

1 Jason S. Mills (SBN 225126)
2 jason.mills@morganlewis.com
3 MORGAN, LEWIS & BOCKIUS LLP
4 300 S. Grand Avenue
5 Los Angeles, CA 90071
6 Telephone: +1 213 612 7387
7 Facsimile: +1 213 612 2501

8 Justin A. Savage (*pro hac vice*)
9 jsavage@sidley.com
10 SIDLEY AUSTIN LLP
11 1501 K Street, NW
12 Washington, DC 20005
13 Telephone: +1 202 736 8000
14 Facsimile: +1 202 736 8711

15 Nima H. Mohebbi (SBN 275453)
16 nima.mohebbi@sidley.com
17 SIDLEY AUSTIN LLP
18 1999 Avenue of the Stars
19 Los Angeles, CA 90067
20 Telephone: +1 310 595 9500
21 Facsimile: +1 310 595 9501

22 *Attorneys for Western States Petroleum*
23 *Association*

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

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

Brooklyn Hildebrandt (SBN 350707)
bhildebrandt@sidley.com
SIDLEY AUSTIN LLP
350 S. Grand Avenue
Los Angeles, CA 90071
Telephone: +1 213 896 6000
Facsimile: +1 213 896 6600

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

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

1 Office of Chemical Safety and Pollution
2 Prevention,
3 Defendants.

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

4 Action Filed: July 8, 2025
5 Trial Date: Not set
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1 **I. Introduction**

2 Congress confined EPA’s authority under TSCA Section 6 to risks arising from
3 a chemical substance’s conditions of use—the circumstances under which it “is
4 *intended, known, or reasonably foreseen* to be manufactured, processed, distributed in
5 commerce, used, or disposed of.” 15 U.S.C. § 2602(4) (emphasis added). Congress
6 did not write accident, catastrophe, explosion, or spill into that definition, though it
7 knew how to—and has in other statutes that directly regulate HF releases. EPA,
8 applying Congress’s statutory text, declined to initiate the total HF ban that Plaintiffs
9 requested. Whether to compel a different decision is, by Congress’s design, a matter
10 courts cannot reach.

11
12 Plaintiffs’ opposition does not engage with the law. On standing, Plaintiffs
13 invoke a “credible threat” talisman stripped of context, then string-cite cases involving
14 identifiable operational defects at identifiable facilities—a far cry from their
15 generalized speculation that some refinery, somewhere, might one day suffer some
16 accident under some confluence of conditions. On jurisdiction, Plaintiffs concede they
17 petitioned EPA for a ban yet now ask this Court to compel a different rulemaking,
18 resisting TSCA’s command that judicial review is limited to relief *as requested in the*
19 *petition*. And on the merits, Plaintiffs ask this Court to rewrite “conditions of use” to
20 mean its opposite—misuse, malfunction, and disaster—contradicting the statutory text
21 and ignoring the other regulatory regimes that Congress chose to address those risks.
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1 Plaintiffs’ opposition makes clear their desire is to transfer authority from the
2 agency Congress empowered to a court. That transfer has no statutory warrant. This
3 Court should dismiss the First Amended Complaint with prejudice.
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5 **II. Plaintiffs’ Theory of Injury Is Too Speculative to Confer Standing.**

6 Plaintiffs’ opposition does not confront the threshold problem: their alleged
7 injury remains a string of contingencies—*if* a third party causes an HF release, *if*
8 mitigation systems fail, *if* weather conditions are ripe to carry a cloud of HF beyond
9 a facility’s borders, and *if* that cloud reaches a member—that Article III does not
10 credit. The cases Plaintiffs cite for standing involve scenarios unlike those alleged
11 here: generalized speculation about an entire industry.
12

13
14 **A. Plaintiffs Fail to Allege an Injury-in-Fact.**

15 Plaintiffs essentially allege that their members face a threat of future harm
16 because, somewhere across all refineries nationwide, a release of HF might one day
17 occur. Resp. Br. at 17–18. But as a matter of law, Plaintiffs’ escalating language
18 about credible threats and probabilistic harm cannot transform conjecture into an
19 Article III injury.
20

