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

DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO RECONSIDER

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Defendants Perdue Farms Inc., Perdue Agribusiness LLC, and Perdue Foods LLC (collectively, "Perdue") oppose Plaintiffs Stephen Jones and Richard Renshaw's ("Plaintiffs") Motion to Reconsider (ECF 38) ("Motion").[1]

INTRODUCTION

The Court should reject Plaintiffs' second attempt to avoid dismissal of Count IV. Despite Plaintiffs' unsupported statements to the contrary, under the guiding standard applied to a motion for reconsideration of an interlocutory order, reconsideration is appropriate only when there has been an intervening change of controlling law, where new evidence has become available, or if there is a need to correct a clear error or prevent manifest injustice. None of these bases exist here.

Rehashing arguments they already put forth in their Opposition to Perdue's Motion to Dismiss, and resorting to new arguments based on old case law they could have put forth then but did not, Plaintiffs claim this Court erred because Plaintiffs sufficiently pled an endangerment *to others and to the environment* by sufficiently pleading endangerment *to themselves*. But the controlling authority does not support any of Plaintiffs' arguments, and they conveniently ignore that this Court dismissed their claims based on harm to the environment—a ruling they do not challenge now.

The Amended Complaint fails to plead an imminent and substantial endangerment to anyone. This Court already considered and correctly rejected Plaintiffs' argument that they pled a risk of imminent endangerment to themselves. They cannot conjure from that deficit a claim for imminent endangerment to others. Plaintiffs' motion lacks any basis for reconsideration and should be denied.

[1] References to Plaintiffs' Memorandum in Support of the Motion, ECF 38-1, are abbreviated as "Mem."

ARGUMENT

I. Plaintiffs have not met their burden to establish any basis for reconsideration of this Court's Order.

Plaintiffs' failure to apply the appropriate reconsideration standard and their failure to identify any basis for relief thereunder are fatal to their Motion. Under Federal Rule of Civil Procedure 54(b), district courts retain the power, in their discretion, to reconsider and modify interlocutory orders like the one at issue here.[2] *See Boyd v. Coventry Health Care Inc.*, 828 F. Supp. 2d 809, 813-14 (D. Md. 2011). Although the Fourth Circuit has not articulated a specific standard governing reconsideration of an interlocutory order, courts in this District routinely apply the Rule 59 and Rule 60 standards to guide their analysis, even though such review is not strictly subject to the standards applicable to reconsideration of final judgments. *See id.*; *Buettner-Hartsoe v. Baltimore Lutheran High School Ass'n*, No. RDB-20-3132, 2022 WL 4080294, at * 2 (D. Md. Sept. 6, 2022) (citing *Fayetteville Invs. v. Com. Builders, Inc.*, 936 F.2d 1462, 1472 (4th Cir. 1991)) (explaining that "the Fourth Circuit has suggested that the Rule 60(b) standard guides the district court's analysis" of a Rule 54(b) motion); *see also Lopez v. United States*, No. PWG-14-2156, 2016 WL 915621, at *1-2 (D. Md. Mar. 10, 2016) ("[C]ourts frequently look to [the Rule 59 and 60] standards for guidance in considering such motions . . . .") (citations omitted).

The Fourth Circuit "makes clear that a court's discretion under Rule 54(b) is not 'limitless,'" and "revision pursuant to Rule 54(b)" is "cabined" by the law of the case. *Siguel v. King Farm Citizens Assembly, Inc.*, No. GLS-22-672, 2024 WL 3303886, at *2 (D. Md. July 3,

[2] Perdue does not dispute that the Court's Order granting in part and denying in part Perdue's Motion to Dismiss, Strike, or Stay is an interlocutory order. *See* ECF 35; *see also* Fed. R. Civ. P. 54(b) ("any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities").

2024) (quoting *U.S. Tobacco Coop., Inc. v. Big S. Wholesale of Va., LLC*, 899 F.3d 236, 257 (4th Cir. 2018)). "A court's discretion to revisit earlier rulings in the same case is also subject 'to the caveat that where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again.'" *Id.* (quoting *U.S. Tobacco Coop., Inc.*, 899 F.3d at 257).

