IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STEPHEN JONES AND RICHARD RENSHAW, Plaintiffs, v. PERDUE FARMS INC., PERDUE AGRIBUSINESS LLC, AND PERDUE FOODS LLC, Defendants.	C.A. No.: 1:25-cv-02445

REPLY IN SUPPORT OF
MOTION TO DISMISS, STRIKE, OR STAY

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INTRODUCTION

Plaintiffs cannot disregard legal requirements and facts for their own convenience, which is the crux of their Opposition to Defendants' Motion ("Opp."). First, Plaintiffs ignore the numerous authorities illustrating their Notice was deficient. Second, they cannot demonstrate a concrete, redressable injury for standing. Likewise, civil penalties will not redress Plaintiffs' injuries as Perdue began remedying the PFAS contamination long before this suit. Third, despite Plaintiffs' attempt to proceed under an outdated pleading standard, all counts fail to state a claim: Count I is duplicative. Count II fails to plead all required elements. Count III fails unless the Court indulges Plaintiffs' request to disregard the plain text of a regulation. Count IV fails because the mere presence of PFAS does not render an endangerment imminent. Fourth, allegations about air emissions are immaterial. The complaint should be dismissed entirely. But, should any counts remain, judicial economy and practicality favor a stay pending MDE's proposed remediation plan.

ARGUMENT

I. Plaintiffs' pre-suit Notice is deficient as to Counts I, II, and III.[1]

Plaintiffs cannot ignore RCRA notice requirements as "procedural technicalities" (Opp. 1). *See Monongahela Power Co. v. Reilly*, 980 F.2d 272, 275 n.2 (4th Cir. 1992) (holding analogous Clean Air Act notice requirements "may not be avoided by employing a 'flexible or pragmatic construction'" (citations omitted)). The Fourth Circuit's 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), does not mean that Plaintiffs can assert a general

[1] As Plaintiffs admit (Opp. 7 n.1), courts in this district review challenges to pre-suit notice under Federal Rule of Civil Procedure 12(b)(1) because such "[n]otice requirements . . . are jurisdictional." *Martin v. W.L. Gore & Assocs., Inc.*, No. 24-cv-3549-SAG, 2025 WL 1294891, at *2 (D. Md. May 5, 2025) (citing *Assateague Coastkeeper v. Alan and Kristin Hudson Farm*, 727 F. Supp. 2d 433, 437 (D. Md. 2010)). Regardless, under either Rule 12(b)(1) or 12(b)(6), the claims must be dismissed.

violation of RCRA and expect Perdue to know, let alone remedy, the specific violation alleged. *See Hallstrom v. Tillamook Cnty.*, 493 U.S. 20, 29 (2019). The deficiency of Plaintiffs' Notice is not the omission of *every* detail, but the omission of *key* details enabling Perdue to understand which "specific permit, standard, regulation, condition, requirement, or order" has allegedly been violated. *See* 40 C.F.R. § 254.3(a).

General allegations that Perdue violated "the RCRA prohibition against Open Dumping" (Compl., Ex. A at 2 ("Pls.' Notice")), are insufficient because the statutory "prohibition" on open dumping is not self-executing; open dumping violations are creatures of regulations. *See* 42 U.S.C. § 6945(a); 42 U.S.C. § 6907(a)(3); 40 C.F.R. § 257.1(a). Alleging "open dumping" alone merely conveys the belief that *something* in the regulations has been violated, without indicating *what*. At a minimum, Plaintiffs must identify an underlying regulatory violation. *See* 40 C.F.R. § 257.1(a). They did not, leaving Perdue to guess from possible violations (*e.g.*, violations listed at 40 C.F.R. §§ 257.3-1–257.3-8) and undermining the very purpose of RCRA's notice requirement. *Hallstrom*, 493 U.S. at 29 ("[N]otice gives the alleged violator 'an opportunity to bring itself into complete compliance with the Act and . . . render unnecessary a citizen suit.'" (citation omitted)). Plaintiffs further excluded key details in the Notice by failing to identify the "water quality management plan" that allegedly supports their open dumping claim (Am. Compl. ¶¶ 97-98), and by omitting any date or duration of Perdue's alleged violations.[2]

Plaintiffs' argument regarding the omission of the word "prohibition" in the notice regulation ignores EPA's authority and misconstrues Perdue's argument. *See* Opp. 8-9. First, it is not the Court's role in a RCRA suit to draw inferences from EPA's inaction or to opine on whether

[2] The Notice references various dates (*e.g.*, Pls.' Notice 3-4), but fails to allege when the violations started or otherwise limit the time period.