21 *First*, Plaintiffs repeatedly invoke the term “credible threat,” Resp. Br. at 18,
22 as if those words alone resolve the inquiry. But “[a]lthough probabilistic harm can
23 create standing, it does not replace the foundational rule that a future injury must be
24 imminent in order to satisfy the injury-in-fact requirement.” *Int’l Partners for*
25 *Ethical Care Inc. v. Ferguson*, 146 F.4th 841, 852 (9th Cir. 2025) (citation omitted),
26
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1 *petition for cert. docketed*, (U.S. Jan. 15, 2026) (No. 25-840). Probabilistic harm
2 asks whether a plaintiff has shown that “his likelihood of harm has *significantly*
3 *increased*, bringing his potential for injury from *certainly imaginable* to ‘*certainly*
4 *impending*.’” *Id.* (emphases added) (citation omitted). Plaintiffs have not made that
5 showing. They allege only that HF can be dangerous under some circumstances, that
6 some refineries use it, and that some refineries have had a release in the past. None
7 of that establishes that any *particular* release is imminent as to any *particular*
8 member.

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12 *Second*, Plaintiffs conflate severity with imminence. Allegations regarding the
13 potential dangers in the event of a HF release, Resp. Br. at 19–22, do not go to
14 imminence. Article III asks whether an injury is certainly impending, not whether it
15 could be bad if it occurred. *San Luis Obispo Mothers for Peace v. NRC*, 100 F.4th
16 1039, 1054 (9th Cir. 2024). On Plaintiffs’ logic, anyone living near any sufficiently
17 dangerous chemical would have standing to demand its prohibition, which is the
18 definition of the “generalized grievance” Article III forbids.

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21 Plaintiffs’ proximity cases prove the opposite of what they assert. Each of
22 those cases involved a specific, identified regulatory *failure* at a specific, identified
23 facility. That specificity is critical to the standing analysis. *Eng v. EPA*, 172 F.4th
24 747 (9th Cir. 2026), for example, only underscores Plaintiffs’ foundational problem.
25 *Eng* involved a CAA permit challenge in which standing was uncontested; the court
26 observed in a footnote that a plaintiff who lived near a particular refinery could
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1 challenge a particular permit alleged to violate particular RMP rules. *Id.* at 750 n.1.
2 That is nothing like this case. Plaintiffs here challenge a categorical TSCA-
3 rulemaking petition denial; they identify no specific facility-level violation that
4 EPA’s denial enabled; and they do not seek to enjoin any specific operation.
5

6 The same distinction defeats Plaintiffs’ reliance on other cases: *San Luis*
7 *Obispo Mothers*, 100 F.4th at 1054 (challenge to specific exemption that allowed
8 individual facility to operate beyond the imminent expiration of its nuclear license);
9 *Pub. Watchdogs v. S. Cal. Edison Co.*, 2019 WL 6497886, at *3, *7 (S.D. Cal. Dec.
10 3, 2019) (known, defective storage canisters at specific facility); *Texas v. NRC*, 78
11 F.4th 827, 834–36 (5th Cir. 2023) (challenge to individual facility’s license to store
12 nuclear fuel), *rev’d and remanded by* 605 U.S. 665 (2025); *Covington v. Jefferson*
13 *Cnty.*, 358 F.3d 626, 633–36, 638 (9th Cir. 2004) (specific landfill operating with
14 violations of federal waste laws); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d
15 1094, 1112 (9th Cir. 2002) (procedural NEPA injury from agency’s specific failure
16 to analyze the impact of a specific new development ban), *abrogated by Wilderness*
17 *Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011). The specificity of the
18 circumstances of those cases is not present here.
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24 Third, Plaintiffs attempt to salvage their speculative claims by alleging
25 general conditions like aging refineries, climate change, and refinery safety records.
26 Resp. Br. at 22–23. But these factors fail to establish any probability of harm
27 sufficient to demonstrate an imminent injury. The Ninth Circuit’s probabilistic harm
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1 framework requires Plaintiffs to show that their potential for injury has moved
2 “from certainly imaginable to ‘*certainly impending*.’” *Int’l Partners*, 146 F.4th at
3 852 (emphasis added) (citation omitted). Saying that refineries are old and the
4 climate is warming says nothing about whether any particular release at any
5 particular facility is impending as to any particular plaintiff. It is a textbook example
6 of what *Clapper v. Amnesty International USA* forbids: a chain of contingencies in
7 which equipment might degrade, weather might intensify, mitigation might fail, and
8 a release might occur and reach a member. 568 U.S. 398, 410 (2013).