Accordingly:

> When considering motions to reconsider, ***whether brought under Rule 54(b), 59(e), or 60(b)***, ***the Court typically permits reconsideration in only three circumstances***: (1) where "there has been an intervening change of controlling law," (2) where "new evidence has become available"; or (3) where "there is a need to correct a clear error or to prevent manifest injustice."

Salisbury House, LLC v. Citizens Ins. Co. of Am., No. 24-3378-BAH, 2025 WL 1332209, at * 3 (D. Md. May 7, 2025) (quoting *Robinson v. Wix Filtration Corp., LLC*, 599 F.3d 403, 411 (4th Cir. 2010) (emphasis added)); *see also Warner v. Cellco P'ship*, 2016 WL 258342, No. ELH-13-3100, at *1 (D. Md. Jan. 20, 2016) (Gallagher, J.) (the Court "will reconsider an interlocutory order ***only where***: (1) there has been an intervening change in controlling law; (2) there is additional evidence that was not previously available; or (3) the prior decision was based on clear error or would work manifest injustice.") (citations omitted) (emphasis added)).

As to the third reason potentially permitting reconsideration—the only one Plaintiffs conceivably put forth here—establishing a clear error and manifest injustice is a "high bar" that is "difficult to meet." *Siguel*, 2024 WL 3303886 at *3 (citing *U.S. Tobacco Coop.*, 899 F.3d at 258). As the Fourth Circuit puts it, "[a] prior decision does not qualify for [this] third exception by being just maybe or probably wrong; it must strike us as wrong with the force of a five-week-old, unrefrigerated dead fish. It must be dead wrong." *Id.* (quoting *U.S. Tobacco Coop.*, 899 F.3d at 258).

Plaintiffs ignore this standard entirely, but the Court's decision smells just fine and is certainly not "dead wrong." *See* Mem. at 2 (defining the "legal standard" as "not subject to the stricter standards governing reconsideration of final orders and final judgments" but failing to identify the guiding standard for district courts on Rule 54 motions). Specifically, Plaintiffs do not contend that there has been an intervening change in the law or that evidence was not previously available to them. As to the former, all of Plaintiffs' newly cited cases date back 20 years or more,[3] and as to the latter, new evidence would have no import in considering the sufficiency of the allegations under Rule 12(b)(6). Nor do Plaintiffs argue that the Court's decision was based on clear error or would cause manifest injustice. For this reason alone, reconsideration of the Court's Order is inappropriate. *See Buettner-Hartsoe*, 2022 WL 4080294, at *3 ("absent indication that this Court's Order was founded on 'clear error,' there is no basis for reconsideration"); *Lynn v. Monarch Recovery Mgmt, Inc.*, 953 F. Supp. 2d 612, 620-21 (D. Md. 2013) ("mere disagreement with a court's rulings will not support granting" a motion for reconsideration) (citations omitted). Plaintiffs' Motion should be denied.

II. Plaintiffs fail to demonstrate that the Court erred.

Given that Plaintiffs do not assert any intervening change in the law or any new evidence, the only conceivable basis for reconsideration is that the Court made a clear error of law in dismissing Count IV's imminent and substantial endangerment claim. Plaintiffs assert two arguments that purportedly justify granting a do-over of the Court's assessment of Count IV: (1) that RCRA does not require them to plead an imminent and substantial endangerment to themselves individually so long as they allege some Article III injury; and (2) even if an imminent and substantial endangerment claim requires pleading individual risk, Plaintiffs have done so.

[3] Plaintiffs omit the date in their citation for *Trinity Am. Corp. v. EPA*, which is more than 25 years old. 150 F.3d 389 (4th Cir. 1998).

