

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

TEXAS CHEMISTRY
COUNCIL, *et al.*

Petitioners,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY, *et al.*

Respondents.

Nos. 24-60193, 24-60281, 24-
60333 (consolidated)

OPPOSED MOTION TO HOLD CASE IN ABEYANCE

Respondents United States Environmental Protection Agency and Administrator Lee Zeldin (“EPA”) respectfully move the Court for an order continuing to hold this case in abeyance for six months, as EPA will conduct a rulemaking to reassess the challenged rule. Petitioners Olin Corporation, Ohio Chemistry Technology Council, American Chemistry Council, Texas Chemistry Council, and Georgia Chemistry Council do not oppose the relief requested in this motion. Petitioner United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO takes no position on the relief requested, however reserves the right to oppose after

reviewing this motion. Petitioner Asbestos Disease Awareness Organization opposes the relief requested.

1. This action involves seven petitions for review. Case Nos. 24-60193, 24-60281, 24-60333.

2. These petitions challenge a final rule entitled “Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA).” *See* 89 Fed. Reg. 21970 (Mar. 28, 2024) (the “Asbestos Rule”).

3. Petitioners filed their opening briefs on September 30, 2024. Doc. Nos. 107, 109–110.

4. EPA filed its response brief on January 17, 2025. Doc. Nos. 149, 153.

5. Intervenors filed their briefs on February 7, 2025. Doc. Nos. 166, 168.

6. No reply briefs have been filed.

7. On February 14, 2025, the Court granted EPA’s motion to hold the case in abeyance for 120 days to allow new Agency leadership to review the Asbestos Rule. Doc. No. 182-1.

8. On April 8, 2025, the Court denied Petitioner Asbestos Disease Awareness Organization’s motion for reconsideration of the February 14 order. Doc. No. 198-2.

9. EPA leadership has reviewed the Asbestos Rule and now intends to reconsider the Rule through notice-and-comment rulemaking. *See* Decl. of Lynn Dekleva ¶ 8. EPA expects that this process, including any regulatory changes, will take approximately 30 months. *Id.* ¶ 9.

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

11. Courts have long recognized that agencies may generally review and, if appropriate, revise their past decisions. *See, e.g., Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“[R]egulatory agencies do not establish rules of conduct to last forever [and] an agency must be given able latitude to adapt their rules and policies to . . . changing circumstances.”); *Clean Water Action v. EPA*, 936 F.3d 308, 315 (5th Cir. 2019) (citing *Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (explaining that an agency’s “reevaluation of which policy would be better in light of the facts” is “well within” its discretion and that a change in administration is a “perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations” (internal quotation marks omitted))).

12. Further abeyance would preserve resources of the parties and the Court. It is possible that after its review, EPA could take action that may obviate the need for judicial resolution of some or all of the disputed issues. Good cause thus exists for the requested abeyance. *See Anchor Line Ltd. v. Fed. Maritime Comm’n*, 299 F.2d 124, 125 (D.C. Cir. 1962) (“[W]hen an agency seeks to reconsider its action, it should move the court to remand or to hold the case in abeyance pending reconsideration by the agency.”); *cf. Ctr. for Biological Diversity v. EPA*, 56 F.4th 55, 71–71 (D.C. Cir. 2022) (courts “routinely stay [their] hand when parties identify developments that are likely to render judicial resolution unnecessary”).

13. No party would be prejudiced by the requested abeyance. Asbestos Disease Awareness Organization opposes an abeyance but faces no harm arising from the postponement of judicial review of the Asbestos Rule, which remains in effect.

WHEREFORE, EPA respectfully requests that the Court extend the abeyance in this case for another six months. Because EPA expects that its reconsideration process will take approximately 30 months, the Agency anticipates seeking further extensions of the abeyance.