11
12 Plaintiffs’ invocation of *San Luis Obispo Mothers for Peace* does not bridge
13 the gap. That case turned on the imminent expiration of a legally-required operating
14 license at a nuclear facility. 100 F.4th at 1054. Refinery aging has no comparable
15 trigger. There is no upcoming moment when refinery safety regulations will lapse;
16 on the contrary, the RMP, PSM, HMR, and state regimes governing HF use will
17 continue to apply with full force tomorrow, next year, and for the foreseeable future.
18
19 See WSPA Br. at 4–9. Nor does Plaintiffs’ secondary theory that even a near-miss
20 imposes evacuation costs and lost wages help. Resp. Br. at 21, 26. That theory still
21 rests on a hypothetical release or near-release; it relocates where imminence falls in
22 the analysis, it does not solve it. See *Thomas v. Cnty. of Humboldt*, 124 F.4th 1179,
23 1188 (9th Cir. 2024) (finding standing because challenged fines had “already been
24 imposed” on plaintiffs) (cited in Resp. Br. at 21).

1 Plaintiffs’ catalogue of past incidents similarly fails to resolve the imminence
2 problem. The most serious off-site event Plaintiffs identify occurred in 1987, before
3 Congress enacted the 1990 CAA Amendments to address such accidents. The other
4 releases Plaintiffs reference are rare events spread across decades, often confined to
5 refinery property, and some predating the modern RMP/PSM regime. Plaintiffs’
6 headline numbers—fourteen HF releases at Torrance, six at Wilmington, eight at
7 Trainer over four decades, Resp. Br. at 12; FAC ¶ 107—do not prove their intended
8 point. Not only did none of those releases produce the catastrophic off-site impacts
9 Plaintiffs predict, they demonstrate that decades of HF use under existing federal
10 and state regulatory regimes have not produced the harm Plaintiffs say is imminent.
11

12 Plaintiffs’ reliance on *Covington* and *Public Watchdogs* is thus misplaced,
13 because those cases involved clusters of recent (and often egregious) regulatory
14 compliance violations at a single facility (not a multi-decade, industry-wide laundry
15 list). *See* 358 F.3d at 634–36, 638 (trash fires, biological waste dumping, hazardous
16 waste leaks, scavenger swarms, and groundwater contamination at same landfill in
17 six years prior to suit); 2019 WL 6497886 at *3, *7 (two failures to control a “49-
18 ton canister full of deadly radioactive ... waste” at same power plant in two years
19 prior to suit). Plaintiffs point to a single observation by the U.S. Chemical Safety
20 and Hazard Investigation Board that releases at one refinery between 2011 and 2012
21 “suggest that there *may* be significant weaknesses” at *that* facility, Resp. Br. at 22;
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1 FAC Ex. 1 ¶ 39, which is not evidence that a release affecting any of Plaintiffs’
2 members is impending now.¹
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4 Fourth, Plaintiffs’ insistence that they need not allege past harm to establish
5 standing, Resp. Br. at 23–25, knocks down a strawman. WSPA has not argued that
6 past harm is required. WSPA’s point—consistent with the law—is that Plaintiffs
7 relied on past harm to support the probability of future injury in the first instance;
8 without past harm, a new cluster of facility-level violations, an upcoming regulatory
9 failure, or anything else that rises above pure speculation about future events,
10 Plaintiffs have nothing left to sustain imminence. The cases Plaintiffs cite for the
11 proposition that future injury can be established without past harm—*Monsanto Co.*
12 *v. Geertson Seed Farms*, 561 U.S. 139, 153–54 (2010), *Animal Legal Defense Fund*
13 *v. Azar*, 2021 WL 4477901, at *3 (N.D. Cal. Feb. 23, 2021), and *Central Delta*
14 *Water Agency v. United States*, 306 F.3d 938, 950 (9th Cir. 2002)—each involved a
15 concrete, immediate factual predicate: the elimination of an *existing* regulation that
16 would expose plaintiffs’ crops to genetic contamination, a novel drug poised to
17 come to market and enter the food supply, and a new water plan the promulgating
18 agency predicted would cause river salinity to exceed safe levels. Plaintiffs here
19 allege no comparable predicate. Their argument that the cost of protective measures
20 would constitute injury, Resp. Br. at 30 (citing *NRDC v. FDA*, 710 F.3d 71, 85 (2d
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27 ¹ Nor is the list of incidents that Plaintiffs attach as Exhibit 1 to the FAC, the majority of which
28 injured no one outside a refinery, and none of which came close to causing mass injury. See
WSPA Br. 17–18.