As a preliminary matter, to the extent that either of these arguments are "new," Plaintiffs' failure to explain why they were unable to raise such arguments in the original briefing is itself grounds for denying the Motion. *Lopez*, 2016 WL 915621, at *2 ("Plaintiffs have presented no evidence whatsoever that they were unable to make this legal argument when briefing originally occurred on Defendant's motion to dismiss. This failure to present the legal argument originally by itself provides grounds for denying Plaintiffs' [Rule 54] motion."). Moreover, "[a]ssuming, arguendo, that [Plaintiffs] have met the high bar of establishing error, they fail to establish that the Court was 'dead wrong[.]'" *Siguel*, 2024 WL 3303886, at *7 (quoting *U.S. Tobacco Coop.*, 899 F.3d at 258).[4] Even if this Court considers Plaintiffs' arguments on the merits, they do not withstand scrutiny.

A. The Court correctly applied the law in determining that Plaintiffs failed to allege a claim for imminent and substantial endangerment under RCRA.

Plaintiffs seek reconsideration only as to Count IV, in which this Court held that Plaintiffs failed to plead a substantial and imminent endangerment as they made no allegation of drinking contaminated water, and that they lack standing to bring this claim based on alleged harms to the environment. ECF 34 at 14-15. Plaintiffs offer no valid basis for the Court to reverse these sound conclusions based on clear error, nor do they challenge the Court's holding as to environmental standing.[5] Instead, Plaintiffs cite the same case law this Court has already addressed, as well as a

[4] Nor do Plaintiffs identify any "manifest injustice" they face here. *See Chae Bros., LLC v. Mayor & City Council of Baltimore*, No. GLR-17-1657, 2019 WL 1040434, at *2 n.2 (D. Md. Mar. 5, 2019) ("To show manifest injustice, a party must establish an error that is 'direct, obvious, and observable.'" (quoting *Register v. Cameron & Barkley Co.*, 481 F.Supp.2d 479, 480 n.1 (D.S.C. 2007)). Plaintiffs' Counts I and II survived dismissal, and they may proceed on those claims. ECF 34 at 15. Plaintiffs have not shown that they face any unfairness here, let alone a "manifest injustice."

[5] Nor could Plaintiffs conceivably challenge their standing to bring claims based on environmental harms, given they failed to "allege with any specificity the nature or type of their use of" nearby waters. ECF 34 at 9.

smattering of out-of-circuit, decades-old case law, some of which is non-published, and all of which is distinguishable. First, Plaintiffs distract from the question of whether their allegations are sufficient to state a claim by conflating the standards under Rule 12(b)(6) and the requirements for an Article III injury, attempting to bootstrap environmental standing when this Court held, and Plaintiffs do not contest, that they lack it. Second, Plaintiffs place undue reliance on cases that do not even address this Court's reasoning for dismissal of their claim, and some that concern the environmental standing that Plaintiffs lack. Third, Plaintiffs continue to argue that they have sufficiently pled a cause of action under Section 6972(a)(1)(B) through their bare allegations of contamination. This Court was correct in its holding that Plaintiffs failed to do so.

Plaintiffs do not seek reconsideration of this Court's holding that they "failed to demonstrate that they possess standing to seek relief based on harms to the environment." ECF 34 at 10. Instead, Plaintiffs attempt an end-run, arguing that they have sufficiently stated a claim for substantial and imminent endangerment to health and the environment under Section 6972(a)(1)(B) by virtue of their standing to seek relief related to their drinking water. *See* Mem. at 2 ("[A] plaintiff need only satisfy the requirements of Article III standing."). In doing so, Plaintiffs conflate the requirements for pleading a cause of action and pleading standing.

Standing is jurisdictional, but Section 6972(a)(1)(B) imposes distinct *merits* elements. Even if standing requirements are met, Plaintiffs must still allege "sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[M]ere conclusory and speculative allegations are not sufficient to withstand a motion to dismiss." *Painter's Mill Grille, LLC v. Brown*, 716 F.3d 342, 350 (4th Cir. 2013). One of the cases this Court relied upon in its discussion of Count IV illustrates the separate standards under the Rules,

dismissing a RCRA claim under *both* Rule 12(b)(6) given the failure to allege an imminent endangerment and Rule 12(b)(1) for want of subject matter jurisdiction. *Warren v. Matthey*, No. CV 15-01919, 2016 WL 215232 at *7, 9 (E.D. Pa. Jan. 19, 2016).

