IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STEPHEN JONES, et al. Plaintiffs, v. PERDUE FARMS INC., et al., Defendants.	C.A. No.: 1:25-cv-02445

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, STRIKE, OR STAY

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INTRODUCTION

This case arises from Defendants' long-running disposal and release of per- and polyfluoroalkyl substances ("PFAS") that have contaminated Plaintiffs' drinking water, groundwater, surface water, and soil. Plaintiffs brought this citizen suit under the Resource Conservation and Recovery Act ("RCRA") to halt these unlawful practices and to remediate the resulting contamination. Plaintiffs' pre-suit notice and the First Amended Complaint detail specific contamination pathways, identify the contaminants at issue, and allege concrete injuries suffered by Plaintiffs and other residents impacted by Defendants' unlawful practices.

Defendants' Motion to Dismiss, Strike, or Stay seeks to avoid those allegations through procedural technicalities and factual disputes that cannot be resolved at the pleading stage. Their notice arguments disregard the level of detail actually provided and misapply the law. Defendants' standing arguments likewise fail, as precedent confirms that ongoing contamination, coupled with requests for remediation, cessation of polluting practices, and civil penalties, fully satisfy Article III's injury and redressability requirements. Defendants ignore the Amended Complaint's allegations regarding surface water impacts on Plaintiffs, instead relying solely on bottled water deliveries and private POET systems that merely raise factual defenses to liability, not jurisdictional defects, and therefore cannot support dismissal at the pleading stage. Nor is there any basis to strike allegations, as the Federal Rules narrowly permit that remedy and Defendants identify no such basis. Finally, Defendants' request to stay this action would improperly undermine Congress's carefully designed citizen-suit enforcement scheme and finds no support in the law.

Because Plaintiffs complied with RCRA's notice requirements, alleged concrete and redressable injuries, and stated viable claims under each pled count, Defendants' motion should be denied in its entirety.

BACKGROUND

This case arises from Defendants' decades-long disposal of PFAS and other solid wastes at their Salisbury, Maryland facility, which has contaminated Plaintiffs' drinking water, groundwater, surface waters, and soil. *See* First Am. Compl. ¶¶ 2–8, 17–24. Plaintiffs Stephen Jones and Richard Renshaw are residential well users whose properties sit adjacent to Peggy Branch, a stream originating on Defendants' property. First Am. Compl. ¶¶ 17–24. Testing has revealed that the drinking water drawn from their wells contains PFAS, including PFOA, PFOS, and PFHxS, at concentrations far above the maximum contaminant levels set by the Environmental Protection Agency ("EPA"). First Am. Compl. ¶¶ 21–23.

The source of this contamination is no mystery. For decades, Defendants have engaged in multiple waste disposal practices that release PFAS into the surrounding environment. These include: (1) discharging approximately 180,000 gallons per day of PFAS-contaminated wastewater; (2) channeling contaminated wastewater into Peggy Branch; (3) operating four aging, unlined earthen lagoons that leach PFAS into groundwater; (4) disposing of excavated soil and dredge spoil without permits; and (5) disposing of aqueous film-forming foam near Defendants' soybean extraction plant. First Am. Compl. ¶¶ 43–52.

The harm is ongoing and severe. Plaintiffs' properties, among at least 112 drinking water wells in the nearby communities, are contaminated with PFAS at levels 10 to 100 times greater than the regulatory limits, and the contamination extends throughout local groundwater and surface waters. First Am. Compl. ¶¶ 21–24, 57. Defendants' practices have injured Plaintiffs by deterring them from the use and enjoyment of their land, instilled fear of present and future health effects, and contributed to widespread environmental degradation in the surrounding area. First Am. Compl. ¶¶ 18–21, 40–41, 76–85.

Plaintiffs served Defendants, EPA, and the Maryland Department of the Environment with a detailed pre-suit notice describing the major contamination pathways, the resulting PFAS levels in groundwater, surface water, and soils, and the remedial actions required. First Am. Compl. ¶ 10; ECF 1-2. They now seek to stop Defendants' illegal dumping, remediate the contamination, and restore safe water supplies for themselves and their community. Specifically, they request injunctive relief requiring Defendants to eliminate ongoing dumping practices, remediate contamination on- and off-site, and implement measures to prevent future violations, and seek civil penalties to ensure Defendants discontinue their unlawful practices and deter future violations. First Am. Compl ¶¶ 118–19.

MOTION TO DISMISS LEGAL STANDARD

When a defendant challenges subject-matter jurisdiction under Rule 12(b)(1), courts distinguish between facial attacks, which apply the Rule 12(b)(6) standard and assume the truth of the allegations, and factual attacks, which may look beyond the pleadings but must be deferred when the jurisdictional facts are inextricably intertwined with the merits. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982); *Kerns v. United States*, 585 F.3d 187, 192–3 (4th Cir. 2009).

A motion to dismiss pursuant to Rule 12(b)(6) "challenges the legal sufficiency of a complaint." *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009). It is not intended to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief…'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007).

A complaint "does not need detailed factual allegations," *Twombly*, 550 U.S. at 555, but it must include enough "factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556). Plausibility is "not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556).

When considering a Rule 12(b)(6) motion to dismiss, the court must accept all well-pled factual allegations as true and view the complaint in the light most favorable to the plaintiff. *Aziz v. Alcolac*, 658 F.3d 388, 391 (4th Cir. 2011). Because of this deferential standard, "[m]otions to dismiss for failure to state a claim are 'granted sparingly and with caution in order to make certain that plaintiff is not improperly denied a right to have his claim adjudicated on the merits.'" *Concerned Citizens of Carderock v. Hubbard*, 84 F. Supp. 2d 668, 669–70 (D. Md. 2000) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure, Civil 2D § 1349 at 192–93 (1990)).

ARGUMENT

Plaintiffs have complied with RCRA's notice requirements, alleged concrete injuries redressable by the requested relief, and stated viable claims under each pled count. Defendants' contrary arguments misread the governing law and ignore the First Amended Complaint's detailed allegations. Their additional requests to strike allegations and to stay this action likewise lack merit and find no support in statute or precedent. The Court should deny the motion in full.

I. Plaintiffs Issued a Valid Notice Under RCRA Before Bringing This Suit.

Plaintiffs issued a valid notice under RCRA before bringing this suit and the alleged defects raised by Defendants fall well short of rendering the notice defective.

Before bringing a citizen suit under RCRA, individuals must provide notice to the person or entity alleged to be in violation. 42 U.S.C. § 6972(b)(1)(A), (b)(2)(A). Counts I–III of the First Amended Complaint are brought under 42 U.S.C. § 6972(a)(1)(A), which requires prospective RCRA plaintiffs to provide "notice of the violation" to the alleged violators, *id.* § 6972(b)(1)(A). First Am. Cmpl. ¶¶ 86–110. Count IV is brought under 42 U.S.C. § 6972(a)(1)(B), which requires prospective RCRA plaintiffs to provide "notice of the endangerment," *id.* § 6972(b)(2)(A). First Am. Cmpl. ¶¶ 111–117.