1 Cir. 2013))), gets them nowhere because they identify no concrete protective
2 measures any member has actually taken in response to EPA’s denial. *Central Delta*
3 *Water Agency*’s observation that environmental injuries are sometimes “*difficult or*
4 *impossible to remedy*” if not addressed early, 306 F.3d at 950 (emphasis added),
5 does not lower Article III’s bar; the court still demanded a concrete and imminent
6 injury.
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9 Fifth, the food-safety and antibacterial-soap cases Plaintiffs invoke cut against
10 jurisdiction. *See NRDC*, 710 F.3d at 82 (handwashing with triclosan-containing
11 soap); *Ctr. for Food Safety v. Perdue*, 517 F. Supp. 3d 1034, 1040 (N.D. Cal. 2021)
12 (imminent consumption of food potentially contaminated with pathogens); *Baur v.*
13 *Veneman*, 352 F.3d 625, 634 (2d Cir. 2003) (similar). In each case, the plaintiff was
14 exposed to the chemical or pathogen at issue in the ordinary course of using the
15 product, and therefore pled an imminent injury tied to that exposure. Plaintiffs
16 allege no comparable risk of exposure from refinery operations.
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20 Sixth, Plaintiffs’ argument that Article III should bend because TSCA is
21 precautionary, Resp. Br. at 24, has no constitutional basis. A statute’s purpose
22 cannot upend the constitutional injury-in-fact requirement.
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24 Seventh, Plaintiffs’ reliance on *Maya v. Centex Corp.* and similar cases for the
25 proposition that a causation chain does not fail simply because it has several links,
26 Resp. Br. at 25, misreads those decisions. *Maya* required that each link remain
27 *plausible*, not hypothetical. 658 F.3d 1060, 1070 (9th Cir. 2011). The links in
28

1 Plaintiffs’ chain are stacked contingencies, each depending on the next: that a
2 catastrophic release will occur, that mitigation will fail, that the wind will blow
3 toward a particular member, that the member will be exposed, that the exposure will
4 be harmful. That is precisely the highly attenuated chain of possibilities the
5 Supreme Court rejected in *Clapper*. 568 U.S. at 410.
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7

8 **B. Plaintiffs Fail to Allege a Traceable or Redressable Injury.**

9 On traceability, where the link between government action (or inaction) and
10 the asserted harm depends on the independent action of a third party, Plaintiffs must
11 allege facts showing the third party will predictably respond in a way that makes the
12 injury certainly impending. *See Murthy v. Missouri*, 603 U.S. 43, 57–58, 69–73
13 (2024). Plaintiffs offer only conjecture about what refiners would do in response to
14 EPA maintaining the status quo.
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17 On redressability, Plaintiffs themselves describe the relief they seek as open-
18 ended: “mandated physical safeguards, volume limits, a ban on refinery HF use, or
19 other measures.” Resp. Br. at 30. They cannot say what subset of these “measures”
20 might meaningfully reduce the speculative threat they describe, particularly given
21 the comprehensive RMP, PSM, HMR, EPCRA, and state regimes already in place.
22 Finally, EPA action affecting the use of HF by *refineries* would not impact the use
23 of HF by other industries across the country, failing to redress members’ concerns
24 around HF, which extend beyond refinery use. Thus, Plaintiffs offer only
25 speculation that their requested relief would alleviate their injury.
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1 **C. Plaintiffs Fail to Distinguish WSPA’s and EPA’s Cases.**

2 Plaintiffs’ attempts to distinguish the cases on which WSPA relies do not
3 credibly engage the legal principles those decisions announced.
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5 Take *Clapper*. Plaintiffs distinguish it on the ground that a federal statute
6 prevented the government from lawfully targeting U.S. citizens for surveillance, so
7 the plaintiffs there could only “assume” they would be surveilled. Resp. Br. at 27 &
8 n.6. The *Clapper* plaintiffs pointed to a statute that authorized the conduct they
9 feared (incidental surveillance). 568 U.S. at 410–13. Plaintiffs here assert an injury
10 that depends on refineries behaving in ways no laws sanction (and even prohibit or
11 prevent). *Clapper*’s rejection of “highly attenuated chain[s] of possibilities,” *id.* at
12 410, applies *a fortiori*.
13
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15 Take *International Partners for Ethical Care*. Plaintiffs distinguish it on the
16 ground that the plaintiffs there did not allege facts showing their children sought
17 gender-affirming care, and thus did not substantiate their fear they might be denied
18 information that their children were seeking such care at a shelter. *See* Resp. Br.
19 at 27–28. But the Ninth Circuit’s holding announced a legal rule: that probabilistic
20 harm requires showing a “significantly increased” likelihood that brings injury from
21 “certainly imaginable to ‘certainly impending.’” 146 F.4th at 852 (citation omitted).
22 Plaintiffs have made no showing their injury is “certainly impending.”
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26 Take EPA’s recital of *FDA v. Alliance for Hippocratic Medicine*. Plaintiffs
27 distinguish it on the ground that federal conscience laws shielded doctors from
28