None of Plaintiffs' cited cases compel, or even suggest, Plaintiffs' conclusion that this Court made an error in determining that Plaintiffs failed to adequately plead a risk of imminent and substantial endangerment.[6] Plaintiffs' out-of-context quotations address different issues. *Middlesex County Board of Chosen Freeholders v. State of New Jersey Department of Environmental Protection* did not directly consider whether the allegations regarding the imminent nature of the endangerment were sufficient to make out a claim under Section 6972(a)(1)(B). 645 F. Supp. 715 (D. N.J. 1986). Rather, the opinion engaged in a general discussion of whether the local government plaintiffs had pled a cause of action. *Id.* at 720-22. The local government plaintiffs' allegations did not involve water contamination. Moreover, the allegations were significantly more substantial than what Plaintiffs offer here, including that the Middlesex County landfill was accepting waste from three other counties; that the landfill had been cited for numerous state regulatory violations "for failure to contain odors, failure to apply proper earth cover, failure to contain dust and other items too numerous to mention"; that traffic associated with rerouting trucks to the landfill caused buildup of carbon monoxide in the area above regulatory standards; and given the extra waste, the landfill would have to close earlier than anticipated, leaving Middlesex without any means of solid waste disposal at all. *Id.* at 717-18. Without describing how the defendants challenged these allegations, the court noted that, pursuant to the 1984 RCRA

[6] In their Opposition to the Motion to Dismiss, Plaintiffs merely argued that they need not plead there is a current threat. Opp. at 28. To the extent Plaintiffs now rely on new arguments, such as their theory that the claim may proceed based on insufficiently pled allegations regarding the health of others, despite Plaintiffs' failure to show a risk of harm to themselves, the Court should disregard such untimely arguments. *See supra* Section I*; Lopez*, 2016 WL 915621, at *2.

amendments enacted two years prior, citizens could bring suit where the EPA Administrator failed to, thus providing "a private means of obtaining the same relief that the EPA Administrator has previously been authorized to seek[.]" *Id.* at 721. Plaintiffs here argue that they may pursue claims beyond those for which they have standing, but *Middlesex* says nothing of the sort. It simply concluded that the local government plaintiffs had alleged a current imminent and substantial endangerment. *Id.* at 722.

Likewise, *Lincoln Properties, Ltd. v. Higgins*, an unreported case in the Eastern District of California, merely noted that the parties had agreed that the elements of Section 6972(a)(1)(B) mirror the elements of 42 U.S.C § 6973. No. S-91-760DFL/GGH, 1993 WL 217429, at *9 n.22 (E.D. Cal. Jan. 21, 1993). While both the statutes include the phrase "imminent and substantial endangerment to health or the environment," that does not mean that Plaintiffs have adequately pled those elements here. Neither *Lincoln Properties* nor *Middlesex* holds that contamination alone presents an imminent and substantial endangerment or that Plaintiffs may bring claims for which they lack standing.

Moreover, Plaintiffs' reliance on *Maine People's Alliance and Natural Resources Defense Council v. Mallinckrodt, Inc.* is illogical. 471 F.3d 277 (1st Cir. 2006). That opinion, issued on appeal following a nine-day bench trial, concerned in part whether the plaintiff environmental associations had associational standing, which turned on whether individual members had *environmental standing*. *Id.* at 281, 283-84. In contrast, here, Plaintiffs do not seek reconsideration of this Court's holding that Plaintiffs lack "standing to seek relief based on harms to the environment." ECF 34 at 10. The cherry-picked quote upon which Plaintiffs rely from *Maine People's Alliance* is part of the standing discussion; the court stated that it would "focus on what is essential to establish Article III standing" given "there is nothing in RCRA's text or history