Regulations implementing this notice requirement require that the notice for cases brought under 42 U.S.C. § 6972(a), *inter alia*, "identify the specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation . . . [and] the date or dates of the violation[.]" 40 C.F.R. § 254.3(a). No regulation imposes comparable requirements on claims brought under 42 U.S.C. § 6972(a)(1)(B). *See* 40 C.F.R. § 254.3 (specifying notice content only for claims alleging a violation of permit, standard, regulation, condition, requirement, or order and for suits against the EPA Administrator for failure to perform a non-discretionary act or duty). Courts therefore inquire in such cases "whether the notice was sufficient to inform [a defendant contributing to an alleged imminent and substantial endangerment] of the nature of the ongoing problems on the facility site and of its potential responsibility for those problems, and whether the notice was sufficient to give [the defendant] 'an opportunity to bring itself into complete compliance with the Act and thus . . . render unnecessary a citizen suit.'" *Bd. of Cnty. Comm'rs of Cnty. of La Plata, Colorado v. Brown Grp. Retail, Inc.*, 598 F. Supp. 2d 1185, 1197 (D. Colo. 2009) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 174–75, (2000)); *see also Blumenthal Power Co., Inc. v. Browning-Ferris, Inc.*, No. 94CV2612, 1995 WL 1902124, at *4 (D. Md. Apr. 19, 1995) (holding that "the specificity requirement of [40 C.F.R.] § 254.3 is appropriate only for private actions filed under § 6972(a)(1)(A)" and not for claims brought under § 6972(a)(1)(B)).

While the notice requirement is "strict and specific," courts caution against an "overly technical application of regulatory requirements." *Friends of the Earth Inc. v. Gaston Copper Recycling Corp.*, 629 F.3d 387, 400 (4th Cir. 2011). Rather, for RCRA citizen suits, notice must "at a minimum provide sufficient information so that the notified parties could identify and attempt to abate the violation." *TC Rich, LLC v. Shaikh*, No. CV192123DMGAGRX, 2019 WL 13078699, at *3 (C.D. Cal. Nov. 14, 2019) (citing *City of Imperial Beach v. Int'l. Boundary and Water Comm'n, United States Section*, 356 F. Supp. 3d 1006, 1019 (S.D. Cal. 2018)). Thus, when evaluating a notice, courts ask whether, in "practical terms, the notice was sufficiently specific to inform the alleged violator about what it was doing wrong, so that the violator knew what corrective actions to take. *Id.* (citing *City of Imperial Beach,* 356 F.Supp.3d at 1019); *ONRC Action v. Columbia Plywood, Inc.,* 286 F.3d 1377, 1143 (9th Cir. 2002)) (internal quotations omitted).

A. The Notice Identified the Major Contamination Pathways and Resulting Harm

Here, Plaintiffs issued a notice providing extensive and specific details about Perdue's violations and the remediation required. *See* ECF 1-2. The notice identified five major contamination pathways: the daily disposal of 180,000 gallons of PFAS-contaminated wastewater (with major sources of this wastewater specified), the discharge of contaminated wastewater to Peggy Branch, the leaching of contaminants from four aging earthen lagoons constructed over 35 years ago without adequate liners, the unpermitted disposal of excavated soil and dredge spoil at multiple locations, and the disposal of aqueous film-forming foam near the soybean extraction plant. ECF 1-2 at 4.

The notice also described the resulting harm, specifying the particular PFAS contaminants involved and the exact contamination levels confirmed by testing of sludge, groundwater, surface water, and drinking water wells on or near Defendants' facility. ECF 1-2 at 3-6. It further established a clear timeline of violations, stating that operations at Defendants' facility began in approximately 1972 and continue to the present, with ongoing manufacturing processes that "have contributed to and are contributing to" the release of PFAS over decades. ECF 1-2 at 3.

In addition, the notice detailed the relief sought, including provision of permanent clean water supplies, containment of groundwater migration using barriers, remediation of all lagoons and waste disposal areas, cessation of spray irrigation practices, and comprehensive monitoring and remediation of soils, groundwater, and surface waters under the oversight of independent and professional environmental engineers. ECF 1-2 at 7-8. Finally, the notice explained that Perdue's actions violated both the imminent and substantial endangerment clause of RCRA, 42 U.S.C. § 6972(a)(1)(B), as well as the open dumping prohibition, 42 U.S.C. § 6945. ECF 1-2 at 3, 7. Given the level of detail in Plaintiffs' notice, Defendants' argument that dismissal is warranted because the notice did not cite a specific regulation finds no support in the statute or case law.[1]

[1] Plaintiffs disagree with Defendants' decision to cast their notice arguments as arising under Rule 12(b)(1). ECF 19-1 at 13. It is not "well established" that RCRA's notice requirement is jurisdictional. *See id.* The Supreme Court expressly left the question open in *Hallstrom v. Tillamook Cnty*., 493 U.S. 20, 31 (1989), and at least one circuit to have addressed the question head-on has concluded the RCRA notice requirement is not jurisdictional. *Adkins v. VIM Recycling, Inc.*, 644 F.3d 483, 492 (7th Cir. 2011). Plaintiffs respectfully disagree with this Court's statement to the contrary in *Martin v. W.L. Gore & Assocs., Inc.*, No. CV SAG-24-3549, 2025 WL 1294891, at *2 (D. Md. May 5, 2025) and maintain that stray references to the court's "jurisdiction" in decisions dismissing RCRA suits on notice grounds, without any reasoned discussion concerning subject matter jurisdiction, appear to reflect the "profligate . . . use of the term" by courts and litigants alike. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 510 (2006). Nevertheless, Plaintiffs concede that the Court may consider the arguments under the Rule 12(b)(6) standard, without consequence.

B. The Notice Was Not Required to Cite a Specific Regulation

Defendants argue that the notice is deficient because, although it described Perdue's actions in detail and cited the relevant statutory sections of RCRA, it did not cite a specific regulation for the open dumping claims and did not specify what dates the violations were alleged to have occurred. ECF 19-1 at 13–19.

Defendants' argument finds no support in the language of the notice regulation or in the statute. First, the regulation requires only that the notice include "sufficient information to permit the recipient to identify the specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated." 40 C.F.R. § 254.3(a). The regulation does not require plaintiffs to cite a particular subsection verbatim, but only to provide information sufficient for the recipient to identify the authority alleged to be violated. Courts applying this provision have confirmed that level of specificity is adequate. *See Hackensack Riverkeeper, Inc. v. Delaware Ostego Corp.*, 450 F. Supp. 2d 467, 480–81 (D.N.J. 2006), *amended on reconsideration in part*, No. CIV A 05-4806 DRD, 2006 WL 3333147 (D.N.J. Nov. 16, 2006) (holding that notice citing RCRA's open dumping prohibition at 42 U.S.C. § 6945(a) and describing unlawful activities in detail was "sufficient to permit the recipient to identify the kind of RCRA violations being charged.").