EPA's statutorily authorized inaction was correct. *See Courtland Co. v. Union Carbide Corp.*, Nos. 18-cv-01230, 19-cv-00894, 21-cv-00101, 21-cv-00487, 2023 WL 6331069, at *94 (S.D. W. Va. Sept. 28, 2023) (noting "it would be improper to draw any inferences from a congressional failure to act"); *Brod v. Omya, Inc.*, 653 F.3d 156, 170 (2d. Cir. 2011) ("Whether the regulation is wise is not a question entrusted to the courts.").

Second, Perdue's notice argument does not rise and fall on the notice regulation's omission of the word "prohibition." Indeed, even if the regulation included "prohibition," the Notice would still be deficient because the statutory open-dumping prohibition operates via regulations, which themselves provide numerous discrete bases for a violation, to the exclusion of other, more general bases. 42 U.S.C. § 6945(a); 42 U.S.C. § 6907(a)(3); 40 C.F.R. § 257.1(a); *see also McHoney v. Marine Navigation Co.*, 233 F.2d 769, 771 (4th Cir. 1956) (applying the principle of *expressio unius est exclusio alterius* to interpret a regulation); *Bowles v. Am. Brewery, Inc.*, 146 F.2d 842, 845 (4th Cir. 1945) (same). Plaintiffs needed to identify the specific regulation underlying the statutory prohibition for Perdue to understand Plaintiffs' allegation.

Plaintiffs' reliance on one out-of-circuit case is also unavailing. *See* Opp. 14 (citing *Hackensack Riverkeeper, Inc. v. Del. Ostego Corp.*, 450 F. Supp. 2d 467 (D.N.J. 2006)). In *Hackensack*, the court relied on Third Circuit precedent holding that content requirements in a notice "are not to be construed as strictly as the timing requirements." 450 F. Supp. 2d at 481. The Fourth Circuit has not made this distinction, and cases post-*Hackensack*, in this Circuit and others, strictly construe both the timing *and* content requirements for notice. *See Friends of the Earth Inc.*, 629 F.3d at 399 (noting the legislative objectives of notice "cannot be met . . . if citizen plaintiffs are excused from providing adequate information in their pre-suit notice to enable the recipients of such notices to identify the specific alleged violations"); *Chesapeake Bay Found. v. Severstal*

Sparrows Point, LLC, 794 F. Supp. 2d 602, 621-22 (D. Md. 2011); *Brod*, 653 F.3d at 168-69; *Karr v. Heffner*, 475 F.3d 1192, 1203 (10th Cir. 2007); *Nat'l Parks & Conservation Ass'n v. TVA*, 502 F.3d 1316, 1329-30 (11th Cir. 2007).

Plaintiffs' failure to meaningfully distinguish Perdue's cited authority also supports dismissal. Just as the notice in *Blumenthal Power Co. v. Browning-Ferris, Inc.*, was deficient for referring to "an entire subchapter of RCRA" (Opp. 10), Plaintiffs' Notice alleging a violation of RCRA's open dumping prohibition is deficient, as both notices fail to provide the violator enough information to identify the specific RCRA violation. No. 94-cv-2612, 1995 WL 1902124, at *4-5 (D. Md. Apr. 19, 1995) (finding notice deficient that "generally refer[s] to all of Subchapter III," which "is the large portion of RCRA which addresses hazardous waste management"). As to *Brod*, and contrary to Plaintiffs' assertions (Opp. 10-11), the court's decision turned not only on the notice's failure to identify the contaminant, but also on its failure to "allege that the practice violated any particular 'open dumping' regulation." 653 F.3d at 169. Plaintiffs' arguments in opposition do not cure their defective notice, and Counts I, II, and III must be dismissed for lack of subject matter jurisdiction.