that suggests a congressional intent to erect statutory *standing* barriers beyond those imposed by Article III of the Constitution and because [defendant] has not identified any prudential standing concerns." *Id.* at 283 (emphasis added). The court determined the plaintiffs had *environmental* standing, as their members testified that they had "modified their behavior due to fear of mercury contamination," including, among others, that they refused to eat fish or shellfish from the river at issue. *Id.* at 284. Plaintiffs do not even come close to making such allegations in their Amended Complaint. The plaintiffs in *Interfaith Community Organization v. Honeywell International, Inc*., also possessed environmental standing, and Plaintiffs' quoted portion comes from the Court's discussion of the term "substantial" in the statute. 399 F.3d 248, 255-58, 259 (3d Cir. 2005). These out-of-circuit cases, each 20 years old or more, provide no basis to conclude that this Court made any clear error here.

Plaintiffs' reliance on *Foster v. United States* is also perplexing because that case further supports this Court's reasoning in dismissing Count IV. 922 F. Supp. 642 (D.D.C. 1996). In *Foster*, the court determined on summary judgment that a risk of harm was not imminent because the plaintiff failed to establish that "the risk of threatened harm is *currently* present on the Site, and that the 'potential for harm is great.'" 922 F. Supp. at 661 (*quoting United States v. Aceto Agricultural Chems. Corp.*, 872 F.2d 1373, 1383 (8th Cir.1989)). The case does not stand, as Plaintiffs would have it, for the proposition that this Court clearly erred in determining that Plaintiffs failed to sufficiently plead their substantial and imminent endangerment claim. Plaintiffs merely pled that their well water is contaminated, and that is not enough.

As to the cases Plaintiffs failed to meaningfully distinguish in their Opposition to the Motion to Dismiss, Plaintiffs' complete repetition of their arguments on those points neither meets the applicable standards nor is persuasive. All three cases support this Court's sound conclusion

that contamination alone is insufficient to present an imminent and substantial endangerment. *See Two Rivers Terminal, L.P. v. Chevron USA, Inc.*, 96 F. Supp. 2d 432, 446 (M.D. Pa. 2000) ("[P]laintiff's position is incorrect in requiring only a showing that there may be a threat of future harm and in asserting that soil and groundwater pollution by itself constitutes imminent and substantial endangerment."); *Scotchtown Holdings LLC v. Town of Goshen*, No. 08-CV-4720-(CS), 2009 WL 27445, at *3 (S.D.N.Y. Jan. 5, 2009) (where the only endangerment alleged was hypothetical given the lack of allegation of consumption of contaminated water, noting "the facts alleged here do not fit the limited remedy created by Congress [under RCRA]."); *Courtland Co., Inc. v. Union Carbide Corp.*, No. 2:18-CV-01230, 2023 WL 6331069, at *57 (S.D.W. Va. Sept. 28, 2023), *aff'd*, No. 23-2143, 2025 WL 2827873 (4th Cir. Oct. 6, 2025) (rejecting the argument that "contaminated groundwater in and of itself demonstrates an endangerment to the environment, even absent any secondary effects").

Plaintiffs continue to argue that contamination alone constitutes an imminent threat, but this Court already determined that Plaintiffs are mistaken. ECF 34 at 13-14. The fact remains that Plaintiffs failed to plead a potential threat that is present now, as RCRA requires. As Plaintiffs recognize, Section 6972(a)(1)(B) requires that whatever endangerment could be present, even if not actually present, it must be imminent. "Imminence" means that "the *risk* of threatened harm is currently present" and "the "potential for harm is great." *Foster*, 922 F. Supp. at 661 (emphasis added). Even as to the health of *other people*, Plaintiffs merely allege that there is PFAS in other wells.[7] Am. Compl. at ¶ 57. Plaintiffs do not allege that other people are drinking the well water

