 from the Congress . . . to reduce the hazards associated with HF” as EPA found the
2 “legislative authorities already in place,” *which did not include TSCA Section 6,*
3 provided “a solid framework for the prevention of accidental chemical releases and
4 preparedness in the event that they occur.” *See EPA, Hydrogen Fluoride Study,*
5 *Final Report: Report to Congress, Section 112(n)(6), Clean Air Act as Amended,* at
6 xiii (1993). EPA nonetheless sought to fortify the regulatory scheme in place,
7 concluding a need to adopt a “process safety management for HF and other
8 hazardous chemicals” and “communicate crucial information to stakeholders and
9 the public on how to prevent, mitigate and respond to HF releases.” *Id.* at 2. EPA,
10 OSHA, and the industry went on to take these exact measures to protect worker
11 safety and the public alike.

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16 Three years later, EPA promulgated its RMP regulations. EPA, *Accidental*
17 *Release Prevention Requirements: Risk Management Programs Under Clean Air*
18 *Act Section 112(r)(7)*, 61 Fed. Reg. 31,668, 31,688 (June 20, 1996). The RMP
19 requirements generally run parallel with OSHA’s PSM requirements; EPA
20 explained that covered sources should not be subject to inconsistent requirements
21 for chemical accident prevention and that it adopted requirements identical to the
22 PSM standards. *See id.* at 31,668–70.

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25 The OSHA PSM and EPA RMP programs collectively impose
26 comprehensive and well-thought-out requirements designed by independent process
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1 safety experts for refiners using HF to ensure proper worker safety and reduce the
2 risk of accidents. These include, but are not limited to:

- 3
- 4 • hazard analyses of processes using HF;
- 5 • training for personnel involved in processes that use HF;
- 6 • mechanical integrity inspection and testing requirements for equipment used in HF service;
- 7 • compliance and consistency with industry-wide standards and recognized and generally accepted good engineering practices;
- 8 • RMP and process safety triennial compliance audits;
- 9 • Mitigation measures and requirements; and
- 10 • Response plans.

11 *See* 40 C.F.R. Part 68, Subpart D (establishing requirements for Program Level 3
12 processes which include HF alkylation units). Working in conjunction with these
13 CAA programs are requirements imposed by the Emergency Planning and
14 Community Right-to-Know Act (“EPCRA”), the Comprehensive Environmental
15 Response, Compensation, and Liability Act of 1980 (“CERCLA”), and the Clean
16 Water Act (“CWA”) aimed to ensure proactive accident response plans. Although
17 the extent of regulations varies, each imposes reporting obligations for releases
18 exceeding reportable thresholds aimed at ensuring timely and adequate community
19 response. *See* 40 C.F.R. Part 355; 40 C.F.R. §§ 117.3, 302.4. EPCRA further
20 requires refineries to maintain comprehensive records regarding HF use, storage,
21 and chemical safety and to share such records with relevant emergency response
22 agencies to ensure human health and the adequate response plans. *See* 42 U.S.C.
23 §§ 11021–23.
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1 All of these requirements directly address and manage the risks associated
2 with using HF in domestic refining in ways that Congress authorized under CAA
3 Section 112(r) to ensure worker safety and prevent impacts to the public, and
4 enforcement means are substantial. CAA Section 113 allows for both civil and
5 criminal liability for violations of RMP requirements, with civil penalties currently
6 authorized for \$124,426 per violation per day. 42 U.S.C. § 7413(b)–(c); EPA, *Civil*
7 *Monetary Penalty Inflation Adjustment*, 90 Fed. Reg. 1,375, 1,378 (Jan. 8, 2025).
8

9
10 The regulation of HF does not end at a refinery’s fence line; worker and public
11 safety are addressed at each juncture of HF use. DOT’s Pipeline and Hazardous
12 Materials Safety Administration separately regulates the transport, packaging,
13 labeling, transfer (i.e., loading and unloading), and incident reporting of HF as
14 hazardous and corrosive material consistent with its Hazardous Materials
15 Regulations (“HMR”). The HMR require training for certain hazardous materials
16 handlers to ensure knowledge of accident prevention methods and procedures,
17 emergency response information, and self-protection measures. *See* 49 C.F.R.
18 § 172.704(a)(3).
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22 Beyond the federal scheme, various state and local governments regulate the
23 hazards associated with HF use through programs aimed to prevent accidental
24 chemical releases. These programs often mirror (or exceed) their federal
25 counterparts in regulating entities like refineries to reduce localized risk in the event
26 of an accident, including providing safety analysis specific to HF.
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1 Indeed, California EPA manages its own RMP program in the form of its
2 “Accidental Release Prevention” program. The Department of Toxic Substances
3 Control oversees statewide hazardous material regulations, and its “Emergency
4 Response Unit” provides statewide response to actual and potential releases of
5 hazardous substances. California OSHA, through the state’s PSM program, requires
6 refineries to maintain written emergency action plans covering alarms, evacuation,
7 shutdown, training, reporting, and more. *See* 8 Cal. Code Reg. § 3220; *see also id.*
8 §§ 5189, 5189.1.