1 being forced to perform abortions, “breaking” the causal chain. Resp. Br. at 28. The
2 lesson of *Alliance* is that an alleged causal chain is broken when other legal regimes
3 intervene to prevent the harm. The chain here is broken the same way. RMP, PSM,
4 HMR, EPCRA, CERCLA, and their state counterparts exist for the very purpose of
5 preventing releases. Plaintiffs cannot evade *Alliance* by distinguishing its statutory
6 shield while ignoring the regulatory shields that occupy the same role here.
7

8
9 Take *California Unions for Reliable Energy v. U.S. Department of Interior*.
10 Plaintiffs say it turned on there being “essentially zero chance” of harm, Resp. Br. at
11 28, as if to suggest their chance is meaningfully greater. But the court in *California*
12 *Unions* did not engage in probability arithmetic; it held the alleged chain of
13 hypotheticals too speculative as a matter of law because plaintiffs’ injury depended
14 on unlikely events and third-party actions. 2011 WL 7505030, at *5–6 (C.D. Cal.
15 Nov. 9, 2011). The same is true here. Plaintiffs allege an injury that depends on the
16 hypothetical lapses of refiners and transporters—third parties whose conduct cannot
17 simply be assumed—and on the hypothetical confluence of weather patterns and
18 equipment failures.
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22 And take *Munns v. Kerry*, another case raised by EPA. 782 F.3d 402 (9th Cir.
23 2015). Plaintiffs distinguish it on the ground that the past policy that allegedly
24 harmed the plaintiff was no longer in effect. Resp. Br. at 28. That distinction
25 concedes the principle WSPA invokes: standing requires that the defendant’s
26 current conduct create imminent injury to the plaintiff. EPA’s denial of a TSCA
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1 petition does not put HF into anyone’s body or onto any property. EPA’s inaction is
2 not the source of any new, imminent harm.

3
4 **III. Plaintiffs’ *Post Hoc* Reframing of Their Request Leaves This Court
5 Without Jurisdiction.**

6 Plaintiffs agree they petitioned EPA for a ban. Resp. Br. at 41. Their FAC, by
7 contrast, asks this Court to compel an *undefined* rulemaking aimed at *current*
8 refinery use of HF. FAC ¶ 134. TSCA does not permit that switch.
9
10 Section 21(b)(4)(A) authorizes a civil action only “to compel the Administrator to
11 initiate a rulemaking proceeding *as requested in the petition*.” 15 U.S.C.
12 § 2620(b)(4)(A) (emphasis added). The relief Plaintiffs now seek is not what they
13 requested in their petition. The Court therefore lacks statutory jurisdiction.
14

15 First, Plaintiffs read “as requested in the petition” out of the statute. They
16 argue that Section 21(b)(4)(A)’s reference to the “rulemaking proceeding as
17 requested in the petition” means only the general species of relief enumerated in
18 Section 21(a), i.e., issuance, amendment, or repeal. Resp. Br. at 41. In their view, a
19 petition for *a* rulemaking under Section 21(a) authorizes them to seek *any*
20 rulemaking remedy in court. *See id.* That cannot be right. If Congress had meant to
21 authorize judicial review of any rulemaking demand within the broad family of
22 Section 21(a) petitions, it would not have written the words “as requested in the
23 petition.” Those words must have meaning.
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1 Second, Plaintiffs’ alternative argument—that their petition was a request for
2 an *undefined* rulemaking all along, and the ban was just a suggested option, Resp.
3 Br. at 41–42 & n.19—cannot be reconciled with the record. Plaintiffs petitioned
4 EPA with an explicit demand that it initiate a rulemaking because, absent a total
5 ban, HF created an unreasonable risk: “This petition sets out the facts establishing
6 why EPA must establish a Section 6(a) rule prohibiting the use of HF in domestic
7 oil refining to eliminate unreasonable risks to public health and the environment.”
8 Petition at 3. Plaintiffs insisted that EPA’s “ongoing failure to prohibit that use—is
9 causing . . . people . . . to live under the threat of a toxic cloud.” *Id.* at 24. Plaintiffs
10 rejected alternative regulations short of a ban, explaining that “federal reporting
11 requirements, occupational and transportation standards for HF,” and “voluntary
12 industry guidance” “cannot eliminate the unreasonable risks that refineries’ use of
13 HF presents,” *see id.* at 53–54, and arguing “there is no guaranteed mitigation in
14 place at any U.S. HF-using refinery today that could prevent or fully suppress
15 formation of an HF cloud.” *Id.* at 54.