[7] As Plaintiffs admit, discussion of point-of-entry treatment systems outside the pleadings should not be considered at the 12(b)(6) stage, which begs the question of why Plaintiffs believed it appropriate to discuss such matters in their Motion, or why they chose to omit the website's explanation that 100 percent of individuals who asked for such systems received them. *See* Mem. at 5 n.2; Perdue Farms, Updates on Salisbury private well sampling for PFAS, (retrieved Jan. 25,

or seek to drink contaminated water. *See generally* Am. Compl. As to endangerments beyond wells, Plaintiffs do not allege that other people are swimming in the contaminated water ways, or fishing in them, or otherwise recreating in them. *Id.* They do not allege other people have PFAS in their soil or otherwise on their properties that they will encounter. *Id.* They fail to make any specific allegations, instead relying on the same bare phrasing regarding "citizens in the surrounding area" as they used for themselves—that contamination "harm[s] the recreational, aesthetic, and/or commercial interests of citizens in the surrounding areas, including Plaintiffs." *Id.* at ¶ 8. As the Court previously noted, "[t]his general allegation, particularly its use of 'and/or' . . . fails to describe with sufficient specificity how Plaintiffs use or plan to use the affected area and what injury they suffer as a result." ECF 34 at 9-10. That general allegation fails to describe with sufficient specificity how *other people* will use the water either.

Plaintiffs failed to plead an imminent and substantial endangerment to anyone, and this Court committed no clear error in its dismissal of Count IV under the standards of Rule 12(b)(6).

B. Plaintiffs' repackaged 12(b)(6) argument regarding individualized risk does not resolve their pleading failures.

As this Court has cautioned, "a motion for reconsideration under Rule 54(b) may not be used merely to reiterate arguments previously rejected by the court." *Innes v. Bd. of Regents of*

2026), https://corporate.perduefarms.com/water-testing-resources/#progress-update (stating "Free Point-of-entry treatment (POET) systems that reduce PFAS levels below the U.S. Environmental Protection Agency's standards for drinking water have been installed at 91% of impacted properties—and at 100% of the homes that requested a system. We continue to reach out to property owners who have not yet requested installation."). In any event, Plaintiffs may not use their Motion to cure a defect in their Amended Complaint. *Zachair, Ltd. v. Driggs*, 965 F. Supp. 741, 748 n.4 (D. Md. 1997) (plaintiff is "is bound by the allegations contained in [the] complaint and cannot, through the use of motion briefs, amend the complaint."); *Allgaier v. Microbiologics, Inc.*, No. 22-cv-01900-ELH, 2023 WL 2837336, at *4 (D. Md. Apr. 7, 2023) ("It is well settled that a plaintiff may not cure a defect in a complaint or otherwise amend a complaint by way of her opposition briefing.").

the Univ. Sys. of Md., 121 F. Supp. 3d 504, 507 (D. Md. 2015). Yet this is precisely what Plaintiffs do when they argue that they have alleged sufficient facts to state a claim for imminent and substantial endangerment and imply the Court made some clear error by finding otherwise. Mem. at 6 ("Plaintiffs do not dispute the Rule 12(b)(6) standard articulated by the Court, [] but respectfully submit that the allegations contained in the Complaint satisfy that standard when properly applied to Count IV"). The Court should deny Plaintiffs' attempt to rehash old arguments and should reject Plaintiffs' effort to compare their deficient RCRA claim to endangerment claims brought by the EPA under the emergency powers provision of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300i(a).

First, as noted above in Section II.A, the Court already rejected Plaintiffs' argument that their allegations satisfy the standard to allege an imminent and substantial endangerment claim. *See* ECF 34 at 13-14 ("Plaintiffs have failed to allege a claim for imminent and substantial endangerment."); Mem. at 6 (rearguing that "Plaintiffs have alleged sufficient facts establishing that they may face an imminent and substantial endangerment"). The fatal flaw in Plaintiffs' allegations was their failure to allege that they are currently drinking contaminated water, as required to state an imminent and substantial endangerment claim under RCRA based on contaminated drinking water. *Id.* ("allegations of contaminated drinking water cannot support an imminent and substantial endangerment claim if plaintiffs do not also allege that they are actually drinking the water"). Plaintiffs now rely on the same allegations in their Amended Complaint to urge this Court to reverse itself. *See* Mem. at 6. To the extent that Plaintiffs argue that the Court misapplied the 12(b)(6) standard, this argument fails. *See Buettner-Hartsoe*, 2022 WL 4080294, at *3 ("These arguments have already been decided, and are not a valid predicate for reconsideration under Rule 60(b), even under the more permissive construction afforded by Rule