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11 California’s extensive RMP, accident prevention, and PSM programs are
12 supplemented by regional and local programs, including those of local Air Quality
13 Management Districts and Air Pollution Control Districts that oversee permitting,
14 inspections, releases, and emissions for refining facilities, and Certified Unified
15 Program Agencies, which manage environmental and hazardous material programs
16 at the local level.

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20 **B. EPA’s Authority under Section 6 of TSCA Is Limited to Addressing**
21 **a Chemical Substance’s *Foreseeable* Conditions of Use.**

22 The above-described, cross-jurisdictional regulatory framework existed when
23 Congress amended TSCA in 2016 to add the provision that Plaintiffs rely upon in
24 this case. *See Frank R. Lautenberg Chemical Safety for the 21st Century Act*, Pub.
25 L. No. 114-182, 130 Stat. 448 (codified at 15 U.S.C. § 2605). Congress made clear
26 that TSCA is not a blank check for EPA, but instead carefully delineated EPA’s
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1 authority. Section 6 does not permit EPA to regulate and/or ban the use of a
2 chemical solely on the basis of speculative, accidental releases. Instead, Section 6
3 provides a three-step process for EPA to evaluate and address “unreasonable risk of
4 injury” that “the manufacture, processing, distribution in commerce, use, or
5 disposal” of chemicals poses to human health and the environment. *See* 15 U.S.C.
6 § 2605.
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9 *First*, Section 6 requires EPA to periodically prioritize chemical substances
10 for evaluation as either high or low priority. 15 U.S.C. § 2605(b). EPA may
11 designate a chemical substance as high priority where EPA concludes the chemical
12 “may present an unreasonable risk of injury to health or the environment” were an
13 exposure to occur “under the conditions of use” for the chemical. *Id.* Congress
14 narrowly defined the phrase “conditions of use” as “the circumstances . . . under
15 which a chemical substance is intended, known, or reasonably foreseen to be
16 manufactured, processed, distributed in commerce, used, or disposed of.” 15 U.S.C.
17 § 2602(4). Section 6 does not permit EPA to designate every chemical substance
18 that *could* possibly present a risk—especially based on unlikely accident
19 scenarios—as high priority for risk evaluation. And mere designation as a high-
20 priority chemical does not translate to regulation by EPA.
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25 *Second*, only if EPA determines at step one that a chemical substance is high
26 priority does TSCA require EPA to conduct a risk evaluation. Under that evaluation,
27 EPA must determine whether the chemical substance *actually* poses an
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1 “unreasonable risk of injury” to human health or the environment under its
2 conditions of use. 15 U.S.C. § 2605(b)(3)(A), (b)(4)(A). As clear from its language,
3 Section 6 does not open the door to unfettered regulation of chemical substances
4 that could *conceivably* pose a risk, but rather focuses on risks within the “intended,
5 known, or reasonably foreseen” “conditions of use.” *Id.* § 2602(4). In addition,
6 when Congress amended Section 6 in 2016, it narrowed the applicability of the
7 statute even further by deleting the phrase whether a substance “*will* present an
8 unreasonable risk of injury” to just whether it actually “presents an unreasonable
9 risk.” 15 U.S.C. § 2605(a). In doing so, Congress made plain that the “risk” meriting
10 regulation under Section 6(a) had to be significant, actual, and present. EPA has
11 rightly embraced that limitation through its regulatory process for conducting risk
12 evaluations. *See* 40 C.F.R. §§ 702.39(c)(1), 702.39(c)(4), 702.39(d)(1),
13 702.39(d)(9), 702.39(f)(1), 702.39(f)(3), 702.43(d)(1) (all limiting review to a
14 chemical substance’s “conditions of use”).

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20 *Third*, only if EPA finds that, within its conditions of use, (1) a high priority
21 chemical substance (2) “presents” an unreasonable risk of injury, can EPA
22 (3) promulgate a regulation, and even then, only “to the extent necessary so that the
23 chemical substance or mixture no longer presents such [unreasonable] risk.” *See*
24 15 U.S.C. § 2605(a); 40 C.F.R. § 702.43(e).

25
26
27 TSCA Section 21(a) permits parties to “petition [EPA] to initiate a
28 proceeding for the issuance, amendment, or repeal of a rule under [TSCA

1 Section 6],” *see* 15 U.S.C. § 2620(a), but it does not override the requirements of
2 Section 6. A petitioner must “set forth the facts which it is claimed establish that it
3 is necessary to issue . . . a rule” under Section 6(a), including that the chemical
4 poses an unreasonable risk of injury within its conditions of use. *Id.* § 2620(b)(1).

