

## **CEH and PEER File Suit Seeking TSCA Section 6 Rule Prohibiting Production of PFOA During Fluorination of Plastic Containers**

Article By:

Lynn L. Bergeson

Carla N. Hutton

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On July 25, 2024, the Center for Environmental Health (CEH) and Public Employees for Environmental Responsibility (PEER) [filed suit](#) against the U.S. Environmental Protection Agency (EPA) in the U.S. District Court for the District of Columbia seeking a rule under Section 6 of the Toxic Substances Control Act (TSCA) to prohibit the production of perfluorooctanoic acid (PFOA) during Inhance Technologies, LLC's (Inhance) fluorination process. As reported in our May 23, 2024, [blog item](#) on their notice of intent to sue (NOI), the petitioners claim that EPA failed to perform non-discretionary duties prescribed by TSCA Section 4(f). According to the petitioners, this obligation arose within 180 days of EPA's proposed National Primary Drinking Water Regulation (NPDWR) for PFOA and five other per- and polyfluoroalkyl substances (PFAS), issued on March 29, 2023, which states: "Following a systematic review of available human epidemiological and animal toxicity studies, EPA has determined that PFOA ... [is] likely to cause cancer (e.g., kidney and liver cancer) and that there is no dose below which ... [it] is considered safe." Petitioners state that to assure that EPA discharges its duty, the court "should enter an order setting an expeditious deadline for the Agency to propose a rule under TSCA section 6 prohibiting production of PFOA during the Inhance fluorination process." Petitioners note that under TSCA Section 7(a)(2), "if EPA has not made a section 6(a) rule immediately effective under section 6(d)(3), it 'shall' commence a suit for immediate injunctive relief where the substance or mixture subject to the rule is 'imminently hazardous.'" Accordingly, the court "must therefore order EPA to immediately file an imminent hazard action under TSCA section 7 against Inhance to prohibit the formation of PFOA during the fluorination process or to make its proposed rule under section 6(a) imposing such a ban immediately effective upon publication in the Federal Register."

As reported in our July 16, 2024, [memoranda](#), EPA [announced](#) on July 11, 2024, that it granted a petition filed under TSCA Section 21 requesting that EPA establish regulations under TSCA Section 6 prohibiting the manufacturing, processing, use, distribution in commerce, and disposal of three PFAS, including PFOA, formed during the fluorination of plastic containers. EPA states that it "will promptly commence an appropriate proceeding under TSCA Section 6." According to EPA's announcement, EPA intends to request information, including the number, location, and uses of fluorinated containers in the United States; alternatives to the fluorination process that generates

PFOA, perfluorononanoic acid (PFNA), and perfluorodecanoic acid (PFDA); and measures to address risk from PFOA, PFNA, and PFDA formed during the fluorination of plastic containers.

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