Plaintiffs' notice did exactly that. It described Defendants' polluting activities in great detail and expressly stated that Defendants' conduct "constitutes Open Dumping in violation of 42 U.S.C. § 6945 and its implementing regulations." ECF 1-2 at 7. These allegations provided more than sufficient information under § 254.3(a), and Defendants' argument to the contrary should be rejected.

C. Statutory History Confirms Plaintiffs' Notice Was Sufficient

Defendants' insistence that a notice must cite a regulation rests on a cramped reading of EPA's notice regulation, 40 C.F.R. § 254.3(a). But that regulation was promulgated in 1977 and has never been updated to reflect Congress's 1984 amendment adding "prohibition" to the statute. The outdated regulation cannot be read to narrow the substantive scope of RCRA citizen suits or the contents of a valid notice.

The statute expressly authorizes citizen suits for violations of any "any permit, standard, regulation, condition, requirement, prohibition, or order," but EPA's notice regulation does not list "prohibition" among those categories. *See* 40 C.F.R. § 254.3(a) (covering notices for violations of a "permit, standard, regulation, condition, requirement, or order"). That omission does not limit Plaintiffs' ability to pursue their open dumping claims. A violation of the RCRA's open dumping provision is clearly a violation of a statutory prohibition. *See* 42 U.S.C. § 6945(a) ("[T]he open dumping of solid waste or hazardous waste is *prohibited*[.]") (emphasis added).

The reason for the discrepancy between the statute and the regulation is straightforward. Congress added the word "prohibition" to 42 U.S.C. § 6972(a)(1)(A) as part of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, § 401(a), 98 Stat. 3221, 3269. But EPA has never updated its 1977 notice regulation to reflect the statutory amendment. *See* 42 Fed. Reg. 56,114 (Oct. 21, 1977).

Because Congress expressly added "prohibition" to § 6972(a)(1)(A), Plaintiffs' citation to the statutory open dumping prohibition, 42 U.S.C. § 6945(a), provided exactly the kind of information the regulation requires. EPA's failure to update its 1977 notice regulation to reflect the 1984 amendment does not limit the statute's reach or bar Plaintiffs' claims. Defendants therefore cannot rely on an outdated regulation to dismiss a notice that expressly identified the statutory prohibition that their conduct violated.

D. Plaintiffs Adequately Alleged Ongoing Violations and Dates

Regarding what dates must be included in a RCRA notice, "[i]n this circuit, it is sufficient to allege ongoing violations relating to the pollutant discharges identified in a notice letter."

Sherrill v. Mayor & City Council of Baltimore, 31 F. Supp. 3d 750 (D. Md. 2014), *vacated on other grounds sub nom. Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500 (4th Cir. 2015) (quoting *Potomac Riverkeeper, Inc. v. Marcella M. Klinger, LLC*, No. CIV. JKB-13-801, 2013 WL 5505397, at *5 (D. Md. Oct. 1, 2013). Here, the notice alleged that the specified contamination pathways constitute ongoing violation of RCRA. *See* ECF 1-2 at 3, 4–7. Therefore, the notice adequately described the timing of the violations and Defendants' contrary arguments should be rejected.

E. Defendants' Case Law Is Inapposite

Defendants' reliance on *Blumenthal Power Co., Inc. v. Browning-Ferris, Inc.*, No. 94CV2612, 1995 WL 1902124 (D. Md. Apr. 19, 1995), ECF 19-1 at 16, is misplaced. The court in *Blumenthal* dismissed one count, in part, because the pre-suit notice alleged a general violation of an entire subchapter of RCRA and failed to cite a specific substantive section violated. *Id.* at *4.[2] By contrast, Plaintiffs here expressly alleged that Defendants are in violation of RCRA's open dumping prohibition found at 42 U.S.C. § 6945. ECF 1-2 at 3, 7

Defendants also quote *Brod v. Omya, Inc.*, 653 F.3d 156 (2d Cir. 2011), but omit that the decision turned on the plaintiffs' failure to identify in the pre-suit notice the contaminant forming the basis for their RCRA claim. *Brod*, 653 F.3d at 166–70 (holding that where an alleged violation depends on a specific contaminant, the notice must identify that contaminant with sufficient specificity). In sharp contrast, Plaintiffs' notice identified the particular PFAS contaminants at

[2] The court also dismissed the count, in part, for failure to cite a relevant section of Maryland law or regulation, where Maryland law had partially superseded the hazardous waste laws of RCRA in effect prior to Congress's Hazardous and Solid Waste Amendments ("HSWA") of 1984. *Blumenthal*, 1995 WL 1902124, at *3. Here, Defendants do not raise the issue of Maryland's authorization to operate a pre-HSWA program.

issue and detailed their levels in groundwater, surface water, and soils, leaving no doubt as to the nature of the violation alleged. ECF 1-2 at 3-6.

Because Plaintiffs' notice cited the statutory prohibition itself and identified the specific contaminants, *Blumenthal* and *Brod* do not support dismissal. Defendants cannot stretch those cases to override a notice that clearly satisfied § 254.3(a).

II. Plaintiffs Have Article III Standing to Bring This Suit

A. Plaintiffs Have Alleged Concrete and Particularized Injuries

The allegations contained in the First Amended Complaint fully support Plaintiffs' Article III standing to bring this suit. To have standing to sue under Article III, plaintiffs must have: (1) an injury in fact; (2) caused by the conduct at issue; and (3) likelihood of redressability by a favorable court decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Injuries in fact must be concrete, particularized, and actual or imminent, rather than conjectural or hypothetical. *Id.*, at 560 (quotations and citations omitted). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [courts] 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *Id.* at 561 (quoting *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990)).