5
6 If EPA denies a Section 21(a) petition, “the petitioner may commence a civil
7 action in a district court . . . to compel [EPA] to initiate a rulemaking proceeding as
8 requested in the petition.” 15 U.S.C. § 2620(b)(4)(A). While the TSCA Section 21
9 proceeding in federal court is conducted *de novo*, *id.* § 2620(b)(4)(B), the
10 limitations Congress imposed on EPA in Section 6 apply all the same. *See generally*
11 *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947).

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14 **C. EPA Denied Plaintiffs’ Attempt to Ban HF Because Their**
15 **Reasoning Rested on Presumed Catastrophic Accidents—Not**
16 **Ordinary Use.**

17 On February 11, 2025, Plaintiffs petitioned EPA to “prohibit the use of [HF]
18 in domestic oil refining.” *Petition to Prohibit the Use of Hydrogen Fluoride in*
19 *Domestic Oil Refining Under §§ 21, 6(a) of the Toxic Substances Control Act*,
20 *Petition to EPA*, Docket No. EPA-HQ-OPPT-2025-0102-0002 (Feb. 11, 2025) (the
21 “Petition”). Plaintiffs asserted that HF presents “an unreasonable risk to human
22 health and the environment” not under its conditions of use, but solely in the event
23 of an accidental release in a refinery or during transportation en route. *Id.* at 2. The
24 Petition rested almost entirely on hypothetical “worst-case” chemical-release
25 modeling, including catastrophic refinery failures, derailments, truck crashes, and
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1 extreme-weather scenarios. *Id.* at 18–37. For example, Plaintiffs provided detailed
2 maps of potential “threat zones” in the event of worst-case scenarios. *Id.* They also
3 summarized past HF release events, as well as a “near-miss event[,]” examples of
4 refineries allegedly leaking *other* chemicals, and an appendix with instances of HF
5 incidents, including, for instance, when “[a] drop of hydrofluoric acid splashed onto
6 a construction worker” in 1987. *Id.* at 38–44; Appendix B to the Petition at 2–6.

9 On May 9, 2025, EPA denied the Petition. EPA, *Reasons for Agency*
10 *Response*, 90 Fed. Reg. 20,575, 20,575 (May 15, 2025). EPA concluded that
11 Plaintiffs had not satisfied TSCA’s statutory criteria for requiring a Section 6
12 rulemaking because Plaintiffs’ “catastrophic release” scenarios are not “conditions
13 of use” under Section 6. Specifically, EPA concluded that the Petition rested on
14 hypothetical catastrophic accidents that are not “conditions of use” because they are
15 not “intended, known, or reasonably foreseen” ways in which HF is manufactured,
16 processed, used, distributed, or disposed of. EPA concluded that the Petition “did
17 not establish unreasonable risk under the conditions of use of *using* and *distributing*
18 in commerce HF for domestic refining.” *Id.* at 20,578 (emphasis added).

22 **D. Plaintiffs’ Faulty Reasoning Has Not Changed.**

23 Plaintiffs now challenge EPA’s denial of their Petition, and their TSCA
24 Section 21 complaint (i.e., the FAC) largely tracks their Petition. Plaintiffs again
25 frame their argument around “worst-case” releases, *see* FAC ¶¶ 73–79, for example,
26 predicting HF clouds that could spread to “danger zones,” *id.* ¶¶ 3, 28. A key
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1 difference from their Petition (and from their original complaint), however, is that
2 Plaintiffs now seek undefined rulemaking from EPA, rather than the outright ban
3 that they originally sought.
4

5 Plaintiffs also amended their complaint to add exhibits purporting to list HF
6 releases, alleged “near-misses,” and releases of totally different chemicals, often
7 stripped of context demonstrating the alleged events are irrelevant. *See* Exhibits 1
8 and 2 to the FAC.
9

10 **III. The FAC Fails to Cure Plaintiffs’ Lack of Standing.**

11 Despite a second attempt, Plaintiffs have not established, on behalf of
12 themselves or their members, a cognizable injury from speculative concerns that a
13 chemical release might occur someday, through the independent actions of third
14 parties, at an unknown time, and in circumstances disconnected to EPA’s conduct.
15 *See, e.g.*, FAC ¶¶ 73–79 (invoking “worst-case” scenarios and speculative future
16 accidents). As an association representing the interests of its members, Plaintiffs
17 must demonstrate that at least one of its members “has suffered an ‘injury in fact’”
18 under Article III to confer associational standing. *Nat. Res. Def. Council v. EPA*,
19 735 F.3d 873, 878 (9th Cir. 2013). If standing is absent, the case ends. *See Shulman*
20 *v. Kaplan*, 58 F.4th 404, 407–08 (9th Cir. 2023). Plaintiffs’ FAC fails to allege any
21 constitutionally-recognized injury, let alone one grounded in fact.
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1 **A. Legal Standard**

2 Plaintiffs bear the sole burden of “establishing standing pursuant to
3 Article III.” *Id.* at 408 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)).
4 While the court “accept[s as true] all facts alleged in the complaint” at the pleading
5 stage, Plaintiffs must still allege that at least one member “(1) [] ‘suffered an injury
6 in fact that is concrete, particularized, and actual or imminent’; (2) ‘that the injury
7 was likely caused by the defendants;’ and (3) ‘that the injury would likely be
8 redressed by judicial relief.’” *Id.* (quoting *TransUnion LLC v. Ramirez*, 594 U.S.
9 413, 423 (2021)); *see also Nat. Res. Def. Council*, 735 F.3d at 878 (same for
10 associational standing on behalf of members).