21 EPA evaluated and denied that request. 90 Fed. Reg. 20,575, 20,575 (May 15,
22 2025). Plaintiffs cannot now relabel their ban demand as a request for some lesser,
23 undefined rulemaking and then sue to compel the lesser rulemaking they did not ask
24 for. The point is beyond formalism; EPA must be the one to evaluate, in the first
25 instance, whether some lesser regulatory measure is *necessary* under Section 6.
26 Plaintiffs squarely deprived EPA of that opportunity by demanding EPA ban HF as
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1 the only way to address the “unreasonable risk” presented by HF. *See* 15 U.S.C.
2 § 2605(b)(4)(A). Plaintiffs want this Court, not EPA, to decide what regulatory
3 response (if any) is appropriate. Section 21 does not permit that. *See Ctr. for Env’t*
4 *Health v. Regan*, 103 F.4th 1027, 1038 (4th Cir. 2024) (“Nothing in the TSCA
5 suggests that a petitioner is entitled to demand a particular [rulemaking].”).
6

7
8 Third, Plaintiffs’ final argument is that “lock[ing]” petitioners into specific
9 relief would render post-petition rulemaking development futile. Resp. Br. at 41–42.
10 That inverts the statute. Section 21 review is not the rulemaking; it asks whether
11 EPA was required to *initiate* the rulemaking the petitioner *requested*. 15 U.S.C.
12 § 2620(b)(4)(A). If a court agrees, the rulemaking that follows is then informed by
13 notice and comment, because the proceeding ordered is the one the petitioner asked
14 for. *See Ctr. for Env’t Health*, 103 F.4th at 1038. The judicial review provision of
15 Section 21—like other statutes that require a party first seek agency relief—is not a
16 vehicle for re-pleading. This Court does not have statutory jurisdiction over the
17 claims in the FAC because they were not “presented in the petition” to EPA. *Id.*
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21 **IV. Plaintiffs’ Interpretation of “Conditions of Use” Contradicts TSCA.**

22 WSPA’s textual argument is straightforward, and Plaintiffs have not
23 meaningfully engaged with it. Section 6 reaches risks arising from a chemical’s
24 *conditions of use*, defined as “the circumstances, as determined by [EPA], under
25 which a chemical substance is intended, known, or reasonably foreseen to be
26 manufactured, processed, distributed in commerce, used, or disposed of.” 15 U.S.C.
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1 § 2602(4). Five verbs—none of which means “ruptured,” “exploded,” “derailed,” or
2 “leaked.” The catastrophes Plaintiffs invoke are not “conditions of use.” They are
3 failures of equipment, transportation, or human conduct arising from regulations
4 under other statutes, not TSCA.

5
6 Plaintiffs argue the circumstances surrounding HF use, broadly construed,
7 must include the conditions that have historically led to releases—i.e., “safety
8 incidents.” Resp. Br. at 32 & n.8. That reading collapses the distinction between use
9 and malfunction. A pipe rupturing because corrosion went undetected is not a
10 circumstance under which HF is typically “processed” or “used;” it is a
11 circumstance under which an alkylation unit broke. A truck colliding on the
12 highway is not a circumstance under which HF is typically “distributed in
13 commerce”; it is the failure of distribution. Congress used verbs of ordinary
14 commercial activity, not the vocabulary of disaster.