II. Plaintiffs are not injured in a way that is both concrete and redressable.

A. Plaintiffs' alleged harms are facially deficient to establish a concrete injury.

Plaintiffs' formulaic allegations of "recreational, aesthetic, and/or commercial" injuries fall far short of the pleading standard and do not establish a cognizable injury.[3] *See* Am. Compl. ¶ 8.

[3] Plaintiffs misconstrue the pleading standard throughout their Opposition and rely on cases that predate *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See* Opp. 4 (arguing motions to dismiss are granted "sparingly and with caution" and quoting *Concerned Citizens of Carderock v. Hubbard*, 84 F. Supp. 2d 668, 669-70 (D. Md. 2000), a case that predates *Twombly* and *Iqbal*); *id.* at 3 (quoting *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006), which relied on caselaw from *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), abrogated by *Twombly*, 550 U.S. at 562-63); *id.* at 11-12 (failing to cite a single post-*Twombly* and *Iqbal* case supporting the facial sufficiency of Plaintiffs' conclusory

That Plaintiffs phrase this harm in the conjunctive *and* disjunctive underscores that Plaintiffs are not sure which hypothetical harms they are, in fact, alleging. *Id*. Plaintiffs rely on dicta from *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), asserting their "general allegations" of recreational, aesthetic, and/or commercial harms establish a concrete injury. *See* Opp. 11. Not so. For a general allegation to suffice, it must be more than conclusory; a plaintiff must allege that "he used the affected area, and that he is an individual 'for whom the aesthetic and recreational values of the area [are] lessened' by the defendant's activity." *Piney Run Pres. Ass'n v. Cnty. Comm'rs of Carroll Cnty.*, 268 F.3d 255, 263 (4th Cir. 2001) (citation omitted)).[4] Plaintiffs allege neither.

Without identifying a specific or planned use of the affected area, Plaintiffs' conclusory complaints of abstract recreational, aesthetic, and/or commercial injuries do not establish standing. *Compare Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 156 (4th Cir. 2000) (finding recreational injuries were concrete where plaintiffs alleged contamination decreased their interest in swimming and fishing in lake), *with Richardson v. Mayor of Balt.*, No. 13-cv-1924-RDB, 2014 WL 60211, at *4 (D. Md. Jan. 7, 2014) (finding recreational injuries were not concrete where plaintiffs merely alleged they "use[d] and recreate[d] on" a river, without

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allegations). However, *Twombly* and *Iqbal* elevated the pleading standard, "requir[ing] that complaints in civil actions be alleged with greater specificity than previously was required." *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012).

[4] As *Piney Run* demonstrates, Plaintiffs' bare allegations of general harm to their "aesthetic, recreational, and/or commercial interests" (Am. Compl. ¶ 8) would likely have been insufficient even under the more lenient pleading standard pre-*Twombly/Iqbal*, as even then, plaintiffs had to allege how the contamination interfered with their use and enjoyment of the environment. 268 F.3d at 263. In *Piney Run*, a plaintiff alleged environmental damage (increased algae) "made the stream's rocks slippery, and therefore difficult to cross," and that "[b]ecause the water [wa]s no longer clear, she stopped allowing her horses to drink from Piney Run" and "the green algae made the stream less desirable to observe," which the Court found sufficient to establish a concrete injury. *Id.* Plaintiffs have not made any allegations that are similarly specific and concrete, nor have they identified any court that has found a concrete injury established by conclusory allegations of "aesthetic, recreational, and/or commercial" harm. Am. Compl. ¶ 8.

allegations of "the nature [and] type of planned use"). Plaintiffs' Amended Complaint is even vaguer than the complaint dismissed in *Richardson*, as Plaintiffs never allege that they use and recreate on Peggy Branch, nor do they specify types of uses or planned uses of the water. *See* Am. Compl. ¶¶ 76-77 (alleging Peggy Branch is designated for swimming and fishing, not that Plaintiffs swim or fish in Peggy Branch).