54(b)."); *Bezek v. First Nat'l of Pennsylvania*, 2023 WL 2571508, at *3 (D. Md. Mar. 20, 2023) ("While Plaintiffs seek a second bite at the apple, 'a motion to reconsider is not a license to reargue the merits . . . .'") (quoting *Carrero v. Farrelly*, 310 F. Supp. 3d 581, 584 (D. Md. 2023)).

Second, Plaintiffs' reliance on *Trinity American Corp. v. EPA* is misplaced.[8] In *Trinity*, the Fourth Circuit reviewed an emergency order issued by the EPA under Section 1431 of the SDWA pursuant to the Administrative Procedure Act's "highly deferential" rational-basis standard. 150 F.3d 389, 395 (4th Cir. 1998) ("So that EPA can act promptly and effectively when a threat to public health is imminent, courts must ensure that the agency's power under the [SDWA] remains 'relatively untrammeled.'"). Under this highly deferential standard, the Fourth Circuit determined that the EPA had a rational basis to conclude that an imminent and substantial endangerment existed to users of a public drinking water source. *Id.* at 399. For this reason, the Court explained that the EPA was not required to prove that there were users of the water to make that finding. *Id.* The Fourth Circuit did not find that an imminent and substantial endangerment can exist where the water is not being used, as Plaintiffs suggest. Instead, the Court simply rejected the notion that the EPA must definitively demonstrate that people are using the water in order to take emergency action. In fact, the EPA *was* alleging that there were potential users of the water. *Id.* at 393 ("These homes use this water for drinking, cooking, food preparation, oral hygiene and bathing."). Here, Plaintiffs do not even claim to do anything with the water, so there is no basis

[8] *Trinity*, at nearly three-decades old, is not an intervening and controlling authority, and Plaintiffs could have raised this argument in their dismissal briefing, but they chose not to. Their failure to do so warrants denial. *See Lopez*, 2016 WL 915621, at *2 ("Plaintiffs have presented no evidence whatsoever that they were unable to make this legal argument when briefing originally occurred on Defendant's motion to dismiss. This failure to present the legal argument originally by itself provides grounds for denying Plaintiffs' [Rule 54] motion.").

for the Court to make *any* inference that they are at risk of harm therefrom.[9] *See* ECF 34 at 14 ("Plaintiffs did not allege in their complaint that they are currently drinking the contaminated water."). Far from "confirm[ing] that the imminent and substantial endangerment provisions under the SDWA and RCRA may be analyzed in a similar manner," as Plaintiffs posit (Mem. at 7 n.3), *Trinity* engaged in a discussion of the RCRA claim alleged in *Leister v. Black & Decker, Inc.*, 117 F.3d 1414, No. 96-1751, 1997 WL 378046 (4th Cir. July 8, 1997), because a party relied on *Leister*, not because the Fourth Circuit found it to be an apt analogy. *Trinity,* 150 F.3d at 399 (noting that party Trinity relied on *Leister v. Black & Decker, Inc.*, to support a contention, and the case did not "assist[] Trinity").