Plaintiffs here have alleged concrete, particularized, and actual ongoing injuries. Defendants dispute this in their motion, even though they admit that "Plaintiffs have alleged an injury to their property in the form of drinking water contamination." ECF 19-1 at 19-20. Plaintiffs have alleged that they have encountered and will continue to encounter "contamination of their drinking water, groundwater, surface water, and soil." First Am. Cmpl. ¶ 21. Mr. Jones has alleged that his drinking well water on his property has been tested to have "concentrations of PFOA, PFOS, and PFHxS well above EPA's maximum contaminant levels." First Am. Cmpl. ¶ 22. Mr. Renshaw has alleged that the drinking well water on his properties also has levels of PFOA, PFOS, and PFHxS well above EPA's maximum contaminant levels. First Am. Cmpl. ¶¶ 22, 23. Plaintiffs additionally alleged that the surface water and soil on their properties have been contaminated, and that Peggy Branch, a stream that originates on Perdue's property and then runs adjacent to Plaintiffs' properties, is a significant source of Perdue's contamination of the surrounding area. First Am. Cmpl. ¶¶ 4, 18–21, 40–41, 43–52. Both Plaintiffs have also alleged that Defendants' contamination of Plaintiffs' properties has deterred Plaintiffs from the use and enjoyment of their property, caused fear of actual and future adverse health effects cause by Defendants' contamination, and harmed their recreational, aesthetic, and/or commercial interests. First Am. Cmpl. ¶¶ 17-20. These allegations of concrete, particularized, and actual injuries, taken as true at the motion to dismiss stage, are enough to satisfy the "injury in fact" prong of Article III standing.

B. Defendants' Challenge to Redressability Fails

Defendants dispute the sufficiency of Plaintiffs' pleadings regarding redressability, ECF 19-1 at 20–23, even though Defendants themselves concede that the relief sought in the first amended complaint "could conceivably address injuries to the environment at large," ECF 19-1 at 23. In their memorandum, Defendants fail to note the limiting principle of factual challenges to standing "where the jurisdictional facts are intertwined with the facts central to the merits of the dispute," which is that "in such cases the entire factual dispute is appropriately resolved only by a proceeding on the merits." *Adams v. Bain,* 697 F.2d 1213, 1219 (4th Cir. 1982) (reversing dismissal of suit where "the facts are so intertwined with the facts upon which the ultimate issues on the merits must be resolved, that [Rule] 12(b)(1) is an inappropriate basis upon which to ground the dismissal"); *Kerns v. United States*, 585 F.3d 187, 193 (4th Cir. 2009) (citing *United States ex rel. Vuyyuru v. Jadhav*, 555 F.3d 337, 348 (4th Cir.2009)) ("Thus, when the jurisdictional facts and the facts central to a tort claim are inextricably intertwined, the trial court should ordinarily assume jurisdiction and proceed to the intertwined merits issues.").

Here, Plaintiffs seek declaratory and injunctive relief ordering Defendants to remediate existing contamination, cease the ongoing practices that continue to release PFAS into the environment, eliminate imminent endangerment, address offsite impacts to groundwater, surface water, and soil, and implement measures to prevent future violations. First Am. Cmpl. ¶ 118. By requiring Perdue to remediate existing contamination and prevent future dumping, this relief would directly address the source of Plaintiffs' harms and would plainly redress their injuries. *See* Declaration of Harvey A. Cohen, Ex. A ¶ 18. Accordingly, the relief requested is not speculative but is reasonably likely to alleviate the ongoing contamination and the harms flowing from it, thereby meeting the constitutional requirement of redressability.

C. Defendants' Bottled Water and POET System Arguments Go to the Merits, Not Jurisdiction

Defendants ask this Court to entertain a factual challenge by attaching several exhibits and citing to Perdue's public relations website. ECF 19-1 at 20–23. The gravamen of Defendants argument is that Mr. Jones has had a POET system installed on his property that has, according to Defendants, reduced the PFAS levels in his drinking water to "non-detectable levels," that Mr. Renshaw has refused to have such a system installed on his properties, thereby "creat[ing] his own injury," and that Plaintiffs have both been supplied with bottled water. ECF 19-1 at 21–22.

Mr. Renshaw, however, declined Defendants' offer to install POET systems because Perdue refused to commit to maintaining them beyond five years, leaving him without assurance that his water would be safe thereafter. Declaration of Richard Renshaw, Ex. B ¶¶ 5–7. Because POET systems demand ongoing oversight to remain effective, Perdue's refusal to extend maintenance past 2029 leaves residents with no reliable assurance that their water will be safe. Ex. A ¶¶ 16–17 ("Considering the persistence of PFAS-contaminated groundwater impacting Mr. Jones' community, the lack of active remediation of the groundwater contamination by Perdue, and uncertainty in temporal trends of contaminant concentrations based on current data and information, this 4-year time frame is insufficient to ensure resident safety past 2029.") Mr. Renshaw continues to rely on his well water for daily household uses, including showering, washing dishes, laundry, and filling his pool. *Id.* ¶ 8. Defendants' assertion that Mr. Renshaw "created his own injury" by declining this limited temporary offer improperly attempts to shift responsibility from the polluter to the victim. Article III standing does not turn on a plaintiff's willingness to accept a defendant's unilateral and temporary mitigation measures, particularly where those measures do nothing to address the underlying contamination.

Defendants' allegations concerning POET systems and bottled water go directly to whether their waste disposal practices continue to cause unlawful contamination and endanger Plaintiffs, which is the central merits question in this case. Defendants' attempt to reframe these factual disputes as jurisdictional challenges impermissibly asks the Court to resolve issues that must instead be adjudicated after discovery and trial.

Moreover, bottled water and POET systems are, at best, temporary stopgap measures. *See* Ex. A ¶ 18. They do not remediate the ongoing migration of PFAS into groundwater, surface water, and soils. *Id*. POETs require continuous maintenance, regular sampling, and replacement of filter media to prevent "breakthrough" of contamination, and they cannot remove PFAS that has already migrated into home piping. *Id.* ¶¶ 16, 20. Similarly, bottled water supplies may reduce exposure from drinking, but residents, including Mr. Renshaw, continue to rely on their contaminated well water for bathing, washing, and other household uses, and the underlying source of pollution remains unaddressed. *See* Ex. B ¶ 8. Far from undermining redressability, the use of bottled water and POET systems highlights that Plaintiffs' injuries persist and can only be effectively redressed through the relief sought in this action. Defendants' reliance on POETs and bottled water reflects a factual defense to liability, not a jurisdictional bar to suit, and thus cannot be grounds for dismissal under Rule 12(b)(1).

D. Civil Penalties Provide an Additional Basis for Redressability

Additionally, Plaintiffs request that this Court assess the maximum civil penalties allowed by law on the Defendants. First Am. Cmpl. ¶ 119. Citizen plaintiffs bringing suit under environmental statutes may have their injuries redressed through civil penalties, since such penalties "encourage defendants to discontinue current violations and deter them from committing future ones." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 186 (2000). Accordingly, the civil penalties Plaintiffs seek would help ensure Defendants cease the very violations causing Plaintiffs' injuries, thereby satisfying redressability. Together with Plaintiffs' requests for remediation and injunctive relief, these civil penalties confirm that Plaintiffs' injuries are redressable as a matter of law.