Moreover, there is no indication of the nature of any aesthetic or commercial interest in Plaintiffs' Amended Complaint, rendering any such "aesthetic" and "commercial" injuries hypothetical. At most, Plaintiffs allege their property is adjacent to Peggy Branch, though they fail to allege that they view Peggy Branch or derive aesthetic enjoyment therefrom. *Id*. ¶¶ 18-19. Even if Plaintiffs did, it is unreasonable to infer that the presence of a non-visible chemical affects aesthetic enjoyment absent additional allegations of visible damage to the water or environment. The same is true for Plaintiffs' commercial harms, as the Amended Complaint is devoid of any allegation that may indicate what commercial interests have been hindered. Rather than argue otherwise, Plaintiffs' Opposition merely repeats their conclusory allegations, Opp. 11-12, illustrating the case should be dismissed.

B. The Court cannot redress Plaintiffs' alleged drinking water contamination.

Plaintiffs' alleged injuries from drinking water contamination are not redressable by the Court, as Mr. Jones's drinking water is already remediated, and Mr. Renshaw elected not to remediate his drinking water. *See* Defs.' Mot. to Dismiss, Ex. A ¶¶ 6-8 (Dec. of Adam Hackenburg). To avoid this conclusion, compelled by undisputed facts, Plaintiffs assert that the jurisdictional facts are intertwined with facts central to the merits of the dispute. Opp. 12. This is incorrect. Whether Plaintiffs' only alleged concrete injury (drinking water contamination) is redressable by the Court is distinct from the evaluation of Plaintiffs' allegations of RCRA violations, which will focus on whether alleged disposal methods violate specific legal prohibitions

under RCRA.

Moreover, because the jurisdictional facts are undisputed, there is nothing to reserve for factfinder resolution as to those facts, which is the reason courts decline to consider "intertwined" facts on jurisdictional challenges. *See Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982) (explaining that "where the jurisdictional facts are intertwined with the facts central to the merits of the dispute[,] . . . [i]t is the better view that in such cases *the entire factual dispute* is appropriately resolved only by a proceeding on the merits" (emphasis added)); *Kerns v. United States*, 585 F.3d 187, 193 (4th Cir. 2009) (explaining that "a presumption of truthfulness should attach to the plaintiff's allegations" when *disputed* jurisdictional facts are intertwined with the merits and courts should resolve "factual *disputes*" central to the merits only after discovery (emphasis added)). Plaintiffs' approach would permit them to pursue their claims despite the undisputed facts demonstrating they lack a redressable injury.

Plaintiffs' cited cases involve disputed factual issues that were determinative of the court's jurisdiction and the merits. *See Adams*, 697 F.2d at 1219 (standing and civil rights claim turned on dispute as to whether firefighters resigned or were discharged); *Kerns*, 585 F.3d at 194-95 (jurisdiction and merits of Federal Torts Claims Act suit turned on dispute as to whether employee acted within the scope of employment). Unlike in *Adams* and *Kerns*, the jurisdictional facts here are undisputed. There is no need to provide plaintiffs with a "presumption of truthfulness" pending a decision on the merits: Mr. Renshaw concedes he declined a POET. Opp. 13. Mr. Jones does not dispute his drinking water currently has non-detectable levels of PFAS. *Id.* There is nothing for a factfinder to resolve as to these facts, and nothing for the Court to redress. The case should be dismissed.

C. Plaintiffs lack standing to seek civil penalties.

Plaintiffs seek declaratory and injunctive relief in addition to civil penalties (Am.

Compl. ¶¶ 118-19), but the mere availability of civil penalties does not create standing. It is Plaintiffs' burden to "demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000). Plaintiffs lack standing to seek civil penalties because they fail to establish such penalties will provide redress through deterrence. *See id.* at 186 (recognizing environmental plaintiffs may seek civil penalties when such penalties can provide redress through deterrence). Here, the uncontested facts confirm that civil penalties will serve no deterrent effect. *See id.* at 186 (recognizing the "deterrent effect of a claim for civil penalties [can] become[] so insubstantial or so remote that it cannot support citizen standing").