Trinity's deferential review of what the EPA must show to warrant an emergency order under the SDWA is fundamentally different from an independent judicial review of a private plaintiff's suit under RCRA. A citizen's claim for imminent and substantial endangerment under RCRA is not subject to agency deference. *See* 42 U.S.C. § 6972(a). A shared phrase in SDWA and RCRA thus *does not* create parallel causes of action or comparable judicial scrutiny, for good reason. When the EPA issues an emergency order, it is authorized to take "such actions as [the Administrator] may deem necessary[,]" including requiring those who caused or contributed to the endangerment to provide alternative water supplies. 42 U.S.C. § 300i(a). Yet, private litigants

[9] Plaintiffs' argument that this Court's decision requires them to knowingly drink contaminated water to bring suit under RCRA is absurd. *See* Mem. at 8. First, this Court did not hold that Plaintiffs must drink contaminated water to bring suit. It held that, absent an allegation of drinking the water, and absent environmental standing, Plaintiffs had not alleged an imminent and substantial endangerment. ECF 34 at 14. Second, the Court did not dismiss Plaintiffs' RCRA suit entirely; Plaintiffs retain two RCRA claims under which they may proceed. ECF 34 at 15. Third, the principal purpose of RCRA is not to effectuate the cleanup of solid waste. *Meghrig v. KFC W.*, 516 U.S. 479, 483 (1996). Despite Plaintiffs' attempt to broaden the purpose of RCRA's citizen suit provision, that Section 6972(a)(1)(B) has a clear, narrow purpose: to abate the risk of imminent and substantial endangerments. *See id.* at 485-86 (noting that Section 6972(a) "was designed to provide a remedy that ameliorates present or obviates the risk of future 'imminent' harms").

under RCRA may only "commence a civil action," and they may only do so after first providing ninety days' notice. 42 U.S.C. § 6972(a); (b)(2)(A).

Accordingly, this Court relied on the appropriate authority, *Meghrig v. KFC W.*, 516 U.S. 479 (1996) and cases applying *Meghrig*, to determine whether Plaintiffs alleged a RCRA claim for imminent and substantial endangerment. *See* ECF 34 at 13-14 (citing *Meghrig*; *Courtland*, 2023 WL 6331069, at *98 (quoting *Meghrig*, 516 U.S. at 485); *Warren*, 2016 WL 215232, at *7 (quoting *Meghrig*, 516 U.S. at 480)). In *Meghrig*, the Supreme Court addressed the RCRA provision (without comparison or reference to the SDWA emergency powers provision), explaining that "the meaning of this timing restriction is plain: An endangerment can only be 'imminent' if it 'threaten[s] to occur immediately.'" 516 U.S. 479, 485-86 (1996) (quoting Webster's New International Dictionary of English Language 1245 (2d ed. 1934)).

This Court thus properly based its dismissal of Count IV on two post-*Meghrig* cases addressing *RCRA* claims, not SDWA claims, which found that a plaintiff cannot allege an imminent and substantial endangerment claim based on contaminated water alone if plaintiffs do not allege they are drinking the water. ECF 34 at 13-14 (citing *Courtland Co. v. Union Carbide Corp.*, Civ. No. 2:18-cv-01230, 2023 WL 6331069, at *98 (S.D.W. Va. Sept. 28, 2023) (quoting *Meghrig*, 516 U.S. at 485); *Warren v. Mathey*, No. 15-01919, 2016 WL 215232, at *7 (E.D. Pa. Jan. 19, 2016) (quoting *Meghrig*, 516 U.S. at 480)). A court does not commit an error of law in exercising its discretion in a manner permitted by precedent. *See, e.g.*, *Anderson v. Skyline Nat'l Bank*, No. 5:21-cv-00048, 2023 WL 2334372, at *1 (W.D.N.C. Mar. 2, 2023) ("Thus, instead of arguing that the Court made a 'clear error of law,' Defendants simply disagree with how the Court exercised its discretion in applying the correct legal standards, which is not grounds for altering the Court's judgment under Rule 59."). Count IV was properly dismissed.

CONCLUSION

For the foregoing reasons, Perdue respectfully requests that the Court deny Plaintiffs' Motion to Reconsider. A proposed order to this effect is appended to this Opposition.

Dated: February 5, 2026

Respectfully submitted,

/s/

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Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 5, 2026, I electronically filed Defendants' Opposition to Plaintiffs' Motion to Reconsider 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