11 The Supreme Court has “repeatedly reiterated that threatened injury must be
12 certainly impending to constitute injury in fact, and that allegations of possible
13 future injury are not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409
14 (2013) (cleaned up). And when a plaintiff sues the government for not regulating a
15 third party, “[t]he one-step-removed, anticipatory nature of their alleged injuries”
16 presents the plaintiffs with heightened standing obstacles. *Murthy v. Missouri*,
17 603 U.S. 43, 57 (2024). Because “a federal court cannot redress injury that results
18 from the independent action of some third party not before the court,” a plaintiff
19 must allege facts showing that the third party will predictably respond to the
20 government’s action—or here, inaction—in a manner that makes the alleged injury
21 “certainly impending.” *Id.* at 57–58 (cleaned up); *Clapper*, 568 U.S. at 409.
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What that means here: Plaintiffs must plead facts showing a certainty that EPA’s decision not to ban (or otherwise regulate) HF will result in an HF release that affects Plaintiffs’ members. Allegations that such release *might* occur someday, through a series of contingent failures, do not satisfy Article III.

B. The FAC Continues Plaintiffs’ Failure to Allege an Actual or Imminent Injury.

The FAC alleges no injury that has occurred or is about to occur. Instead, it repeats a chain of hypotheticals: *if* EPA does not ban HF, a third party *might* accidentally release HF at a refinery or during transportation; *if* that release occurs under particular conditions and *if* enough HF is released, and *if* all mitigation measures fail, then Plaintiffs’ members *might* be exposed. That is not standing. It is speculation.

Plaintiffs’ theory depends on “a highly attenuated chain of possibilities,” rather than certainty, which Article III does not tolerate. *Clapper*, 568 U.S. at 409–10. Despite having a year since filing their Petition with EPA to develop facts, as well as an opportunity to amend their pleading here, Plaintiffs continue to allege only that some of their members live near refineries and transportation routes. *See, e.g.*, FAC ¶¶ 17–31. The FAC does not allege that any HF release that would affect these members is imminent. Instead, Plaintiffs continue to rely on hypothetical “worst-case” scenarios involving refinery explosions or transportation accidents. *Id.*

1 ¶¶ 73–79 (fictional “worst-case” scenarios). Their theory layers conjecture upon
2 conjecture.
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4 Plaintiffs attempt to dress this speculation in stronger language, asserting that
5 the risk of HF release is “substantial, foreseeable, and growing.” *Id.* at p. 38. But a
6 risk that is merely possible—regardless of how emphatically described—does not
7 establish standing unless the “threatened injury [is] certainly impending.” *Clapper*,
8 568 U.S. at 401.
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10 The FAC’s factual allegations underscore how remote Plaintiffs’ alleged
11 injury is. In the body of the FAC, they identify only two HF releases from U.S.
12 refineries over several decades: a 1987 accident in Texas that occurred before
13 Congress enacted the CAA Amendment of 1990; and a 2019 pipe rupture at a
14 facility in Philadelphia—both tied to site-specific circumstances and separated by
15 decades. *See* FAC ¶¶ 7, 11, 104. Plaintiffs also reference two rail incidents
16 involving HF, one in 1997 and another in 2012, *id.* ¶¶ 14, 92, a 2023 HF release at a
17 reboiler (an industrial facility unrelated to petroleum refining), *id.* ¶ 12, and a
18 release on the other side of the globe in South Korea, *id.* ¶¶ 104–05. These isolated
19 examples are irrelevant to Plaintiffs’ request for domestic HF regulation at U.S.
20 refineries.
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25 To supplement their allegations, Plaintiffs added “Exhibit 1” to the FAC,
26 purportedly cataloging several dozen purported domestic HF-related incidents.
27 Exhibit 1, ¶¶ 1–79. The exhibit adds volume, not substance. The descriptions of
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1 each incident are sparse, and of the incidents listed, few even allegedly resulted in
2 any injury to persons or property outside the refinery. *Id.* Importantly, none of the
3 alleged incidents have resulted in the catastrophic mass injuries on which Plaintiffs
4 base their speculations. Plaintiffs also reference “near misses,” releases of entirely
5 different chemicals, unrelated refinery accidents (such as fires), and unspecified HF
6 “leaks.” *See* Exhibit 2. Allegations centered around on-site exposures and non-
7 events do not support Plaintiffs’ purported fear of imminent off-site injury.
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10 Nor do Plaintiffs’ efforts in the FAC to detail individual members’ supposed
11 injuries address this determinative deficiency. They identify members who live at
12 varying distances from refineries and express generalized concerns about
13 hypothetical HF releases, such as potential traffic congestion during a possible
14 future evacuation, or the distance from their home to the nearest hospital. FAC
15 ¶¶ 13, 20. But again, apprehension about what might occur in the event of a future
16 accident is too “speculative and remote to confer standing.” *See, e.g., Cal. Unions*
17 *for Reliable Energy v. U.S. Dep’t of Interior*, 2011 WL 7505030, at *5 (C.D. Cal.
18 Nov. 9, 2011).
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22 In *California Unions for Reliable Energy*, the plaintiffs feared that if a solar
23 energy project were built, and then in response “the third-party governmental
24 entities that supply them with domestic water may declare a water shortage and
25 either ration water or institute mandatory conservation measures,” then their water
26 supply would be affected. *Id.* Much like Plaintiffs in this case, who fear a sequence
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1 of hypotheticals, the plaintiffs in *California Union* failed to establish standing, and
2 this Court rightfully dismissed their complaint. *Id.*