III. Each Count of the First Amended Complaint States a Cognizable RCRA Claim

Plaintiffs include four counts in the First Amended Complaint. Count I alleges a violation of the open dumping statutory prohibition set forth at 42 U.S.C. § 6945(a). First Am. Cmpl. ¶¶ 86–94. Count II alleges a violation of the regulatory criteria located at 40 C.F.R. § 257.3-3 prohibiting contamination of surface water. First Am. Cmpl. ¶¶ 95–103. Count III alleges a violation of the regulatory criteria located at 40 C.F.R. § 257.3-4 prohibiting contamination of groundwater. First Am. Cmpl. ¶¶ 104–10. Count IV alleges that Perdue's past and present practices may present an imminent and substantial endangerment to health or the environment, which is a basis for a citizen suit under 42 U.S.C. § 6972(a)(1)(B). First Am. Cmpl. ¶¶ 111–17. This Court should reject Defendants' arguments that all counts should be dismissed for failure to state a claim.

A. Count I — Open Dumping (42 U.S.C. § 6945(a))

Plaintiffs' base Count I on the statutory prohibition against open dumping contained in 42 U.S.C. § 6945(a), which states that "any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited[.]" First Am. Cmpl. ¶ 88. The statute creates a dichotomy between sanitary landfills and open dumps, with open dumps defined in the negative as those facilities that do not meet the criteria for sanitary landfills. *See* 42 U.S.C. § 6903(14). EPA is authorized to promulgate criteria for classification of sanitary landfills and open dumps, but the statute itself sets a baseline prohibition; a facility may avoid classification as an open dump "only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility." 42 U.S.C. § 6944(a). Plaintiffs pled Count I on the basis that Perdue's practices create precisely such adverse effects, in violation of the statute's ban on open dumping. First Am. Cmpl. ¶ 92.

Defendants argue that the Court should dismiss Count I as a matter of "judicial economy" because it is duplicative of Counts II and III. ECF 19-1 at 25. But judicial economy is not the Rule 12(b)(6) standard. At this stage, the relevant question is whether Count I pleads factual content that allows the Court to infer liability under the statute, and it plainly does. *Preziosi v. United States*, No. CIV. RDB-11-02913, 2012 WL 2798771, at *6 (D. Md. July 9, 2012) (holding that at the motion to dismiss stage, the court's role under a Rule 12(b)(6) motion is to decide "whether a claim 'pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'") (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009)) (citing *A Society Without A Name v. Virginia*, 655 F.3d 342, 346 (4th Cir. 2011)). Accordingly, even if Count I overlaps with Counts II and III, it still states a cognizable statutory claim.

Moreover, Plaintiffs are entitled to plead both broad and narrow theories of liability in a single complaint. Rule 8 expressly permits alternative and overlapping claims, providing that a party may "set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones" and that "[i]f a party makes alternative statements, the pleading is sufficient if any one of them is sufficient." Fed. R. Civ. P. 8(d)(2); *see Barnett v. Inova Health Care Servs.*, 125 F.4th 465, 471–72 (4th Cir. 2025) (reversing district court dismissal of duplicative claims); *see also Millennium Pharmacy Sys., LLC v. Alice Operator, LLC*, No. CV JKB-16-3467, 2017 WL 1404565, at *2 (D. Md. Apr. 19, 2017) ("After all, a plaintiff is the master of its complaint, and it is free to combine theories or not as it deems expedient."). That is precisely what Plaintiffs have done here: Count I asserts the statute's broad prohibition on open dumping, while Counts II and III assert additional more specific violations of the regulatory criteria for surface water and groundwater contamination. These are not redundant for pleading purposes but rather represent different legal frameworks that may apply to the same facts.

Concerns about redundancy do not warrant dismissal at the pleading stage, and courts routinely reserve such questions for later under Rule 12(f) or summary judgment, when the record is more developed and judicial efficiency can be best assessed. Especially at this early stage, the Court should not foreclose Plaintiffs' claims before they have had a fair opportunity to be developed and heard.

B. Count II — Surface Water (40 C.F.R. § 257.3-3(c))

Count II states a plausible RCRA claim because Plaintiffs allege that Defendants' disposal of PFAS has caused non-point source pollution of surface waters in violation of 40 C.F.R. § 257.3-3(c) and applicable Maryland water-quality requirements. Plaintiffs identify the precise regulation at issue, cite the supporting state standards, and allege facts showing Defendants' disposal practices have contaminated surface water. Defendants' motion seeks to impose a level of detail that the Federal Rules do not require.

Under the Federal Rules, a complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A claim survives a Rule 12(b)(6) motion so long as it contains sufficient factual content to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). On a Rule 12(b)(6) motion, the court must accept all factual allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The regulation at issue states that, "[a] facility or practice shall not cause non-point source pollution of waters of the United States that violates applicable legal requirements implementing an areawide or Statewide water quality management plan that has been approved by the Administrator under section 208 of the Clean Water Act, as amended." 40 C.F.R. § 257.3-3(c).

Count II tracks that regulation and satisfies the pleading requirements. Count II clearly indicates the statutory basis for the claim (the open dumping prohibition), states with particularity the regulation that Defendants are violating, down to the particular subsection (40 C.F.R. § 257.3-3(c)), and then goes even into even further detail by citing specific sections of Maryland's applicable water quality laws and regulations that Defendants are violating. First Am. Cmpl. ¶ 95–101. The Complaint also provides ample factual support for the allegation that Defendants are emitting, discharging, and/or disposing of PFAS into Peggy Branch and Middle Neck Branch and otherwise causing PFAS migration into surface waters. First Am. Cmpl. ¶¶ 4–6, 43–45, 50–52, 54, 85.

Defendants ask the Court to reject Count II because, they say, Plaintiffs have not produced the underlying section 208 "Statewide water quality management plan" or expressly pleaded that particular plan's text. *See* ECF 19-1 at 25–27. That is an overly technical demand that Rule 8 does not impose. Plaintiffs need not plead evidentiary detail or append administrative plans at the pleading stage. Rather, it is sufficient to allege the legal claim and the facts giving rise to it. Here, Plaintiffs have done exactly that: they tied the alleged non-point source discharges to violations of concrete Maryland statutes and regulations implementing water-quality requirements. First Am. Cmpl. ¶¶ 97–101. Those allegations give Defendants fair notice of the claim and permit a reasonable inference of liability under 40 C.F.R. § 257.3-3(c).

The only RCRA case cited by Defendants in support of their Count II argument is *Chart v. Town of Parma*, No. 10-CV-6179P, 2012 WL 3839241 (W.D.N.Y. Aug. 28, 2012). That case involved a RCRA complaint which did not specify that the claim was an open dumping claim, did not cite the open dumping portion of the statute, and did not cite any specific regulation alleged to have been violated. *Id.* at *8–9. The Court should find that opinion readily distinguishable, where Plaintiffs here have cited the open dumping prohibition in the complaint, alleged a specific regulation that Defendants are violating and even cited the underlying state statutes and regulations that support the specific violation of RCRA alleged in Count II. *See* First Am. Cmpl. ¶¶ 95–101.