15
16 Plaintiffs’ invocation of Section 2605(b)(4)(F)(iv) asks more than its text
17 supports. Resp. Br. at 33. That subsection directs EPA, when conducting risk
18 evaluations, to take into account “the likely duration, intensity, frequency, and
19 number of exposures *under the conditions of use*.” 15 U.S.C. § 2605(b)(4)(F)(iv)
20 (emphasis added). Plaintiffs read this as an instruction to “weigh[]” all conceivable
21 exposures, including those arising from accidents and disasters. But this ignores the
22 statutory text, which requires that EPA only weigh exposures “under the conditions
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1 of use.” Plaintiffs’ reading would render those words surplusage, as Plaintiffs’
2 interpretation of “conditions of use” is all-encompassing.
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4 Plaintiffs counter with a textualist gambit of their own: the words “regular”
5 and “predictable” do not appear in Sections 6 or 21. Resp. Br. at 33. But neither do
6 “accident,” “spill,” “explosion,” “catastrophe,” “rupture,” or “derailment”—or any
7 vocabulary on which Plaintiffs’ theory depends. The textualist sword cuts both
8 ways, and Plaintiffs ask this Court to read into the statute terms Congress did not
9 write. The words Congress *did* write—“intended, known, or reasonably foreseen”—
10 supply the limiting principle. EPA’s gloss explaining those words as covering
11 regular and predictable exposures is not an addition to the statute; it is instead an
12 ordinary application of the words actually there. Plaintiffs do not offer an alternative
13 definition of “intended, known, or reasonably foreseen” that would encompass
14 catastrophic equipment failures and severe-weather-induced accidents. No ordinary
15 reader would read those terms to reach such events.
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20 Congress chose to exclude accidental releases from TSCA. Other statutes
21 show that Congress knows how to reach accidents when it wants to. The CAA is
22 directed at the “accidental release” of hazardous substances, including HF.
23
24 42 U.S.C. § 7412(r). The CWA regulates “spills.” 33 U.S.C. § 1321. The Oil
25 Pollution Act regulates “intentional or unintentional” discharges. 33 U.S.C. § 2701
26 *et seq.* EPCRA, CERCLA, and the Hazardous Materials Transportation Act all use
27 similar accident-and-release vocabulary. TSCA does not. Where Congress omits
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1 language from a statute that it included in others, the omission is usually presumed
2 intentional. *See Lackey v. Stinnie*, 604 U.S. 192, 205 (2025); *see also City of San*
3 *Francisco v. EPA*, 604 U.S. 334, 335 (2025).

4
5 Plaintiffs’ legislative history arguments do not let them escape the text. They
6 mention a 2015 Senate hearing exchange in which an EPA official said the bill
7 “does” allow consideration of accidental releases. Resp. Br. at 34–35. The words of
8 an agency witness regarding a draft bill cannot displace the enacted text. Plaintiffs
9 claim that individual legislators’ floor statements rank among the least illuminating
10 forms of legislative history. Resp. Br. at 34 n.10. Surely then an informal hearing
11 colloquy with a non-legislator ranks even lower. Further, the same 1976 Senate
12 Report Plaintiffs invoke for TSCA’s precautionary purpose explained that “TSCA
13 was ‘designed to fill a number of regulatory gaps’ in premarket review, regulation
14 of chemicals themselves (rather than regulation of discharges, emissions, ambient
15 air, or consumer products), and information-gathering responsibility.” *Safer Chems.,*
16 *Healthy Fams. v. EPA*, 943 F.3d 397, 406 (9th Cir. 2019) (quoting S. Rep. No. 94-
17 698, at 1 (1976)).
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22 Plaintiffs’ attempt to weaponize two stray sentences from EPA’s recent
23 rulemakings also fails to support their interpretation of TSCA. The 2024 RMP
24 preamble’s observation that “[a]ccidental releases occur much more often than
25 intentional events,” 89 Fed. Reg. 17,622, 17,675 (Mar. 11, 2024), is wholly
26 unrelated to the statutory definition of conditions of use and addresses a CAA
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1 discussion. The 2023 TSCA rule preamble’s observation that “the mere existence of
2 authority to assess or regulate a chemical . . . under a statute other than TSCA does
3 not equate to effective risk management” 88 Fed. Reg. 74,292, 74,300 (Oct. 30,
4 2023), is similarly unrelated to the statutory definition of conditions of use. Indeed,
5 under the heading “Determination of ‘Conditions of Use’” EPA stated it “would not
6 expect to include within the scope of the risk evaluation exposures from
7 releases . . . that are unsubstantiated, speculative or otherwise not likely to occur.
8 For example, a future one-time accident involving the chemical substance that could
9 be caused by an atypical one-time set of circumstances would generally not be
10 assessed as part of a risk evaluation.” *Id.* at 74,298. Plaintiffs ignore this language to
11 draw out a red herring where their arguments defy the statutory text.
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16 Most fundamentally, Congress expressly delegated EPA the power to
17 interpret the meaning of “conditions of use.” *See* 15 U.S.C. § 2602(4). EPA’s
18 consistent practice across multiple Section 6 rulemakings has been to exclude
19 accidents, spills, and extreme weather events from the scope of conditions of use.
20 WSPA Br. at 24–25. Even on *de novo* review under Section 21, this Court asks the
21 same statutory question EPA asked: whether HF’s ordinary commercial use presents
22 an unreasonable risk under the conditions in which it is intended, known, or
23 reasonably foreseen to be used. Plaintiffs do not allege that it does. They allege only
24 that something might go wrong. That is not a Section 6 claim.
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1 Plaintiffs’ effort to dismiss the existing regulatory regime as “procedural[]” is
2 contradicted by the statutes they invoke. Resp. Br. at 38–40. The CAA RMP rules
3 impose accident-prevention duties, enforceable by steep penalties. OSHA’s PSM
4 standards mandate hazard analyses, mechanical integrity testing, and
5 implementation of management-of-change plans. DOT’s HMR impose substantive
6 packaging, labeling, and transport requirements specific to HF as a hazardous
7 material. The API’s Recommended Practice 751—which Plaintiffs downplay as
8 voluntary—is incorporated into the Recognized and Generally Accepted Good
9 Engineering Practices that PSM and RMP enforce. *See, e.g.*, 40 C.F.R.
10 § 68.65(d)(2). If Plaintiffs believe these regimes are insufficient, they can ask
11 Congress to amend the statutes.