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4 In essence, Plaintiffs’ theory depends on a cascading failure of safeguards.
5 Their hypothesized catastrophe assumes that the numerous federal, state, and local
6 regulatory regimes governing HF either directly or indirectly—as well as industry
7 safety standards and mitigation measures—would all fail at once. *See supra*
8 Section II.A. Article III does not permit standing based on the assumption that every
9 protective system will simultaneously collapse. Allegations that require such a
10 “highly attenuated chain of possibilities” do not establish a threatened injury that is
11 “certainly impending.” *See, e.g., Clapper*, 568 U.S. at 410; *Summers v. Earth Island*
12 *Inst.*, 555 U.S. 488, 499 (2013) (“speculation does not suffice” for standing). There
13 is no standing where a plaintiff cannot allege “the predictable effect of Government
14 action on the decisions of third parties” and instead merely “speculat[es].” *Murthy*,
15 603 U.S. at 72.

16
17 Plaintiffs’ FAC still does not allege an actual or imminent injury traceable to
18 EPA’s conduct without resorting to conjecture at every step. Plaintiffs have had a
19 full and fair second opportunity to plead standing and have failed to do so. This
20 Court should dismiss the action with prejudice for lack of standing and failure to
21 cure the pleadings.
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1 **IV. Plaintiffs’ FAC Seeks Relief Not Requested from EPA, Depriving This**
2 **Court of Jurisdiction under TSCA.**

3 Plaintiffs’ FAC should be dismissed for an additional threshold reason:

4 Plaintiffs seek relief they never petitioned EPA to consider. Plaintiffs asked EPA to
5 ban all refinery use of HF but are now seeking a general, undefined rulemaking to
6 address “current” refinery use of HF. Because Plaintiffs have materially changed
7 their requested relief, there is no valid Section 21 claim, and this Court should
8 dismiss the FAC.
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11 TSCA establishes a carefully circumscribed petition-and-review mechanism.
12 Section 21(a) permits a party to petition EPA “to initiate a proceeding for the
13 issuance, amendment, or repeal of a rule under [Section 6].” 15 U.S.C. § 2620(a). If
14 EPA denies the petition, the petitioner may bring a civil action “to compel the
15 Administrator to initiate a rulemaking proceeding *as requested in the petition.*” *Id.*
16 § 2620(b)(4)(A) (emphasis added). The statute thus textually limits judicial review
17 to EPA’s refusal to initiate the particular rulemaking the petitioner actually sought.
18 TSCA does not allow a party to ask a court to compel EPA to initiate a reframed
19 request that EPA never had the opportunity to evaluate. This limitation is dispositive
20 here.
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24 In their Petition, Plaintiffs explicitly asked EPA to “promptly begin a TSCA
25 Section 6(a) rulemaking to ban refinery-related HF use.” Petition at 56. EPA
26 evaluated that precise request and denied it. *See* 90 Fed. Reg. at 20,575 (“The
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1 petition requests that EPA establish a TSCA rule prohibiting the use of hydrogen
2 fluoride (HF) in domestic oil refining EPA has denied the TSCA petition for
3 the reasons set forth in this notice.”). Plaintiffs acknowledged this framing in their
4 original complaint, which alleged that they had asked EPA to “promptly begin a
5 TSCA Section 6(a) rulemaking to ban refinery-related HF use.” Dkt. 1 ¶ 95.
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8 In their FAC, Plaintiffs conspicuously abandon that request. They struck all
9 reference to a “ban” and instead seek a declaration from this Court that “current”
10 refinery use of HF presents unreasonable risks—a term Plaintiffs did not use in their
11 original complaint, instead suggesting in the original complaint that *any and all*
12 refinery use of HF presented risks such that a total ban was required. Their request
13 now is that EPA “commence a Section 6(a) risk-management rulemaking to
14 eliminate” the risks of *current* HF use. FAC ¶ 134. Although subtle, that is a
15 *fundamentally* different request. By creatively recasting their requested relief as an
16 open-ended demand for “risk management,” Plaintiffs are seeking regulatory
17 pathways never presented in their Petition to EPA.
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21 But creatively or not, TSCA does not permit this bait-and-switch. *See*
22 15 U.S.C. § 2620(b)(4)(A). A petition to ban a chemical substance raises materially
23 different factual and policy questions than a petition seeking unspecified regulations
24 short of a ban. EPA’s denial addressed whether Plaintiffs had shown that a
25 categorical prohibition on refinery HF use was “necessary” under Section 6. It was
26 not asked to determine whether some other regulatory approach might be warranted.
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1 Allowing Plaintiffs to proceed on their amended theory would improperly convert
2 TSCA Section 21 into an open-ended license for judicial policymaking and deprive
3 EPA of its congressionally-assigned role. Plaintiffs’ claims should be dismissed.
4