Taken together, these allegations give Defendants fair notice of the claim and permit the reasonable inference that their disposal practices violate 40 C.F.R. § 257.3-3(c). Count II states a cognizable RCRA claim and should proceed.

C. Count III — Groundwater (40 C.F.R. § 257.3-4(a))

Count III alleges that Defendants' disposal of PFAS has contaminated underground drinking water sources beyond maximum contaminant levels (MCLs) set by EPA, in violation of 40 C.F.R. § 257.3-4(a). First Am. Cmpl. ¶¶ 104–110. In numerous instances throughout the First

Amended Complaint, Plaintiffs alleged that Defendants' actions have caused the drinking water on their property and in the surrounding community to exceed EPA's MCLs for PFOA, PFOS, and PFHxS. *See* First Am. Cmpl. ¶¶ 8, 21–24, 48, 56–60, 110.

The regulation states that "[a] facility or practice shall not contaminate an underground drinking water source beyond the solid waste boundary[.]" 40 C.F.R. § 257.3-4(a). The regulation defines contamination through incorporation of Appendix I to Part 257, *id.* § 257.3-4(c)(2), which, in turn lists "Maximum Contaminant Levels (MCLs) Promulgated Under the Safe Drinking Water Act," 40 C.F.R. Pt. 257, App. I. When promulgating the RCRA regulations, EPA explained that it linked the contaminants and MCLs contained in RCRA's groundwater contamination regulation to the contaminants and MCLs used under the Safe Drinking Water Act to ensure consistent protection of drinking water. *See* 44 Fed. Reg. 53,438, 53,445–47 (Sept. 13, 1979).

Defendants argue that Count III fails because PFAS are not listed in Appendix I to Part 257. ECF 19-1 at 28–30. But 40 C.F.R. § 257.3-4(a) expressly prohibits contamination of drinking water sources, and EPA adopted the appendix mechanism to ensure that this prohibition reflects the national drinking water standards in effect under the Safe Drinking Water Act. *See* 44 Fed. Reg. at 53,445–47. EPA has now promulgated MCLs for PFAS, including for PFOA, PFOS, and PFHxS, under 40 C.F.R. part 141, and those standards provide the benchmark for safe drinking water. Plaintiffs' allegations that Defendants' practices have caused PFAS concentrations above those levels state a plausible claim under the regulatory text and its purpose.

Defendants' reading would freeze the scope of 40 C.F.R. § 257.3-4 in time, ignoring EPA's subsequent adoption of binding MCLs under part 141. Nothing in the regulation prohibits citizens from relying on newly promulgated MCLs when alleging contamination of underground drinking water sources. Plaintiffs' reliance on those current standards is consistent with both the text and history of 40 C.F.R. § 257.3-4.

Count III therefore states a plausible claim because Plaintiffs identified the governing regulation, alleged exceedances of EPA's MCLs, and connected those exceedances to Defendants' disposal practices. These allegations satisfy Rule 8 and are sufficient to defeat dismissal at this stage.

D. Count IV — Imminent and Substantial Endangerment (42 U.S.C. § 6972(a)(1)(B))

Defendants maintain that in order for Plaintiffs to bring a claim for imminent and substantial endangerment, they must continue to drink the water that Perdue has contaminated. *See* ECF 19-1 at 30–31.

However, the statute does not require the current presence of imminent and substantial harm, but rather that Defendants' actions "*may present* an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B) (emphasis added). In *United States v. Waste Indus., Inc.*, 734 F.2d 159 (4th Cir. 1984), the court examined the parallel language for EPA to bring an action under 42 U.S.C. § 6973(a) and concluded that "EPA need not prove that an emergency exists to prevail under [§ 6973], only that the circumstances may present an imminent and substantial endangerment." *Id.* at 168.

In *Meghrig v. KFC W., Inc.*, 516 U.S. 479 (1996), the Supreme Court interpreted the language of § 6972(a)(1)(B) to hold that it cannot provide the basis to recover costs for past cleanup efforts. *Id.* at 485–86. In doing so, the Court explained that the risk of future harm under § 6972(a)(1)(B) must be present at the time of suit. *Id.* Plaintiffs have alleged exactly that, citing contamination of their drinking well water at levels far above EPA's MCLs, as well as contamination of their surface waters and soils. These allegations demonstrate an ongoing and substantial threat to health and the environment, regardless of whether Plaintiffs continue to drink the contaminated water.

The cases cited by Defendants are inapposite here. In *Schmucker v. Johnson Controls, Inc.*, No. 3:14-CV-1593 JD, 2019 WL 718553 (N.D. Ind. Feb. 19, 2019), the Court denied Plaintiffs' motion for summary judgment in part because the homes in the area were connected to municipal water and defendant's expert maintained that the contamination would never reach the city's wellfield. *Id.* at *27 (denying Plaintiffs' summary judgment motion and allowing the case to go to trial). Similarly, in *Scotchtown Holdings LLC v. Town of Goshen*, No. 08-CV-4720-(CS), 2009 WL 27445 (S.D.N.Y. Jan. 5, 2009), the court dismissed a RCRA claim where the plaintiff wished to develop an uninhabited parcel of land and claimed that future occupants would be harmed. *Id.* at *1–3. In a similar vein, *Two Rivers Terminal, L.P. v. Chevron USA, Inc.*, 96 F. Supp. 2d 432 (M.D. Pa. 2000), involved a situation where the groundwater was already unfit for human consumption due to high iron levels and the groundwater flowed in the opposite direction of the drinking wells in the surrounding area. *Id.* at 445.

There are multiple, material distinctions between this case and *Courtland Co., Inc. v. Union Carbide Corp.*, No. 2:18-CV-01230, 2023 WL 6331069 (S.D.W. Va. Sept. 28, 2023). First, *Courtland* was decided after an eighteen-day bench trial, whereas here, Defendants ask this Court to reach similar conclusions at the motion to dismiss stage where all inferences are to be drawn in favor of the Plaintiffs. *Id.* at *1. Additionally, the plaintiff in *Courtland* was a corporation that purchased land formerly used as a coal storage yard and then leased it out "as a storage, staging, and waste site for various construction equipment, debris, and materials," and also established a natural gas well on the property. *Id.* at *8–9. Finally, the aquifer under at least one *Courtland* site was known to have naturally high iron and manganese, with a local ordinance prohibiting potable use of groundwater without treatment, and no drinking-water wells were known nearby. *Id.* at *49.

