

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA, et al.,

Petitioners,

v.

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

Respondents.

Case No. 24-1193 and
consolidated cases

MOTION TO GOVERN

Respondents the United States Environmental Protection Agency and Administrator Lee Zeldin (“EPA”) respectfully move the Court to lift the abeyance and order the parties to propose an amended briefing schedule by September 30, 2025. EPA has reviewed the underlying rule and has decided to keep the Rule in place. *See* Att. A, Evans Decl. ¶ 11.

Petitioners and Respondent-Intervenors in these consolidated cases do not oppose this motion. In support of this motion, EPA states as follows:

1. Petitioners seek review of an EPA final rule titled “Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances,” 89 Fed. Reg. 39124 (May 8, 2024) (“Rule”).

2. On October 1, 2024, the Court entered a briefing schedule and format for these consolidated cases. Doc. No. 2077702.

3. Consistent with the Court's order, Petitioners filed their opening brief on November 4, 2024, EPA filed its response brief on January 17, 2025, and Respondent-Intervenors filed their brief on February 13, 2025. *See id.*; Doc. Nos. 2083600, 2094951, 2100646.

4. Before briefing completed, on February 24, 2025, the Court granted EPA's motion to hold the case in abeyance pending new EPA leadership's review of the Rule. Doc. No. 2102403. Since then, the Court has granted EPA's motions to continue the abeyance to allow additional time for EPA to review the Rule, the issues presented in this case, and to develop EPA's position on how to proceed in this litigation. *See, e.g.*, Doc. No. 2130679.

5. EPA has completed its review and has decided to keep the Rule in place. Evans Decl. ¶ 11.

6. The parties now need to complete briefing. Petitioners' joint reply brief (not to exceed 8,500 words), a deferred appendix, and the parties' final briefs remain to be filed. *See* Doc. No. 2077702. And the briefing deadlines established in the Court's October 1, 2024, order have now passed. *Id.* Thus, EPA requests that the Court order the parties to propose an amended briefing schedule by September 30, 2025, to complete briefing these consolidated cases.

Respectfully submitted,

DATED: September 17, 2025

ADAM R.F. GUSTAFSON

Acting Assistant Attorney General

/s/ Jin Hyung Lee

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CERTIFICATES OF COMPLIANCE AND SERVICE

This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 336 words.

This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

On September 17, 2025, I filed the foregoing with the Court's CM/ECF system, which will notify each party.

/s/ Jin Hyung Lee
JIN HYUNG LEE

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U.S. ENVIRONMENTAL PROTECTION
AGENCY and Lee M. Zeldin, Administrator
of the U.S. Environmental Protection Agency,

Respondents.

No. 24-1193 (and consolidated
cases)

DECLARATION OF JOHN EVANS

1. I, John Evans, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief, and are based on my own personal knowledge or on information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees.

2. I am the Senior Advisor for Implementation in the Office of Land and Emergency Management (OLEM) at EPA. OLEM is responsible for overseeing the responses to abandoned and active hazardous waste sites, as well as accidental chemical releases under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). OLEM also works with programs within the Agency and representatives of various public and private organizations to enhance the cleanup of contaminated sites by encouraging innovative technologies to address contaminated soil and groundwater.

3. In my current capacity, I advise senior leadership in OLEM including on the implementation of EPA's national remedial action cleanup program under

CERCLA and the development and implementation of regulations designating hazardous substances pursuant to section 102(a) of CERCLA.

4. This declaration is filed in support of EPA’s motion to govern in *Chamber of Commerce, et al. v. U.S. Env’tl Protection Agency, et al.*, No. 24-1193 (D.C. Cir.) and consolidated cases.

Regulatory Background

5. On May 8, 2024, EPA issued a rulemaking designating perfluorooctanoic acid and perfluorooctanesulfonic acid, as well as their salts and structural isomers, as hazardous substances under section 102(a) of CERCLA. *See* “Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances,” 89 Fed. Reg. 39124 (May 8, 2024) (Designation Rule). Section 102(a) authorizes EPA to “promulgate and revise as may be appropriate, regulations designating as hazardous substances . . . such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment” 42 U.S.C. § 9602(a).

Review of the Designation Rule

6. Petitioners in the above-captioned cases challenged the Designation Rule in the summer of 2024, and the parties began briefing these cases.

7. A new administration took office on January 20, 2025.

8. Shortly thereafter, EPA asked that the Court hold the litigation in abeyance to allow new Agency leadership time to determine how to proceed with the litigation and the underlying rule.

9. The Court granted the initial abeyance on February 24, 2025, which was further extended on April 30, June 2, July 3, and August 20.

10. During that time, EPA reviewed the issues presented in these cases, evaluated the Designation Rule within the broader context of EPA’s comprehensive strategy to address PFOA and PFOS, and considered EPA’s position on how to proceed in this litigation.

11. Consistent with EPA's commitment to combat PFAS contamination, EPA has decided to keep the CERCLA Designation Rule in place.

12. This decision is in line with Administrator Zeldin's Powering the Great American Comeback Initiative and will advance Pillar 1: Clean Air, Land, and Water for Every American, and Pillar 3: Permitting Reform, Cooperative Federalism, and Cross-Agency Partnership.

13. EPA will continue to engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected.

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

Executed this 17th day of September, 2025.

SO DECLARED:

JOHN
EVANS

Digitally signed by JOHN
EVANS
Date: 2025.09.17
12:02:38 -04'00'

John Evans, Senior Advisor for Implementation
Office of Land and Emergency Management