5 **V. Alternatively, the FAC Should Be Dismissed Because TSCA Forecloses**
6 **Plaintiffs’ Requested Relief.**

7 The FAC continues to fail on the merits. Despite their amendment, Plaintiffs
8 continue to ask the court to stretch TSCA beyond its text and structure to regulate
9 extreme, accidental events. Congress did not authorize TSCA to operate as a general
10 disaster-prevention statute. Because the requested relief lies outside TSCA’s
11 statutory scope, the FAC fails to state a claim and should be dismissed with
12 prejudice.
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15 **A. Legal Standard**

16 “[A] complaint must contain sufficient factual matter . . . to ‘state a claim to
17 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
18 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Somers v.*
19 *Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). A court must disregard “labels and
20 conclusions” disguised as facts and “formulaic recitation[s] of the elements of a
21 cause of action.” *See Iqbal*, 556 U.S. at 678, 681.
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24 **B. TSCA Confirms That EPA Correctly Declined to Initiate**
25 **Rulemaking Based on Hypothetical Accidental Releases.**

26 Congress intended TSCA to function as a “regulatory gap[.]” filler, addressing
27 unreasonable risks of injury posed by chemical substances under their *conditions of*
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1 use—that is, during typical and foreseeable use. *Safer Chems., Healthy Fams. v.*
2 *EPA*, 943 F.3d 397, 406 (9th Cir. 2019); S. Rep. No. 94-698, at 1 (1976), *as*
3 *reprinted in* 1976 U.S.C.C.A.N. 4491, 4491. Refinery explosions, truck collisions,
4 and similar disasters are not “uses” of a chemical in any sense. They are failures of
5 equipment, transportation systems, or human conduct, and they cannot underlie a
6 Section 6 rulemaking.
7

8
9 1. *Section 6 Is Limited to “Conditions of Use” and Excludes*
10 *Accidental and Catastrophic Events.*