In this case, neither party contests that Perdue initiated remediation activities well before Plaintiffs' suit. *Compare* Pls.' Notice 1 (dated April 29, 2025), *with id.*, Attachment A (Perdue designated "responsible person" for investigating PFAS and funding remediation activities on September 12, 2024), *and* Am. Compl., Ex. D (Perdue's community letters dated September 30, 2024, seeking to test surrounding wells and provide bottled water). Given Perdue's pre-suit, interim remediation measures and its obligations to fund remediation, Plaintiffs fail to allege or even explain how a civil penalty could plausibly have a legitimate deterrent effect on Perdue. As civil penalties are unlikely to provide redress through deterrence, Plaintiffs' suit should be dismissed entirely for want of subject matter jurisdiction.

III. Counts I-IV fail to allege RCRA violations.

A. Count I is a catchall count that duplicates Counts II and III.

Count I encompasses the same legal theories and facts as Counts II and III, only with less detail. This catchall Count adds nothing to this suit at the expense of the Court's and Perdue's time and resources. Plaintiffs concede that Count I "asserts the statute's broad prohibition on open dumping." Opp. 17. Though Count I is for a violation of 42 U.S.C. § 6945, Plaintiffs argue Count

I pleads a violation of a "baseline" in 42 U.S.C. § 6944(a)—a baseline set for EPA in its promulgation of regulatory criteria. *See id.* at 16. Plaintiffs misapprehend § 6944(a)'s role in the statutory and regulatory scheme.

Section 6944(a) mandates that EPA "promulgate regulations containing criteria for determining which facilities" are sanitary landfills and which are open dumps. "[S]uch criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste[.]" 42 U.S.C. § 6944(a). EPA issued those criteria in 40 C.F.R. Part 257. *S. Rd. Assocs. v. Int'l Bus. Machs. Corp.*, 216 F.3d 251, 256 (2d Cir. 2000). Thus, "the criteria in §§ 257.1 through 257.4" determine "which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under . . . 4004(a) [42 U.S.C. § 6944(a)] of the [RCRA]." 40 C.F.R. § 257.1(a); *see also S. Rd. Assocs.*, 216 F.3d at 256 ("40 C.F.R. pt. 257 lists criteria for determining what is, and what is not, an open dump."). Absent allegations supporting a Part 257 regulatory violation, there is no claim for open dumping under § 6945(a).

"[A]lternative pleading is permitted in federal court," but "duplicative pleading is not." *Lower Neuse Pres. Grp., LLC v. Boats, Etc., Inc.*, No. 11-cv-77, 2011 WL 4565434, at *5 (E.D. Va. Sept. 28, 2011). Duplicative claims like Count I are subject to dismissal in the interest of judicial economy. *See Pizarro Orta v. Creekstone Landscaping & Excavating, LLC*, No. 23-cv-1954-EA, 2024 WL 3555093, at *4 (D. Md. July 25, 2024) (dismissing one count as redundant because both counts "stem[med] from identical allegations, that are decided under identical legal standards, and for which identical relief is available" (quoting *Doe v. Cmty. Coll. of Balt. Cnty.*, 595 F. Supp. 3d 392, 417 (D. Md. 2022)); *Gregory Packaging, Inc. v. Sodexo Operations, LLC*, No. 24-cv-187-DKC, 2024 WL 4335666, at *3 (D. Md. Sept. 26, 2024) (similar).

Plaintiffs' Amended Complaint lacks allegations that could state a claim for any of the relevant criteria besides those tied to Counts II and III. *See* Defs.' Mem., ECF 19-1 at 16 n.9 ("Mem.") (describing Part 257 regulations). That Count I is untethered to a specific regulatory criterion, while Counts II and III are not, illustrates Count I's insufficiency. *See Chart v. Town of Parma*, No. 10-cv-6179, 2012 WL 3839241, at *9 (W.D.N.Y. Aug. 28, 2012) (where complaint failed to specify regulation for open-dumping claim, "this alone constitutes grounds for dismissal"). Count I should be dismissed.