Dated: June 16, 2025

Respectfully submitted,

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s/ Laura J. Glickman

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because it contains 704 words, excluding the parts of the filing exempted by Fed. R. App. P. 32(f). This filing complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it was prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman fourteen-point font.

s/ Laura J. Glickman
LAURA J. GLICKMAN

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

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

2. I am the Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (“OCSPP”) within EPA. I have held this position since January of 2025; however, I have previously held other positions within EPA. Specifically, from August 2019 to January 2021 I served as the Associate Deputy Assistant Administrator for New Chemicals and from October 2018 to August 2019 I served as a Science Advisor. Prior to rejoining EPA this year, I worked as a Senior Director at the American Chemistry Council. I hold a B.S. in Biology

and a B.S. in Medical Technology from Wilkes University and a M.S. in Environmental Microbiology and a Ph. D. in Environmental Engineering from Drexel University.

3. The Office of Pollution Prevention and Toxics (“OPPT”) within OCSPP is responsible for the development of the regulation entitled, “Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA).” See 89 Fed. Reg. 21970 (Mar. 28, 2024) (codified at 40 C.F.R. Part 751) (“Asbestos Part 1 Rule”), as well as for the underlying Asbestos Part 1 risk evaluation and associated determinations of unreasonable risk upon which the rule is based. OPPT is also currently working diligently on numerous prioritization actions, scope evaluations, risk evaluations and risk management rules required under TSCA. This work is necessary to ensure that EPA is able to meet the aggressive statutory deadlines that Congress added to TSCA in 2016. *See e.g.*, 15 U.S.C. §§ 2605(b)(4)(G), 2605(c)(1). Many of these actions are also subject to court-ordered deadlines in consent decrees. *See, e.g., Consent Decree Regarding High-Priority Chemical Risk Evaluation Deadlines, Community In-Power Development Assoc., Inc., et al. v. U.S. Environmental Protection Agency*, No. 1:23-cv-02715-DLF (D.D.C. No. 22, 2024), ECF No. 39 (setting deadlines to complete draft and final risk evaluations for subject chemicals, including several deadlines in 2025 and 2026). In addition to these rulemaking proceedings, OPPT has now begun the process of reconsidering other TSCA rules currently subject to litigation. *See e.g., FabriClean Supply et al. v. EPA*, No. 25-60006. (5th Cir.), ECF No. 56 (declaring EPA’s intent to reconsider perchloroethylene risk management rule and to issue a new rule within 18 months).

4. On February 11, 2025, EPA filed an opposed motion to hold this case in abeyance for 120 days to allow new Agency leadership to review the underlying rule that is the subject of the petitions for review. This Court granted that motion on February 14, 2025.

5. OCSPP has now completed that review and determined that the Asbestos Part 1 Rule at issue in these consolidated petitions for review should be reconsidered through further rulemaking. Accordingly, EPA, by and through OCSPP, believes that further abeyance of this action while the Agency engages in this rulemaking proceeding is necessary.

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

7. Statutory and Regulatory Background

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

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

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

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

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

8. During abeyance, OCSPP intends to reconsider the Asbestos Part 1 Rule through notice-and-comment rulemaking. For example, OCSPP intends to reconsider the applicability of

workplace protection requirements in the use of asbestos-containing sheet gaskets in non-titanium dioxide chemical production. Additionally, OCSPP will consider all reasonably available information and assess whether, consistent with the best available science and its risk management authority in Section 2605(a), the prohibitions with respect to the Asbestos sheet gasket and Chlor-alkali conditions of use in the Asbestos Part 1 Rule went beyond what is necessary to eliminate the unreasonable risk and whether alternative measures—such as requiring permanent workplace protection measures—would eliminate the unreasonable risk.

9. OCSPP intends to solicit early stakeholder input, issue a proposed rule seeking public comment on potential changes to the Asbestos Part 1 Rule, and as appropriate considering public input, finalize a new rule. EPA expects this process, including any regulatory changes, to take 30 months. As explained above, OCSPP currently has several other rulemaking proceedings to conduct, each with aggressive statutory and/or court-ordered deadlines. OCSPP will thus have to balance its commitment of resources between this Asbestos Part 1 rulemaking and its numerous other TSCA rulemaking proceedings. Because of this, EPA currently believes that 30 months is the fastest it can complete this rulemaking.

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



Lynn Ann Dekleva
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