11 Plaintiffs’ attempt to compel a TSCA Section 6 rulemaking to ban (or
12 otherwise regulate) HF fails at the threshold because the statute does not reach
13 accidental or catastrophic chemical releases. Congress made that limitation explicit
14 in 2016, when it amended TSCA to confine Section 6 risk evaluations to a chemical
15 substance’s “conditions of use.” *Frank R. Lautenberg Chemical Safety for the 21st*
16 *Century Act*, Pub. L. No.114-182, 130 Stat. 448 (codified at 15 U.S.C. § 2605). The
17 statute defines “conditions of use” narrowly: “the circumstances, as determined by
18 [EPA], under which a chemical substance is intended, known, or reasonably
19 foreseen to be manufactured, processed, distributed in commerce, used, or disposed
20 of.” 15 U.S.C. § 2602(4). Congress did not include “accidents,” “catastrophes,”
21 “spills,” or other similar situations in TSCA’s definition of “conditions of use.”
22 15 U.S.C. § 2601 *et seq.* In fact, those words do not appear *anywhere* in TSCA. *Id.*
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1 That omission is telling. When Congress intends to regulate accidental
2 releases, it does so expressly—and has done so in other statutes. *See, e.g.*, CAA,
3 42 U.S.C. § 7412 (addressing “accidental releases” of HF); CWA, 33 U.S.C. § 1321
4 (regulating “discharges” and “spills”); Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*
5 (regulating “incidences” including “discharges”). Courts presume that “‘Congress
6 acts intentionally and purposely in the disparate inclusion or exclusion’ of language
7 in a statute.” *City of San Francisco v. EPA*, 604 U.S. 334, 335 (2025). TSCA’s
8 silence on accidents confirms what its text and structure already make clear:
9 Section 6 does not authorize EPA to regulate catastrophic releases.
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13 Congress directed EPA to consider “the likely duration, intensity, frequency,
14 and number of exposures under the conditions of use of the chemical substance”
15 when conducting risk evaluations. 15 U.S.C. § 2605(b)(4)(F)(iv). And the 2016
16 amendments settle EPA’s central role in defining what qualifies as a “condition of
17 use.” *See id.* § 2602(4) (conditions of use “determined by [EPA]”). EPA has
18 exercised its authority to define “condition of use,” *see id.*, making clear “that it
19 does not consider exposures from [catastrophic, etc.] circumstances to be reasonably
20 foreseen and, therefore, generally would not assess them as part of a risk
21 evaluation.” 90 Fed. Reg. at 20,576; *see also* 90 Fed. Reg. 45,690, 45,697 (Sept. 23,
22 2025) (reiterating that EPA “has consistently excluded from the scope of risk
23 evaluations” consideration of “accidents, spills, leaks, and extreme weather-related
24 events like hurricanes and wildfires”).
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1 Indeed, EPA’s use of Section 6 illustrates how seriously it takes its mandate
2 to consider only foreseeable conditions of use. When EPA most recently completed
3 the review process to address concerns about worker inhalation of a chemical used
4 in vapor form, it considered only the chemical’s “manufacture (including import),
5 processing, distribution in commerce, industrial and commercial use, consumer use,
6 and disposal”—not the risk of accidents, spills, etc. *See* 89 Fed. Reg. 102,568
7
8 (Dec. 17, 2024) (regulating use of trichloroethylene). This practice is consistent
9 across EPA’s Section 6 rulemaking history. *See, e.g.*, 89 Fed. Reg. 103,560
10 (Dec. 18, 2024) (perchloroethylene); 89 Fed. Reg. 103,512 (Dec. 18, 2024) (carbon
11 tetrachloride); 89 Fed. Reg. 21,970, 22,005 (Mar. 28, 2024) (chrysotile asbestos);
12 89 Fed. Reg. 39,254, 39,296 (May 8, 2024) (methylene chloride).
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16 Congress made the deliberate choice to limit TSCA to risks arising from the
17 typical, recurring, and foreseeable use of a chemical substance, not from
18 extraordinary disasters or system failures. Yet Plaintiffs focus on the possibility of
19 “worst-case” HF releases, events that are rare even on the face of the additions in
20 the FAC. FAC ¶ 76. As EPA explained in denying the Petition, “catastrophic
21 accidents, extreme weather events, and other natural disasters” are not foreseeable
22 conditions of use under TSCA if such events “do not lead to *regular and predictable*
23 exposures associated with a given condition of use.” 90 Fed. Reg. at 20,577
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25 (emphasis added). “A future one-time accident caused by an atypical one-time set of
26 circumstances,” EPA concluded, is not “reasonably foreseen.” *Id.* (quoting
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1 15 U.S.C. § 2602(4)). That ends the matter. Plaintiffs’ reliance on a handful of
2 isolated incidents spread over four decades cannot transform extraordinary accidents
3 into ordinary conditions of use within the meaning of TSCA.
4

5 TSCA does not treat such scenarios as “reasonably foreseen” conditions of
6 use, and EPA correctly declined to do so here.
7

8 2. *TSCA’s Gap-Filling Role Further Precludes Duplicative*
9 *Regulation of Risks Addressed by Other Statutes.*

10 Plaintiffs’ FAC also fails because Congress did not design TSCA to impose
11 duplicative regulation on chemical releases already governed by other federal
12 statutes. TSCA is a *gap-filling* statute, enacted to address unreasonable risks posed
13 by “chemical substances and mixtures”—particularly new and emerging
14 chemicals—“which are constantly being developed and produced.” 15 U.S.C.
15 § 2601(a)(1), (2). It was not intended to displace or replicate existing regulatory
16 regimes that already govern emissions, discharges, spills, transportation accidents,
17 and industrial safety.
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19 That distinction is critical to TSCA’s design. Unlike statutes such as the
20 CAA, EPCRA, CWA, or CERCLA, TSCA regulates the “*chemicals themselves*
21 (rather than regulation of discharges, emissions, ambient air, or consumer
22 products).” *Safer Chems., Healthy Fams.*, 943 F.3d at 406 (quoting S. Rep. No. 94-
23 698, at 1 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 4491, 4491) (emphasis added).
24 Plaintiffs’ theory would collapse that distinction by transforming TSCA into a
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1 backstop for accident prevention at refineries and during transportation, even though
2 those risks are already extensively regulated elsewhere.

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4 To effectuate Congress’s design, EPA has determined that it “may, on a case-
5 by-case basis, exclude certain activities that [it] has determined to be conditions of
6 use,” including activities “that ha[ve] been adequately assessed by another
7 regulatory agency, particularly where the other agency has effectively managed the
8 risks.” 82 Fed. Reg. 33,726, 33,729 (July 20, 2017). EPA maintains discretion to
9 define the scope of risk evaluations, as TSCA does not authorize regulation of
10 activities governed by other statutory schemes, especially where EPA has expressly
11 declined to regulate because another agency is already doing so. *See Ctr. for Cmty.*
12 *Action & Env’t Just. v. BNSF Ry.*, 764 F.3d 1019, 1030 (9th Cir. 2014) (“The
13 statutory and legislative histories make clear that Congress, having identified
14 specific reasons for its decision, intended to exclude indirect sources from federal
15 regulation.”).