B. Plaintiffs fail to allege a violation of legal requirements implementing a water quality management plan.

The regulation tied to Count II, 40 C.F.R. § 257.3-3(c), does not forbid non-point source pollution generally or violations of just any law or regulation. It forbids such pollution that violates specific "legal requirements": those that implement "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). Plaintiffs make much of the fact that they identified Maryland statutes and regulations (Opp. 18), but they never alleged that those regulations or statutes implement a water quality management plan. *See* Am. Compl. ¶¶ 97-100. Instead, Plaintiffs ask the Court to agree with their legal conclusion that the factual allegations state a claim for a violation of legal requirements that they have not identified or even connected to an applicable plan. *See* Opp. 19 (stating there is a "reasonable inference of liability" for violations of legal requirements that Plaintiffs have not identified). Plaintiffs' failure prevents the Court from analyzing whether Plaintiffs' factual allegations state a claim for a violation of § 257.3-3(c).

Modern pleading standards require "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also supra* note 3. The Court cannot

evaluate if the allegations state a claim for a violation of unidentified legal requirements. That is why this case is analogous to *Chart* (*contra* Opp. 19), as in that case, "even if the complaint" was "construed to assert a statutory open dumping claim," the court could not "review the [defendant's] alleged conduct against the applicable regulatory criteria to determine the sufficiency of the allegations." 2012 WL 3839241, at *9. Count II should be dismissed.

C. Count III fails because PFAS are not regulated contaminants in Appendix I.

Plaintiffs cannot escape that the plain text of 40 C.F.R. § 257.3-4(a) renders Count III meritless. They concede that "the regulation defines contamination through incorporation of Appendix I to Part 257," and in the next breath, claim contamination is instead defined by 40 C.F.R Part 141. Opp. 20. But 40 C.F.R. § 257.3-4(a)'s plain language is clear, and that language controls. *See United States v. Moriello*, 980 F.3d 924, 934 (4th Cir. 2020) ("If the language of the regulation 'has a plain and ordinary meaning, courts need look no further and should apply the regulation as it is written.'" (citation omitted)). EPA determines which MCLs are in Appendix I and when to update it. *See, e.g.*, Solid Waste Disposal Facility Criteria, 56 Fed. Reg. 50978, 50998 (Oct. 9, 1991). Appendix I does not include PFAS. Count III must be dismissed.

D. Imminent endangerment requires more than the mere presence of PFAS.

Plaintiffs fail to address Count IV's key deficiency: they cannot state a claim for imminent and substantial endangerment by alleging the presence of a contaminant alone. Plaintiffs instead rely on *United States v. Waste Industries,* 734 F.2d 159, 168 (4th Cir. 1984), and its statement that EPA need not prove the existence of an emergency under 42 U.S.C. § 6973(a). Yet the Supreme Court interpreted § 6972(a)(1)(B), the relevant law here, more recently in 1996. It determined that "[a]n endangerment can only be 'imminent' if it 'threaten[s] to occur immediately.'" *Meghrig v. KFC W.*, 516 U.S. 479, 485-86 (1996) (second alteration in original) (citation omitted). Thus, Plaintiffs must allege "a threat which is present *now*[.]" *Id.* at 486; *see also Crandall v. City of*

Denver, 594 F.3d 1231, 1238 (10th Cir. 2010) (noting the harm may be in the future, but "the *endangerment* must be imminent" (citing *Meghrig*, 516 U.S. at 486)). Absent an allegation that Plaintiffs may immediately encounter contaminated water, the endangerment is not imminent.[5]

Plaintiffs also ignore post-*Meghrig* cases recognizing that unused contaminated water does not present an imminent threat. *See Warren v. Johnson Matthey, Inc.*, No. 15-cv-01919, 2016 WL 215232 at *7 (E.D. Pa. Jan. 19, 2016); *Scotchtown Holdings LLC v. Town of Goshen*, No. 08-cv-4720, 2009 WL 27445, at *2-3 (S.D.N.Y. Jan. 5, 2009). Here, Plaintiffs do not allege that they are drinking the water in their wells, that they are bathing in it, that they are swimming or fishing in nearby waters, or that they even plan to do anything with the contaminated water or land that would endanger them.[6] *See generally* Am. Compl. Plaintiffs fail to connect their various allegations regarding contamination to an immediate threat of endangerment. Accordingly, Plaintiffs' Count IV must be dismissed.