This case is the opposite on each point. Plaintiffs are residential well users living adjacent to Peggy Branch, a stream that originates on Perdue's property and runs alongside theirs. First Am. Cmpl. ¶¶ 22–24. The First Amended Complaint alleges not only that the drinking water wells on Plaintiffs' properties has been shown to exceed the MCLs for PFOA, PFOS, PFHxS, but also that in the area surrounding Perdue's property "at least 112 drinking water wells exceed the maximum allowable drinking water levels set by EPA for one or more PFAS chemicals, often at levels that are 10 to 100 times the regulatory limits." First Am. Cmpl. ¶¶ 22–24, 57. Plaintiffs additionally alleged that the surface water and soil on their properties has been contaminated, and that Peggy Branch, a stream that originates on Perdue's property and then runs adjacent to Plaintiffs' properties, is a significant source of Perdue's contamination of the surrounding area. First Am. Cmpl. ¶¶ 4, 18–21, 40–41, 43–52. Plaintiffs also allege that Defendants' contamination of Peggy Branch, Middle Neck Branch, and the surrounding groundwater and surface waters, presents a risk of harm to aquatic life, including fish and shellfish. First Am. Compl. ¶¶ 8, 40–41, 76–85. Plaintiffs' allegations comfortably satisfy the statutory standard that Defendants' practices "may present an imminent and substantial endangerment to health or the environment," 42 U.S.C. § 6972(a)(1)(B).

IV. The Court Should Deny the Request to Strike Allegations Contained in Count IV

Defendants cite no legal basis for asking this Court to strike references to air emissions contained in Count IV of the First Amended Complaint. *See* ECF 19-1 at 32–33. A court may strike from a pleading only "redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). As this Court has explained, "[m]otions to strike are disfavored and usually should be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties." *Baxter v. AmeriHome Mortg. Co., LLC*, 617 F. Supp. 3d 346, 350–51 (D. Md. 2022) (cleaned up) (citing *Graff v. Prime Retail, Inc.*, 172 F. Supp. 2d 721, 731 (D. Md. 2001); 5A Wright & Miller, Federal Practice and Procedure § 1382 (2d ed. 1990)).

Defendants misapprehend Plaintiffs' allegations in asserting that Plaintiffs claim PFAS are released as a gas. *See* ECF 19-1 at 32. Rather, the First Amended Complaint alleges that Defendants are disposing of PFAS, in part, as particulates or aerosols. First Am. Compl. ¶ 52. The authority Defendants rely on, *Ctr. for Cmty. Action & Env't Just. v. BNSF R. Co.*, 764 F.3d 1019 (9th Cir. 2014), expressly declined to address whether particulate matter constitutes a solid waste under RCRA. *Id.* at 1030 n.10. By contrast, other courts have addressed that question and found that emitting particulate matter into the air "is precisely the type of harm RCRA aims to remediate." *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 965 (S.D. Ohio 2015). Furthermore, even assuming arguendo that the Court were to agree with Defendants' position regarding air emissions, Defendants identify no prejudice they would suffer from leaving the allegations in place. Therefore, this Court should deny Defendants' request to strike allegations contained in Count IV.

V. A Stay Is Improper

A. A Stay Would Undermine Congress's Chosen Enforcement Scheme Under RCRA

Congress designed a detailed framework specifying when government enforcement actions take precedence over a RCRA citizen suit, including a built-in notice requirement that allows the government to file suit before a citizen action proceeds. *See* 42 U.S.C. § 6972(b)–(c). Defendants know that they fail to meet any statutory provisions that would prohibit the citizen suit from proceeding, so they instead invoke the primary jurisdiction doctrine and ask this Court to disregard Congress's design and stay this case. *See* ECF 19-1 at 33-37.

Citizens are prohibited from filing a RCRA suit under 42 U.S.C. § 6972(a)(1)(A), the provision underlying Counts I – III, if the EPA or a State "has commenced and is diligently prosecuting a *civil or criminal action in a court* of the United States or a State." 42 U.S.C. § 6972(b)(1)(B) (emphasis added). For citizen suits under the imminent and substantial endangerment subparagraph of 42 U.S.C. § 6972(a)(1)(B), citizen plaintiffs are precluded only if: (1) the EPA or State has taken a certain specified action under the Comprehensive Environmental Response, Compensation, and Liability Act; or (2) a State "has commenced and is diligently prosecuting" its own imminent and substantial endangerment claim under section 6972(a)(1)(B). 42 U.S.C. § 6972(b)(2)(B)–(C). None of these conditions are met in this case, and Plaintiffs' suit therefore falls squarely within the statutory scheme Congress created and may proceed.

The statute requires that both EPA and the State receive notice 60-90 days before a citizen files a RCRA suit. 42 U.S.C. § 6972(b)(1)(A), (b)(2)(A). This provides both governmental entities an opportunity to file a RCRA suit first, with citizens then limited to intervening in the federal or state-brought RCRA action. 42 U.S.C. § 6972(b)(1), (b)(2)(E). Plaintiffs duly provided the required pre-suit notice to both EPA and the Maryland Department of the Environment (MDE), stating Plaintiffs' intent to file suit under RCRA. First Am. Compl. ¶ 10. Neither entity elected to bring its own RCRA action. Yet Defendants now ask this Court to deny Plaintiffs the very rights Congress granted in section 6972. As courts have warned, "[t]o abstain in situations other than those identified in the statute thus threatens an 'end run around RCRA,' and would substitute our judgment for that of Congress about the correct balance between respect for state administrative processes and the need for consistent and timely enforcement of RCRA." *Chico Serv. Station, Inc.*

v. Sol Puerto Rico Ltd., 633 F.3d 20, 31 (1st Cir. 2011) (quoting *PMC, Inc. v. Sherwin-Williams Co.*, 151 F.3d 610, 619 (7th Cir.1998)). Because Congress spoke directly to when citizen suits must yield to government enforcement, the Court should decline Defendants' invitation to graft an extra-statutory stay onto RCRA's carefully drawn framework.

B. Primary Jurisdiction Does Not Apply to Plaintiffs' RCRA Claims

The doctrine of primary jurisdiction "requires the court to enable a 'referral' to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling. *Reiter v. Cooper,* 507 U.S. 258, 268 (1993); *see Mitchell Coal & Coke Co. v. Pennsylvania R. Co.*, 230 U.S. 247, 267 (1913) (staying case "to give the plaintiff a reasonable opportunity within which to apply to the [Interstate Commerce] Commission").

Primary jurisdiction is to be "invoked sparingly, as it often results in added expense and delay." *Alpharma, Inc. v. Pennfield Oil Co.*, 411 F.3d 934, 938 (8th Cir. 2005) (citing *Red Lake Band of Chippewa Indians v. Barlow,* 846 F.2d 474, 477 (8th Cir. 1988) (internal quotations omitted)). There is "[n]o fixed formula" for its application. *Env't Tech. Council v. Sierra Club*, 98 F.3d 774, 789 (4th Cir. 1996) (quoting *United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 64 (1956)). Instead, court must ask in every case "whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation." *Western Pac. R.R. Co.*, 352 U.S. at 64. Primary jurisdiction may be relevant when "enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body." *Id.* at 59.