16
17 The transportation, storage, and use of HF at refineries are already governed
18 by extensive regulatory programs designed to prevent and mitigate accidental
19 chemical releases of HF. Those regimes were adopted in direct response to past
20 chemical accidents, through deliberate congressional action and coordinated
21 regulatory oversight. Congress enacted targeted statutes and delegated authority to
22 agencies with specialized expertise, while the refining industry implemented
23 rigorous safety standards and mitigation measures to comply with those mandates.
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1 Those programs include EPA’s CAA RMP and OSHA’s PSM requirements,
2 which obligate refinery owners and operators to implement extensive mitigation
3 measures and safeguards to prevent and respond to accidental HF releases. These
4 consist of process-specific hazard analysis, onsite employee training,
5 implementation of mechanical integrity and leak detection systems, and incident
6 response planning. HF transportation is separately regulated by DOT under its
7 HMR, which impose detailed requirements for labeling, placarding, packaging,
8 handling, and transport of HF to protect the public and reduce the risk of
9 transportation-related incidents (i.e., the very risks Plaintiffs invoke here). *See* FAC
10 ¶ 5 (“Trains and trucks carry HF thousands of miles across our country, jeopardizing
11 people along the way.”). In addition, the American Petroleum Institute designed
12 Recommended Practice 751 for the Safe Operation of HF Alkylation Units to
13 “assist[] refinery operators in implementing maintenance, integrity management and
14 other safety programs for [HF] acid alkylation units.”¹

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20 Plaintiffs’ attempt to contort TSCA into an all-purpose accident-prevention
21 statute mirrors the theory rejected by the Ninth Circuit in *Center for Community*
22 *Action*. There, the plaintiff filed a citizen suit under the Resource Conservation and
23 Recovery Act that sought to enjoin railway companies from operating heavy-vehicle
24 engines at their railyards, arguing that particulate matter air in diesel exhaust
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¹ American Petroleum Institute, Recommended Practice 751, 5th Edition, <https://www.api.org/products-and-services/standards/important-standards-announcements/751>.

1 constituted the “disposal” of solid waste. *Ctr. for Cmty. Action & Env’t Just.*,
2 764 F.3d at 1021. The district court dismissed the claim, and the Ninth Circuit
3 affirmed. In doing so, the court explained that particulate matter air emissions were
4 already subject to comprehensive regulation under the CAA, and that allowing
5 plaintiffs to regulate those emissions through a different statute would be contrary to
6 Congress’s “careful and reasoned decision” to assign regulatory authority for air
7 emissions under the CAA. *Id.* at 1030.

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10 The same logic applies here. Plaintiffs ask this Court to regulate speculative
11 accidental releases of HF from refineries through TSCA, even though Congress has
12 already addressed those risks through a “careful and reasoned decision” to vest
13 regulatory authority in other statutory schemes administered by agencies with
14 specialized expertise. *Id.* Put differently, DOT, EPA, and OSHA have “adequately
15 assessed” the risks posed by HF transportation, storage, and use in refineries and
16 have “effectively managed th[ose] risks.” 82 Fed. Reg. at 33,729.

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20 TSCA Section 9 (“Relationship to other Federal laws”) further confirms that
21 Congress did not intend for TSCA to regulate risks already addressed by other
22 statutes. Under that provision, if EPA determines that a chemical presents an
23 unreasonable risk under its conditions of use and that another agency’s law can
24 reduce that risk, EPA must refer the matter to that agency. 15 U.S.C. § 2608(a)(1).
25 TSCA bars further EPA action after another agency concludes that the activity does
26 not pose a risk or takes steps to address it. *Id.* § 2608(a)(2). Section 9 reflects a
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deliberate congressional choice to avoid overlapping regulation. To the extent Plaintiffs believe existing refinery-safety or transportation regulations are inadequate, their recourse lies with the agencies Congress charged with administering those regimes. EPA’s refusal to initiate a duplicative Section 6 rulemaking therefore accords with the statute’s text and design.

VI. CONCLUSION

For the foregoing reasons, WSPA respectfully requests that the Court grant this motion and dismiss Plaintiffs’ claims with prejudice. Plaintiffs have already had a full opportunity to amend the complaint for the very same defects identified in EPA’s and WSPA’s prior motions to dismiss. Yet the FAC confirms that those defects cannot be cured. Further amendment would be futile.

DATED: February 20, 2026

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Proposed Intervenor, certifies that this brief contains 6,932 words, which complies with the word limit of L.R. 11-6.1.

DATED: February 20, 2026

/s/ Jason S. Mills
Jason S. Mills

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February 2026, a true and complete copy of the foregoing has been filed with the Clerk of the Court pursuant to the Court’s electronic filing procedures, and served on counsel of record via the Court’s electronic filing system.

/s/ Jason S. Mills
Jason S. Mills