IV. Plaintiffs' immaterial allegations regarding air emissions should be struck.

"'Immaterial' matter is that which has no essential or important relationship to the claim for relief[.]" *CTH 1 Caregiver v. Owens*, No. 11-cv-2215, 2012 WL 2572044, at *5 (D.S.C. July 2, 2012) (citation omitted). Whether in the form of uncontained gas or particulate emissions, PFAS emitted from "manufacturing processes" are not within the scope of RCRA, and these immaterial allegations will result in burdensome discovery requests levied at Perdue.

The Ninth Circuit has recognized that emission of diesel particulate matter directly into the

[5] As noted above, Plaintiffs' general allegations regarding the environment fail to allege a cognizable Article III injury, and thus those allegations cannot save Count IV.

[6] Although Mr. Renshaw now alleges he showers in the water to support Plaintiffs' factual standing argument (Opp., Ex. B ¶ 8), the evaluation of Count IV is based upon the facial sufficiency of the Amended Complaint, which makes no mention of showering or other water use. *See E. I. du Pont de Nemours & Co. v. Kolon Indus.*, 637 F.3d 435, 448 (4th Cir. 2011).

air does not constitute disposal of solid waste in violation of RCRA. *Ctr. for Cmty. Action & Env't Just. v. BNSF Ry. Co.*, 764 F.3d 1019, 1030 (9th Cir. 2014); *see also Steward v. Honeywell Int'l, Inc.*, 469 F. Supp. 3d 872, 881 (S.D. Ill. 2020) (dismissing RCRA count as air emissions of solid waste particulate matter are not "the type of solid waste governed by RCRA"). Plaintiffs' sole authority stating otherwise is incorrect, as it ignored 42 U.S.C. § 6903(3)'s text, which defines "disposal" as placing solid waste first onto land or water. *See Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 3d 940, 964-65 (S.D. Ohio 2015). Accordingly, because it is self-evident that immaterial allegations can prejudicially expand the scope of discovery, *see Jones v. Aberdeen Proving Ground Fed. Credit Union*, No. 21-cv-1915-ELH, 2022 WL 2703825, at *3 (D. Md. July 12, 2022), Plaintiffs' irrelevant allegations regarding air emissions (Am. Compl. ¶¶ 91, 106, 115-16), should be struck.

V. In the alternative, this case should be stayed.

Imposition of a stay is both proper and warranted in this case. First, there is nothing improper about imposing a stay in a RCRA case. Although Plaintiffs suggest RCRA cases are uniquely immune from the exercise of primary jurisdiction (Opp. 26), courts impose stays in RCRA cases, just as in any other type of case. *E.g. Coal. for Health Concern v. LWD, Inc.*, 60 F.3d 1188, 1194-95 (6th Cir. 1995); *Space Age Fuels, Inc. v. Standard Oil Co. of Cal.*, No. 95-cv-1637, 1996 WL 160741, at *3 (D. Or. Feb. 29, 1996). Plaintiffs' claim that a stay would "undermine" Congress's enforcement scheme is similarly meritless, and the only case Plaintiffs cite for this does not even involve a motion to stay. *See* Opp. 25-26 (citing only *Chico Serv. Station, Inc. v. Sol P.R. Ltd.*, 633 F.3d 20, 31 (1st Cir. 2011), an inapposite case involving a motion to dismiss on abstention grounds). Moreover, that neither EPA nor MDE brought a RCRA action is of no moment (Opp. 25), particularly when EPA and MDE were provided inadequate notice, *supra* Section I, and when even without agency prosecution, Perdue began significant interim

remediation measures. Mem. 25-30. Congress's enforcement scheme was designed to permit citizens to enforce environmental regulations when agencies turn a blind eye to violations. That is not this case.[7] MDE is directing appropriate remediation, and judicial intervention risks upsetting, rather than aiding, that effort.