Here, Plaintiffs' claims have not "been placed within the special competence" of MDE. *See id.* Rather, Plaintiffs allege that Defendants have violated RCRA and that their conduct "may present an imminent and substantial endangerment to health or the environment" under RCRA. 42 U.S.C. § 6972(a)(1)(B). Defendants cannot claim that MDE will make administrative rulings on these questions of *federal* law. That authority lies exclusively within the jurisdiction of federal courts. *See* 42 U.S.C. § 6972(a). Just as this Court could resolve the case in the absence of any MDE action, so too it can adjudicate Plaintiffs' RCRA claims while MDE is considering its own investigation under state law. *See* ECF 19-5 at 4.

To the extent the Defendants raise the specter of conflicting order from this Court and MDE, they offer no concrete explanation for how such orders may conflict. If MDE were to order Defendants to remediate their PFAS contamination, such directives would complement rather than conflict with the relief that Plaintiffs seek here. *See Sullivan v. Saint-Gobain Performance Plastics Corp.*, 226 F. Supp. 3d 288, 298 (D. Vt. 2016) ("Rather than being an impediment or potential conflict, the court views those discussions as potentially helpful to this case, since they might obviate some of the relief that Plaintiffs seek."). Speculation about hypothetical conflicts is insufficient to justify staying a properly filed RCRA citizen suit.

C. Defendants' Incomplete Efforts Highlight the Need for Judicial Relief Under RCRA

Defendants urge this Court to stay the case while MDE conducts its investigation, but the record shows that delay would only worsen the risks. An interim remedial measures report ("IRM report") prepared by S.S. Papadopulos & Associates, Inc. ("SSPA") and other experts in the field of PFAS contamination investigation and remediation,[3] attached as Exhibit C, documents the staggering extent of Perdue's PFAS contamination and describes major gaps in Perdue's response to date. Perdue's reliance on stopgap measures such as installing POET systems, supplying bottled water, and upgrading its treatment plant fails to confront the widespread contamination it has

[3] The IRM report was prepared by a team of experts in hydrogeology, remediation engineering, geochemistry, soybean processing technology, and wastewater treatment. Collectively, they have more than 175 years of site remediation experience.

already caused and is continuing to cause to the region's groundwater, surface waters, and soils. Ex. A ¶ 18.

Perdue has tested only a portion of the homes within its designated area and excluded thousands of residents outside its designated area from any monitoring or treatment. Ex. C at 17. As part of a related matter before this Court, Plaintiffs' counsel raised concerns about contaminated drinking water wells located outside of Perdue's investigation area and requested that Perdue provide well testing and point-of-entry treatment (POET) systems for those residences. As shown in the correspondence between counsel attached hereto as Exhibit D, Perdue has declined to take these measures for any residences outside the zone that has been approved by MDE. Even within the designated area, Defendants' testing has been incomplete. Their reported results cover only six PFAS compounds and omit others detected in more than half of the offsite drinking water samples taken by SSP&A, leaving critical gaps in information needed to protect residents from exposure. Ex. A ¶ 14.

At the same time, Perdue continues to discharge hundreds of thousands of gallons of wastewater each day and has applied for a permit to increase that volume to one million gallons daily. Ex. C at 2, 20. It has not investigated or addressed suspected sources of continuing contamination such as leaking lagoons, contaminated soils, and former spray fields, which continue to release PFAS into groundwater and surface waters that impact Plaintiffs and hundreds of other properties and streams that course through their neighborhoods. *See* Ex. C at 13–14. More than 500,000 gallons of PFAS-contaminated groundwater continue to flow offsite each day from Defendants' property to downgradient residents, yet MDE has not required Defendants to investigate or implement measures to contain or mitigate this ongoing migration of "Forever Chemicals" endangering the health of Plaintiffs, the surrounding community, and the environment.

Ex. C at 5; *see* Ex. A ¶ 23 ("At the current time, Perdue has undertaken no active measures to mitigate or contain groundwater contaminants migrating to the Heather Glen neighborhood from the western edge of their property, or to treat PFAS contamination already released to groundwater.)

The IRM report identifies straightforward interim measures, including excavation of contaminated soil, reconstruction of lagoons with proper liners, and installation of groundwater treatment systems. Ex. C at 17–32. Plaintiffs' counsel approached MDE to discuss these interim remedial measures, but MDE indicated that it does not wish to discuss them at this time. *See* Exhibit E.

Additionally, Defendants' consultant, Langan Engineering and Environmental Services, LLC ("Langan"), submitted a revised investigation workplan to MDE on May 28, 2025, Exhibit F, which was approved by MDE on June 12, 2025, Exhibit G.[4] Langan's workplan does not provide for any off-site testing of surface water, any testing of particulates or other air emissions, or any expansion of the well testing area, all of which are recommended in the SSPA's IRM Report, Ex. C. These omissions underscore that MDE's process, while ongoing, will not ensure timely or comprehensive protection of Plaintiffs or their communities. Without judicial involvement, the most critical sources of contamination will remain unaddressed and the risks will continue to grow. After many months of delay, judicial oversight has become an essential part of ensuring that Perdue

[4] It is significant that none of these documents that describe what Defendants are required to investigate reference RCRA and its broad investigatory and corrective action requirements related to surface water, soils and air deposition. The Defendants and MDE are pursuing a much more limited investigation under state law that does not adequately assess the RCRA violations and imminent and substantial endangerment outlined in Plaintiffs' First Amended Complaint. For example, MDE is not requiring sampling of surface water and air particulates, which would ordinarily be a requirement for RCRA facility investigations.

remedies the harms it has caused and halts the ongoing damage, while regulatory proceedings continue.

Even if the Court were to decide that primary jurisdiction was an appropriate consideration in this matter, the doctrine is generally applied only after the factual record is developed, not at the pleading stage. *See Spears v. Chrysler, LLC*, No. 3:08 CV 331, 2011 WL 540284, at *8 (S.D. Ohio 2011) ("[C]ourts typically resolve questions of primary jurisdiction regarding such claims, at the summary judgment stage of litigation, rather than at the motion to dismiss stage.") (citations omitted). Therefore, if the Court chooses to entertain Defendants' stay request at all, it should do so only after the parties and the Court have had an opportunity to develop a more complete factual record following discovery.

Congress carefully delineated when RCRA suits may be stayed or displaced, and primary jurisdiction cannot be invoked to create an extra-statutory barrier where no agency expertise is needed.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' Motion to Dismiss, Strike, or Stay.

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