12 Plaintiffs note that Congress “strengthened” TSCA in 2016 despite these
13 other federal regimes, and arbitrarily conclude that TSCA must have been meant to
14 add to those regimes. Resp. Br. at 36. But the 2016 amendments tightened how EPA
15 evaluates the unreasonable risk of *intended uses* of chemicals—for example, by
16 removing the cost-benefit balancing the prior version permitted. Those changes did
17 not modify the *categorical* scope of conditions of use. The amendment left the
18 operative definition untouched.

19 Plaintiffs’ attempt to wave off *Center for Community Action* by asserting that
20 Congress did not “mean[] to” exclude refinery-related HF releases from TSCA’s
21 regulatory scheme misses the forest for the trees. Resp. Br. at 36 n.12. The court’s
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1 holding in that case did not depend solely on the fact that Congress intentionally
2 excluded railyard emissions from federal CAA regulation. It rested on the principle
3 that where Congress intentionally assigns regulatory authority over a subject matter
4 to one statutory regime, courts should not allow plaintiffs to stretch the text of a
5 second statute to reach that subject matter. *Ctr. for Cmty. Action & Env't Just. v.*
6 *BNSF Ry.*, 764 F.3d 1019, 1026–30 (9th Cir. 2014). Congress made that structural
7 choice for chemical accident prevention in other statutes. TSCA was the gap-filler.
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10 Finally, Plaintiffs attempt to dismiss Section 9 of TSCA as irrelevant because
11 EPA has not yet conducted a Section 6(b) risk evaluation. Resp. Br. at 37. But
12 whether Section 9's referral mechanism is currently triggered is beside the point.
13 That Congress wrote Section 9 confirms that TSCA was designed to coordinate
14 with, not duplicate, other federal regulatory regimes.
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17 **V. Conclusion**

18 The FAC cannot be salvaged. Plaintiffs lack Article III standing. Plaintiffs
19 seek relief Section 21 does not authorize. And Plaintiffs ask this Court to read into
20 TSCA a regulatory mandate Congress declined to write. Each defect is independent;
21 together they are dispositive. Plaintiffs had one opportunity to amend, and the FAC
22 confirms that there is no version of this case that conforms to the statute. WSPA
23 respectfully requests that the Court dismiss the FAC with prejudice.
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26 DATED: May 15, 2026

Respectfully Submitted

By: /s/ Jason S. Mills

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Jason S. Mills (SBN 225126)
jason.mills@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
300 S. Grand Avenue
Los Angeles, CA 90071
Telephone: +1 213 612 7387
Facsimile: +1 213 612 2501

Justin A. Savage (*pro hac vice*)
jsavage@sidley.com
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
Telephone: +1 202 736 8000
Facsimile: +1 202 736 8711

Nima H. Mohebbi (SBN 275453)
nima.mohebbi@sidley.com
SIDLEY AUSTIN LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
Telephone: +1 310 595 9500
Facsimile: +1 310 595 9501

Brooklyn Hildebrandt (SBN 350707)
bhildebrandt@sidley.com
SIDLEY AUSTIN LLP
350 S. Grand Avenue
Los Angeles, CA 90071
Telephone: +1 213 896 6000
Facsimile: +1 213 896 6600

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Proposed Intervenor, certifies that this brief contains 4,975 words, which complies with the word limit of L.R. 11-6.1.

DATED: May 15, 2026

/s/ Jason S. Mills

Jason S. Mills

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May 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