Second, imposition of a stay is warranted in this case as all four factors guiding a court's exercise of primary jurisdiction favor Perdue. Mem. 26-30. Plaintiffs do not even address each of the factors endorsed in this Circuit. Opp. 26-27. Plaintiffs instead argue their federal RCRA claims have not "been placed within the special competence" of MDE. *Id.* at 26 (quoting *United States v. W. Pac. R.R. Co.*, 352 U.S. 59, 64 (1956)). As Plaintiffs' cited case demonstrates, courts determine whether *questions or issues* fall within the agency's expertise—an agency is not required to have expertise in a *legal claim* to warrant a stay. *W. Pac. R.R. Co.*, 352 U.S. at 64 (approving of primary jurisdiction when resolution of an *issue* falls within an agency's special competence). Here, the relevant issue is the nature of appropriate remediation of PFAS contamination, a question that falls plainly within MDE's area of expertise. *See* Mem. 27 (outlining Maryland's comprehensive environmental scheme for pollution remediation).

Plaintiffs' argument that MDE remediation plans will inherently complement the Court's injunction is speculative and poses risks. Opp. 27. Whatever remediation ultimately entails, MDE permits will likely be required for remedial activities such as drilling wells or pumping

[7] In an apparent attempt to characterize MDE as neglectful, Plaintiffs complain that MDE did "not wish to discuss" interim remedial measures with Plaintiffs' counsel. Opp. 29. Yet, as evidenced in Plaintiffs' Exhibit E, MDE management met with Plaintiffs' counsel on July 16, 2025, reviewed Plaintiffs' counsel's expert report, and indicated it would reach out if it had any questions. Opp. Ex. E at 1, 12. MDE conveyed it was "assessing the modeling files and w[ould] share [the remediation plan] with the public once the review [wa]s complete." *Id.* at 12. Plaintiffs will also have the opportunity to provide comments once a proposed remediation plan is available for public review. Plaintiffs' disappointment that MDE did not extend additional special treatment to Plaintiffs' counsel does not constitute a failure of the agency's diligence.

groundwater for treatment. *See* Md. Code. Ann., Env't § 9-1306 (regarding well drilling permits); COMAR 26.04.04.01 *et seq.* (same); Env't § 5-502 (regarding appropriation and use of water permits); COMAR 26.17.06.06-.07 (same). MDE's remediation plan will account for inherent limitations imposed by other environmental laws and provide a comprehensive and efficient path towards remediation. In contrast, Plaintiffs would have the Court rely exclusively on Plaintiffs' hydrologist to independently craft a remediation plan via injunctive relief. *See* Opp., Ex. A ¶ 1. There is a serious risk of a Court-imposed remediation order that cannot be executed, either within a set time or at all, due to MDE's authority in issuing permits that are prerequisites to certain forms of remediation.

Finally, Plaintiffs' critiques about interim remedial measures are irrelevant to the Court's consideration of a stay. The decision to decline a stay will not translate to Plaintiffs receiving their preferred remedial measures right now, as those remedial measures could only conceivably materialize after a full trial on the merits. While Plaintiffs are dissatisfied with MDE's interim remedial measures, a motion to stay is not the forum for Plaintiffs' grievances.

Rather, the Court should impose a stay because it is a poor use of judicial resources to continue ahead when a short stay may eliminate the need for future relief or, at the very least, narrow the factual issues presented. If Plaintiffs are satisfied by MDE's remediation plan, court intervention will be unnecessary and judicial resources are conserved. If Plaintiffs are dissatisfied, they can tailor their requests for additional injunctive relief, significantly narrowing the realm of disputed issues, in which case judicial resources are still conserved. The benefits of a stay pending MDE's remediation plan are numerous, and the harms are negligible, if not nonexistent.

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 23, 2025, I electronically filed this Reply in Support of Motion to Dismiss, Strike, or Stay with the Court and used the CM/ECF system to serve all parties in this action registered with that system.

I FURTHER CERTIFY that a courtesy copy of the foregoing will be sent by overnight mail to the Clerk's Office.

/s/
Catherine G. Ottenritter